

# THE STRIX MYTHOLOGY DEMYSTIFIED

The Strix, in the Mythology of Classical antiquity was a bird of ill omen, the product of metamorphosis, that fed on human flesh and blood. It's also referred to witches and related Malevolent folkloric beings.



ISAAC CHRISTOPHER LUBOGO

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**ISAAC CHRISTOPHER LUBOGO**

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# **THE ORIGINS OF HOMOSEXUALITY: A COMPREHENSIVE GUIDE**

## **ABSTRACT**

The origins of homosexuality have been a source of debate and controversy for centuries. While there is no single answer to this question, there are a variety of theories that attempt to explain the phenomenon. This book will provide an overview of the various theories that have been proposed to explain the origins of homosexuality, as well as a discussion of the implications of these theories for a further understanding of sexual orientation in light of different interpretations such as religion, atheist, tradition & culture and the scientific view in respect to its causes among others with a comparison with other species with similar IQ levels as human beings.

It shall delve into and focus on the contemporary issues concerned with LGBTQIA+ inclusive of other sexual orientations such as objectophilia & bestiality, its legal status in Uganda visa via the different International Conventions in light of it being a Human Right visa via a moral aspect, Its merits and demerits



## **CHAPTER ONE**

### **ORDER, PATTERN & ORDER AND INTELLIGENCE ARGUMENTS TOWARDS HOMOSEXUALITY.**

Among the many topics explored by the philosophy of sexuality are procreation, contraception, celibacy, marriage, adultery, casual sex, flirting, prostitution, homosexuality, masturbation, seduction, rape, sexual harassment, sadomasochism, pornography, bestiality, and pedophilia. What do all these things have in common? All are related in various ways to the vast domain of human sexuality. That is, they are related, on the one hand, to the human desires and activities that involve the search for and attainment of sexual pleasure or satisfaction and, on the other hand, to the human desires and activities that involve the creation of new human beings. For it is a natural feature of human beings that certain sorts of behaviors and certain bodily organs are and can be employed either for pleasure or for reproduction, or for both.

Normative philosophy of sexuality inquires about the value of sexual activity and sexual pleasure and of the various forms they take. Thus, the philosophy of sexuality is concerned with the perennial questions of sexual morality and constitutes a large branch of applied ethics. Normative philosophy of sexuality investigates what contribution is made to the good or virtuous life by sexuality, and tries to determine what moral obligations we have to refrain from performing certain sexual acts and what moral permissions we have to engage in others.

Some philosophers of sexuality carry out conceptual analysis and the study of sexual ethics separately. They believe that it is one thing to define a sexual phenomenon (such as rape or adultery) and quite another thing to evaluate it. Other philosophers of sexuality believe that a robust distinction between defining a sexual phenomenon and arriving at moral evaluations of it cannot be made, that analyses of sexual

concepts and moral evaluations of sexual acts influence each other. Whether there actually is a tidy distinction between values and morals, on the one hand, and natural, social, or conceptual facts, on the other hand, is one of those fascinating, endlessly debated issues in philosophy, and is not limited to the philosophy of sexuality.

## **1. Metaphysics of Sexuality**

Our moral evaluations of sexual activity are bound to be affected by what we view the nature of the sexual impulse, or of sexual desire, to be in human beings. In this regard there is a deep divide between those philosophers that we might call the metaphysical sexual optimists and those we might call the metaphysical sexual pessimists.

The pessimists in the philosophy of sexuality, such as St. Augustine, Immanuel Kant, and, sometimes, Sigmund Freud, perceive the sexual impulse and acting on it to be something nearly always, if not necessarily, unbecoming the dignity of the human person; they see the essence and the results of the drive to be incompatible with more significant and lofty goals and aspirations of human existence; they fear that the power and demands of the sexual impulse make it a danger to harmonious civilized life; and they find in sexuality a severe threat not only to our proper relations with, and our moral treatment of, other persons, but also equally a threat to our own humanity.

On the other side of the divide are the metaphysical sexual optimists (Plato, in some of his works, sometimes Sigmund Freud, Bertrand Russell, and many contemporary philosophers) who perceive nothing especially obnoxious in the sexual impulse. They view human sexuality as just another and mostly innocuous dimension of our existence as embodied or animal-like creatures; they judge that sexuality, which in some measure has been given to us by evolution, cannot but be conducive to our well-being without detracting from our intellectual propensities; and they praise rather than fear the power of an impulse that can lift us to various high forms of happiness.

The particular sort of metaphysics of sex one believes will influence one's subsequent judgments about the value and role of sexuality in the good or virtuous life and about what sexual activities are morally wrong and which ones are morally permissible as explored below.

## 2. Metaphysical Sexual Pessimism

An extended version of metaphysical pessimism might make the following claims: In virtue of the nature of sexual desire, a person who sexually desires another person objectifies that other person, both before and during sexual activity. Immanuel Kant, states that sex “makes of the loved person an Object of appetite. . . . Taken by itself it is a degradation of human nature<sup>1</sup>” Certain types of manipulation and deception seem required prior to engaging in sex with another person, or are so common as to appear part of the nature of the sexual experience. As Bernard Baumrim makes the point, “sexual interaction is essentially manipulative—physically, psychologically, emotionally, and even intellectually<sup>2</sup>” We go out of our way, for example, to make ourselves look more attractive and desirable to the other person than we really are, and we go to great lengths to conceal our defects. And when one person sexually desires another, the other person’s body, his or her lips, thighs, toes, and buttocks are desired as the arousing parts they are, distinct from the person. The other’s genitals, too, are the object of our attention: Kant notes that “sexuality is not an inclination which one human being has for another as such, but is an inclination for the sex of another. . . . Only her sex is the object of his desires” Further, the sexual act itself is peculiar, with its uncontrollable arousal, involuntary jerkings, and its yearning to master and consume the other person’s body. During the act, a person both loses control of himself and loses regard for the humanity of the other. Our sexuality is a threat to the other’s personhood; but the one who is in the grip of desire is also on the verge of losing his or her personhood. The one who desires depends on the whims of another person to gain satisfaction, and becomes as a result a jellyfish, susceptible to the demands and manipulations of the other: “In desire you are compromised in the eyes of the object of desire, since you have displayed that you have designs which are vulnerable to his intentions<sup>3</sup>”. A person who proposes an irresistible sexual offer to another person may be exploiting someone made weak by sexual desire<sup>4</sup>.

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<sup>1</sup> Kant, Immanuel. *The Metaphysics of Morals*. Translated by Mary Gregor. Cambridge, Eng.: Cambridge University Press, 1996.

<sup>2</sup> “Sexual Immorality Delineated,” p. 300.

<sup>3</sup> Roger Scruton, *Sexual Desire*, p. 82

<sup>4</sup> Virginia Held, “Coercion and Coercive Offers,” p. 58.

Moreover, a person who gives in to another's sexual desire makes a tool of himself or herself. "For the natural use that one sex makes of the other's sexual organs is enjoyment, for which one gives oneself up to the other. In this act a human being makes himself into a thing, which conflicts with the right of humanity in his own person<sup>5</sup>" Those engaged in sexual activity make themselves willingly into objects for each other merely for the sake of sexual pleasure. Hence both persons are reduced to the animal level. "If . . . a man wishes to satisfy his desire, and a woman hers, they stimulate each other's desire; their inclinations meet, but their object is not human nature but sex, and each of them dishonours the human nature of the other. They make of humanity an instrument for the satisfaction of their lusts and inclinations, and dishonour it by placing it on a level with animal nature<sup>6</sup>".

Finally, due to the insistent nature of the sexual impulse, once things get going it is often hard to stop them in their tracks, and as a result we often end up doing things sexually that we had never planned or wanted to do. Sexual desire is also powerfully inelastic, one of the passions most likely to challenge reason, compelling us to seek satisfaction even when doing so involves dark-alley gropings, microbiologically filthy acts, slinking around the White House, or getting married impetuously.

Given such a pessimistic metaphysics of human sexuality, one might well conclude that acting on the sexual impulse is always morally wrong. That might, indeed, be precisely the right conclusion to draw, even if it implies the end of *Homo sapiens*. (This doomsday result is also implied by St. Paul's praising, in 1 Corinthians 7, sexual celibacy as the ideal spiritual state.) More frequently, however, the pessimistic metaphysicians of sexuality conclude that sexual activity is morally permissible only within marriage (of the lifelong, monogamous, heterosexual sort) and only for the purpose of procreation. Regarding the bodily activities that both lead to procreation and produce sexual pleasure, it is their procreative potential that is singularly significant and bestows value on these activities; seeking pleasure is an impediment to morally virtuous sexuality, and is something that should not be undertaken deliberately or for its own sake. Sexual pleasure at most has instrumental value, in inducing us to engage in an act that has procreation as its primary purpose. Such views are common among Christian thinkers, for example, St. Augustine: "A

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<sup>5</sup> Ibid.

<sup>6</sup> Kant, Immanuel. *The Metaphysics of Morals*. Translated by Mary Gregor. Cambridge, Eng.: Cambridge University Press, 1996.

man turns to good use the evil of concupiscence, and is not overcome by it, when he bridles and restrains its rage . . . and never relaxes his hold upon it except when intent on offspring, and then controls and applies it to the carnal generation of children . . . , not to the subjection of the spirit to the flesh in a sordid servitude<sup>7</sup>”

### **3. Metaphysical Sexual Optimism**

Metaphysical sexual optimists suppose that sexuality is a bonding mechanism that naturally and happily joins people together both sexually and nonsexually. Sexual activity involves pleasing the self and the other at the same time, and these exchanges of pleasure generate both gratitude and affection, which in turn are bound to deepen human relationships and make them more emotionally substantial. Further, and this is the most important point, sexual pleasure is, for a metaphysical optimist, a valuable thing in its own right, something to be cherished and promoted because it has intrinsic and not merely instrumental value. Hence the pursuit of sexual pleasure does not require much intricate justification; sexual activity surely need not be confined to marriage or directed at procreation. The good and virtuous life, while including much else, can also include a wide variety and extent of sexual relations. (See Russell Vannoy’s spirited defense of the value of sexual activity for its own sake, in *Sex Without Love*.)

Irving Singer is a contemporary philosopher of sexuality who expresses well one form of metaphysical optimism: “For though sexual interest resembles an appetite in some respects, it differs from hunger or thirst in being an interpersonal sensitivity, one that enables us to delight in the mind and character of other persons as well as in their flesh. Though at times people may be used as sexual objects and cast aside once their utility has been exhausted, this is no[t] . . . definitive of sexual desire. . . . By awakening us to the living presence of someone else, sexuality can enable us to treat this other being as just the person he or she happens to be. . . . There is nothing in the nature of sexuality as such that necessarily . . . reduces persons to things. On the contrary, sex may be seen as an instinctual agency by which persons respond to one another through their bodies” (*The Nature of Love*, vol. 2, p. 382. See also Jean Hampton, “Defining Wrong and Defining Rape”).

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<sup>7</sup> On Marriage and Concupiscence, bk. 1, ch. 9.

Pausanias, in Plato's *Symposium*, asserts that sexuality in itself is neither good nor bad. He recognizes, as a result, that there can be morally bad and morally good sexual activity, and proposes a corresponding distinction between what he calls "vulgar" eros and "heavenly" eros. A person who has vulgar eros is one who experiences promiscuous sexual desire, has a lust that can be satisfied by any partner, and selfishly seeks only for himself or herself the pleasures of sexual activity. By contrast, a person who has heavenly eros experiences a sexual desire that attaches to a particular person; he or she is as much interested in the other person's personality and well-being as he or she is concerned to have physical contact with and sexual satisfaction by means of the other person. A similar distinction between sexuality per se and eros is described by C. S. Lewis in his *The Four Loves* (chapter 5), and it is perhaps what Allan Bloom has in mind when he writes, "Animals have sex and human beings have eros, and no accurate science [or philosophy] is possible without making this distinction" (*Love and Friendship*, p. 19).

The divide between metaphysical optimists and metaphysical pessimists might, then, be put this way: metaphysical pessimists think that sexuality, unless it is rigorously constrained by social norms that have become internalized, will tend to be governed by vulgar eros, while metaphysical optimists think that sexuality, by itself, does not lead to or become vulgar, that by its nature it can easily be and often is heavenly<sup>8</sup>.

#### **4. Moral Evaluations**

Of course, we can and often do evaluate sexual activity morally: we inquire whether a sexual act—either a particular occurrence of a sexual act (the act we are doing or want to do right now) or a type of sexual act (say, all instances of homosexual fellatio)—is morally good or morally bad. More specifically, we evaluate, or judge, sexual acts to be morally obligatory, morally permissible, morally supererogatory, or morally wrong. For example: a spouse might have a moral obligation to engage in sex with the other spouse; it might be morally permissible for married couples to employ contraception while engaging in coitus; one person's agreeing to have sexual relations with another person when the former has no sexual desire of his or her own but does want to please the latter might be an act of supererogation; and rape and incest are commonly thought to be morally wrong.

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<sup>8</sup> (See the entry, *Philosophy of Love*.)

Note that if a specific type of sexual act is morally wrong (say, homosexual fellatio), then every instance of that type of act will be morally wrong. However, from the fact that the particular sexual act we are now doing or contemplate doing is morally wrong, it does not follow that any specific type of act is morally wrong; the sexual act that we are contemplating might be wrong for lots of different reasons having nothing to do with the type of sexual act that it is. For example, suppose we are engaging in heterosexual coitus (or anything else), and that this particular act is wrong because it is adulterous. The wrongfulness of our sexual activity does not imply that heterosexual coitus in general (or anything else), as a type of sexual act, is morally wrong. In some cases, of course, a particular sexual act will be wrong for several reasons: not only is it wrong because it is of a specific type (say, it is an instance of homosexual fellatio), but it is also wrong because at least one of the participants is married to someone else (it is wrong also because it is adulterous).

## **5. Nonmoral Evaluations**

We can also evaluate sexual activity (again, either a particular occurrence of a sexual act or a specific type of sexual activity) nonmorally: nonmorally “good” sex is sexual activity that provides pleasure to the participants or is physically or emotionally satisfying, while nonmorally “bad” sex is unexciting, tedious, boring, unenjoyable, or even unpleasant. An analogy will clarify the difference between morally evaluating something as good or bad and nonmorally evaluating it as good or bad. This radio on my desk is a good radio, in the nonmoral sense, because it does for me what I expect from a radio: it consistently provides clear tones. If, instead, the radio hissed and cackled most of the time, it would be a bad radio, nonmorally-speaking, and it would be senseless for me to blame the radio for its faults and threaten it with a trip to hell if it did not improve its behavior. Similarly, sexual activity can be nonmorally good if it provides for us what we expect sexual activity to provide, which is usually sexual pleasure, and this fact has no necessary moral implications.

It is not difficult to see that the fact that a sexual activity is perfectly nonmorally good, by abundantly satisfying both persons, does not mean by itself that the act is morally good: some adulterous sexual activity might well be very pleasing to the participants, yet be morally wrong. Further, the fact that a sexual activity is nonmorally bad, that is, does not produce pleasure for the persons engaged in it, does not by itself mean that the act is morally bad. Unpleasant sexual activity might occur

between persons who have little experience engaging in sexual activity (they do not yet know how to do sexual things, or have not yet learned what their likes and dislikes are), but their failure to provide pleasure for each other does not mean by itself that they perform morally wrongful acts.

Thus, the moral evaluation of sexual activity is a distinct enterprise from the nonmoral evaluation of sexual activity, even if there do remain important connections between them. For example, the fact that a sexual act provides pleasure to both participants, and is thereby nonmorally good, might be taken as a strong, but only *prima facie* good, reason for thinking that the act is morally good or at least has some degree of moral value. Indeed, utilitarians such as Jeremy Bentham and even John Stuart Mill might claim that, in general, the nonmoral goodness of sexual activity goes a long way toward justifying it. Another example: if one person never attempts to provide sexual pleasure to his or her partner, but selfishly insists on experiencing only his or her own pleasure, then that person's contribution to their sexual activity is morally suspicious or objectionable. But that judgment rests not simply on the fact that he or she did not provide pleasure for the other person, that is, on the fact that the sexual activity was for the other person nonmorally bad. The moral judgment rests, more precisely, on his or her motives for not providing any pleasure, for not making the experience nonmorally good for the other person.

Alan Soble argues that its one thing to point out that as evaluative categories, moral goodness/badness is quite distinct from nonmoral goodness/badness and another thing to wonder, nonetheless, about the emotional or psychological connections between the moral quality of sexual activity and its nonmoral quality. Perhaps morally good sexual activity tends also to be the most satisfying sexual activity, in the nonmoral sense. Whether that is true likely depends on what we mean by "morally good" sexuality and on certain features of human moral psychology. What would our lives be like, if there were always a neat correspondence between the moral quality of a sexual act and its nonmoral quality?

He states that examples that violate such a neat correspondence are at the present time, in this world, easy to come by in that a sexual act might be both morally and nonmorally good considering the exciting and joyful sexual activity of a newly-married couple. That a sexual act might be morally good and nonmorally bad in consideration of the routine sexual acts of this couple after they have been married

for ten years. Alan argues sexual act might be morally bad yet nonmorally good: one spouse in that couple, married for ten years, commits adultery with another married person and finds their sexual activity to be extraordinarily satisfying. And, finally, that a sexual act might be both morally and nonmorally bad: the adulterous couple get tired of each other, eventually no longer experiencing the excitement they once knew. A world in which there was little or no discrepancy between the moral and the nonmoral quality of sexual activity might be a better world than ours, or it might be worse. Alan maintains that a sexual activity is acknowledged to be morally wrong due to its own attributes of being non-morally good<sup>9</sup>.

## **6. The Dangers of Sex**

According to Alan Soble, whether a particular sexual act or a specific type of sexual act provides sexual pleasure is not the only factor in judging its nonmoral quality: pragmatic and prudential considerations also figure into whether a sexual act, all things considered, has a preponderance of nonmoral goodness. Many sexual activities can be physically or psychologically risky, dangerous, or harmful. Anal coitus, for example, whether carried out by a heterosexual couple or by two gay males, can damage delicate tissues and is a mechanism for the potential transmission of various HIV viruses (as is heterosexual genital intercourse). Thus in evaluating whether a sexual act will be overall nonmorally good or bad, not only its anticipated pleasure or satisfaction must be counted, but also all sorts of negative (undesired) side effects: whether the sexual act is likely to damage the body, as in some sadomasochistic acts, or transmit any one of a number of venereal diseases, or result in an unwanted pregnancy, or even whether one might feel regret, anger, or guilt afterwards as a result of having engaged in a sexual act with this person, or in this location, or under these conditions, or of a specific type. Indeed, all these pragmatic and prudential factors also figure into the moral evaluation of sexual activity: intentionally causing unwanted pain or discomfort to one's partner, or not taking adequate precautions against the possibility of pregnancy, or not informing one's partner of a suspected case of genital infection can be morally wrong. Thus, depending on what particular moral principles about sexuality one embraces, the various ingredients that constitute the nonmoral quality of sexual acts can influence one's moral judgments. As such, the danger associated with homosexuality in terms

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<sup>9</sup> Soble, Alan. *The Philosophy of Sex and Love: An Introduction*. St. Paul, Minn.: Paragon House, 1998.

of damaging the other partner's tissues is high, and as such, homosexuality though from the non-moral perspective is dangerous and should be desisted.

## **7. Sexual Perversion**

In addition to inquiring about the moral and nonmoral quality of a given sexual act or a type of sexual activity, we can also ask whether the act or type is natural or unnatural (that is, perverted). Alan Soble states that Natural sexual acts, to provide merely a broad definition, are those acts that either flow naturally from human sexual nature, or at least do not frustrate or counteract sexual tendencies that flow naturally from human sexual desire. An account of what is natural in human sexual desire and activity is part of a philosophical account of human nature in general, what we might call philosophical anthropology, which is a rather large undertaking.

Note that evaluating a particular sexual act or a specific type of sexual activity as being natural or unnatural can very well be distinct from evaluating the act or type either as being morally good or bad or as being nonmorally good or bad. Suppose we assume, for the sake of discussion only, that heterosexual coitus is a natural human sexual activity and that homosexual fellatio is unnatural, or a sexual perversion. Even so, it would not follow from these judgments alone that all heterosexual coitus is morally good (some of it might be adulterous, or rape) or that all homosexual fellatio is morally wrong (some of it, engaged in by consenting adults in the privacy of their homes, might be morally permissible). Further, from the fact that heterosexual coitus is natural, it does not follow that acts of heterosexual coitus will be nonmorally good, that is, pleasurable; nor does it follow from the fact that homosexual fellatio is perverted that it does not or cannot produce sexual pleasure for those people who engage in it. Of course, both natural and unnatural sexual acts can be medically or psychologically risky or dangerous. There is no reason to assume that natural sexual acts are in general more safe than unnatural sexual acts; for example, unprotected heterosexual intercourse is likely more dangerous, in several ways, than mutual homosexual masturbation.

Since there are no necessary connections between, on the one hand, evaluating a particular sexual act or a specific type of sexual activity as being natural or unnatural and, on the other hand, evaluating its moral and nonmoral quality, why would we wonder whether a sexual act or a type of sex was natural or perverted? One reason

is simply that understanding what is natural and unnatural in human sexuality helps complete our picture of human nature in general, and allows us to understand our species more fully. With such deliberations, the self-reflection about humanity and the human condition that is the heart of philosophy becomes more complete. A second reason is that an account of the difference between the natural and the perverted in human sexuality might be useful for psychology, especially if we assume that a desire or tendency to engage in perverted sexual activities is a sign or symptom of an underlying mental or psychological pathology.

## **8. Sexual Perversion and Morality**

Finally (a third reason), even though natural sexual activity is not on that score alone morally good and unnatural sexual activity is not necessarily morally wrong, it is still possible to argue that whether a particular sexual act or a specific type of sexuality is natural or unnatural does influence, to a greater or lesser extent, whether the act is morally good or morally bad. Just as whether a sexual act is nonmorally good, that is, produces pleasure for the participants, may be a factor, sometimes an important one, in our evaluating the act morally, whether a sexual act or type of sexual expression is natural or unnatural may also play a role, sometimes a large one, in deciding whether the act is morally good or bad.

A comparison between the sexual philosophy of the medieval Catholic theologian St. Thomas Aquinas and that of the contemporary secular philosophy Thomas Nagel is in this regard instructive. Both Aquinas and Nagel can be understood as assuming that what is unnatural in human sexuality is perverted, and that what is unnatural or perverted in human sexuality is simply that which does not conform with or is inconsistent with natural human sexuality. But beyond these general areas of agreement, there are deep differences between Aquinas and Nagel.

## **9. Aquinas's Natural Law**

Based upon a comparison of the sexuality of humans and the sexuality of lower animals (mammals, in particular), Aquinas concludes that what is natural in human sexuality is the impulse to engage in heterosexual coitus. Heterosexual coitus is the mechanism designed by the Christian God to insure the preservation of animal species, including humans, and hence engaging in this activity is the primary natural

expression of human sexual nature. Further, this God designed each of the parts of the human body to carry out specific functions, and on Aquinas's view God designed the male penis to implant sperm into the female's vagina for the purpose of effecting procreation. It follows, for Aquinas, that depositing the sperm elsewhere than inside a human female's vagina is unnatural: it is a violation of God's design, contrary to the nature of things as established by God. For this reason alone, on Aquinas's view, such activities are immoral, a grave offense to the sagacious plan of the Almighty.

Sexual intercourse with lower animals (bestiality), sexual activity with members of one's own sex (homosexuality), and masturbation, for Aquinas, are unnatural sexual acts and are immoral exactly for that reason. If they are committed intentionally, according to one's will, they deliberately disrupt the natural order of the world as created by God and which God commanded to be respected.

In none of these activities is there any possibility of procreation, and the sexual and other organs are used, or misused, for purposes other than that for which they were designed. Although Aquinas does not say so explicitly, but only hints in this direction, it follows from his philosophy of sexuality that fellatio, even when engaged in by heterosexuals, is also perverted and morally wrong. At least in those cases in which orgasm occurs by means of this act, the sperm is not being placed where it should be placed and procreation is therefore not possible. If the penis entering the vagina is the paradigmatic natural act, then any other combination of anatomical connections will be unnatural and hence immoral; for example, the penis, mouth, or fingers entering the anus. Note that Aquinas's criterion of the natural, that the sexual act must be procreative in form, and hence must involve a penis inserted into a vagina, makes no mention of human psychology. Aquinas's line of thought yields an anatomical criterion of natural and perverted sex that refers only to bodily organs and what they might accomplish physiologically and to where they are, or are not, put in relation to each other.

## **10. Nagel's Secular Philosophy**

Thomas Nagel denies Aquinas's central presupposition, that in order to discover what is natural in human sexuality we should emphasize what humans and lower animals have in common. Applying this formula, Aquinas concluded that the purpose of sexual activity and the sexual organs in humans was procreation, as it is

in the lower animals. Everything else in Aquinas's sexual philosophy follows more-or-less logically from this. Nagel, by contrast, argues that to discover what is distinctive about the natural human sexuality, and hence derivatively what is unnatural or perverted, we should focus, instead, on what humans and lower animals do not have in common. We should emphasize the ways in which humans are different from animals, the ways in which humans and their sexuality are special. Thus, Nagel argues that sexual perversion in humans should be understood as a psychological phenomenon rather than, as in Aquinas's treatment, in anatomical and physiological terms. For it is human psychology that makes us quite different from other animals, and hence an account of natural human sexuality must acknowledge the uniqueness of human psychology.

Nagel proposes that sexual interactions in which each person responds with sexual arousal to noticing the sexual arousal of the other person exhibit the psychology that is natural to human sexuality. In such an encounter, each person becomes aware of himself or herself and the other person as both the subject and the object of their joint sexual experiences. Perverted sexual encounters or events would be those in which this mutual recognition of arousal is absent, and in which a person remains fully a subject of the sexual experience or fully an object. Perversion, then, is a departure from or a truncation of a psychologically "complete" pattern of arousal and consciousness<sup>10</sup>.

Nothing in Nagel's psychological account of the natural and the perverted refers to bodily organs or physiological processes. That is, for a sexual encounter to be natural, it need not be procreative in form, as long as the requisite psychology of mutual recognition is present. Whether a sexual activity is natural or perverted does not depend, on Nagel's view, on what organs are used or where they are put, but only on the character of the psychology of the sexual encounter. Thus, Nagel disagrees with Aquinas that homosexual activities, as a specific type of sexual act, are unnatural or perverted, for homosexual fellatio and anal intercourse may very well be accompanied by the mutual recognition of and response to the other's sexual arousal.

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<sup>10</sup> Nagel, Thomas. "Sexual Perversion," in Alan Soble, ed., *The Philosophy of Sex*, 3rd edition. Lanham, Md.: Rowman and Littlefield, 1997, pp. 15-17.

## **11. Fetishism**

It is illuminating to compare what the views of Aquinas and Nagel imply about fetishism, that is, the usually male practice of masturbating while fondling women's shoes or undergarments. Aquinas and Nagel agree that such activities are unnatural and perverted, but they disagree about the grounds of that evaluation. For Aquinas, masturbating while fondling shoes or undergarments is unnatural because the sperm is not deposited where it should be, and the act thereby has no procreative potential.

For Nagel, masturbatory fetishism is perverted for a quite different reason: in this activity, there is no possibility of one person's noticing and being aroused by the arousal of another person. The arousal of the fetishist is, from the perspective of natural human psychology, defective. Note, in this example, one more difference between Aquinas and Nagel: Aquinas would judge the sexual activity of the fetishist to be immoral precisely because it is perverted (it violates a natural pattern established by God), while Nagel would not conclude that it must be morally wrong—after all, a fetishistic sexual act might be carried out quite harmlessly—even if it does indicate that something is suspicious about the fetishist's psychology. The move historically and socially away from a Thomistic moralistic account of sexual perversion toward an amoral psychological account such as Nagel's is representative of a more widespread trend: the gradual replacement of moral or religious judgments, about all sorts of deviant behavior, by medical or psychiatric judgments and interventions<sup>11</sup>.

## **12. Female Sexuality and Natural Law**

A different kind of disagreement with Aquinas is registered by Christine Gudorf, a Christian theologian who otherwise has a lot in common with Aquinas. Gudorf agrees that the study of human anatomy and physiology yields insights into God's plan and design, and that human sexual behavior should conform with God's creative intentions. That is, Gudorf's philosophy is squarely within the Thomistic Natural Law tradition.

But Gudorf argues that if we take a careful look at the anatomy and physiology of the female sexual organs, and especially the clitoris, instead of focusing exclusively

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<sup>11</sup> Soble, Alan. *Sexual Investigations*. New York: New York University Press, 1996.

on the male's penis (which is what Aquinas did), quite different conclusions about God's plan and design emerge and hence Christian sexual ethics turns out to be less restrictive. In particular, Gudorf claims that the female's clitoris is an organ whose only purpose is the production of sexual pleasure and, unlike the mixed or dual functionality of the penis, has no connection with procreation. Gudorf concludes that the existence of the clitoris in the female body suggests that God intended that the purpose of sexual activity was as much for sexual pleasure for its own sake as it was for procreation. Therefore, according to Gudorf, pleasurable sexual activity apart from procreation does not violate God's design, is not unnatural, and hence is not necessarily morally wrong, as long as it occurs in the context of a monogamous marriage<sup>12</sup>. Today we are not as confident as Aquinas was that God's plan can be discovered by a straightforward examination of human and animal bodies; but such healthy skepticism about our ability to discern the intentions of God from facts of the natural world would seem to apply to Gudorf's proposal as well.

### **13. Debates in Sexual Ethics**

The ethics of sexual behavior, as a branch of applied ethics, is no more and no less contentious than the ethics of anything else that is usually included within the area of applied ethics. Think, for example, of the notorious debates over euthanasia, capital punishment, abortion, and our treatment of lower animals for food, clothing, entertainment, and in medical research. So, it should come as no surprise that even though a discussion of sexual ethics might well result in the removal of some confusions and a clarification of the issues, no final answers to questions about the morality of sexual activity are likely to be forthcoming from the philosophy of sexuality. As far as I can tell by surveying the literature on sexual ethics, there are at least three major topics that have received much discussion by philosophers of sexuality and which provide arenas for continual debate.

### **14. Natural Law vs. Liberal Ethics**

We have already encountered one debate: the dispute between a Thomistic Natural Law approach to sexual morality and a more liberal, secular outlook that denies that there is a tight connection between what is unnatural in human sexuality and what is

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<sup>12</sup> Sex, Body, and Pleasure, p. 65.

immoral. The secular liberal philosopher emphasizes the values of autonomous choice, self-determination, and pleasure in arriving at moral judgments about sexual behavior, in contrast to the Thomistic tradition that justifies a more restrictive sexual ethics by invoking a divinely imposed scheme to which human action must conform. According to the secular liberal philosopher of sexuality, the only paradigmatically morally wrong sexual act is rape, in which one person forces himself or herself upon another or uses threats to coerce the other to engage in sexual activity. By contrast, for the liberal, anything done voluntarily between two or more people is generally morally permissible. For the secular liberal, then, a sexual act would be morally wrong if it were dishonest, coercive, or manipulative, and Natural Law theory would agree, except to add that the act's merely being unnatural is another, independent reason for condemning it morally. Kant, for example, held that "Onanism . . . is abuse of the sexual faculty. . . . By it man sets aside his person and degrades himself below the level of animals. . . . Intercourse between *sexus homogenii* . . . too is contrary to the ends of humanity" (Lectures, p. 170). The sexual liberal, however, usually finds nothing morally wrong or nonmorally bad about either masturbation or homosexual sexual activity. They argue that these activities might be unnatural, and perhaps in some ways prudentially unwise, but in many if not most cases they can be carried out without harm being done either to the participants or to anyone else.

Natural Law is alive and well today among philosophers of sex, even if the details do not match Aquinas's original version. For example, the contemporary philosopher John Finnis argues that there are morally worthless sexual acts in which "one's body is treated as instrumental for the securing of the experiential satisfaction of the conscious self" (see "Is Homosexual Conduct Wrong?"). For example, in masturbating or in being anally sodomized, the body is just a tool of sexual satisfaction and, as a result, the person undergoes "disintegration." "One's choosing self [becomes] the quasi-slave of the experiencing self which is demanding gratification." The worthlessness and disintegration attaching to masturbation and sodomy actually attach, for Finnis, to "all extramarital sexual gratification." This is because only in married, heterosexual coitus does the persons' "reproductive organs . . . make them a biological . . . unit." Finnis begins his argument with the metaphysically pessimistic intuition that sexual activity involves treating human bodies and persons instrumentally, and he concludes with the thought that sexual activity in marriage—in particular, genital intercourse—avoids disintegrity because

only in this case, as intended by God's plan, does the couple attain a state of genuine unity: "the orgasmic union of the reproductive organs of husband and wife really unites them biologically<sup>13</sup>."

## **15. Consent Is Not Sufficient**

Another debate is about whether, when there is no harm done to third parties to be concerned about, the fact that two people engage in a sexual act voluntarily, with their own free and informed consent, is sufficient for satisfying the demands of sexual morality. Of course, those in the Natural Law tradition deny that consent is sufficient, since on their view willingly engaging in unnatural sexual acts is morally wrong, but they are not alone in reducing the moral significance of consent. Sexual activity between two persons might be harmful to one or both participants, and a moral paternalist or perfectionist would claim that it is wrong for one person to harm another person, or for the latter to allow the former to engage in this harmful behavior, even when both persons provide free and informed consent to their joint activity. Consent in this case is not sufficient, and as a result some forms of sadomasochistic sexuality turn out to be morally wrong. The denial of the sufficiency of consent is also frequently presupposed by those philosophers who claim that only in a committed relationship is sexual activity between two people morally permissible. The free and informed consent of both parties may be a necessary condition for the morality of their sexual activity, but without the presence of some other ingredient (love, marriage, devotion, and the like) their sexual activity remains mere mutual use or objectification and hence morally objectionable.

In casual sex, for example, two persons are merely using each other for their own sexual pleasure; even when genuinely consensual, these mutual sexual uses do not yield a virtuous sexual act. Kant and Karol Wojtyla (Pope John Paul II) take this position: willingly allowing oneself to be used sexually by another makes an object of oneself. For Kant, sexual activity avoids treating a person merely as a means only in marriage, since here both persons have surrendered their bodies and souls to each other and have achieved a subtle metaphysical unity, "only love can preclude the use of one person by another<sup>14</sup>" since love is a unification of persons resulting from a

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<sup>13</sup> Finnis, John. "Law, Morality, and 'Sexual Orientation'," *Notre Dame Law Review* 69:5 (1994), pp. 1049-76.

<sup>14</sup> Kant, Immanuel. *The Metaphysics of Morals*. Translated by Mary Gregor. Cambridge, Eng.: Cambridge University Press, 1996.

mutual gift of their selves. Note, however, that the thought that a unifying love is the ingredient that justifies sexual activity (beyond consent) has an interesting and ironic implication: gay and lesbian sexual relations would seem to be permissible if they occur within loving, monogamous homosexual marriages (a position defended by the theologians Patricia Jung and Ralph Smith, in *Heterosexism*). At this point in the argument, defenders of the view that sexual activity is justifiable only in marriage commonly appeal to Natural Law to rule out homosexual marriage.

## **16. Consent Is Sufficient**

On another view of these matters, the fact that sexual activity is carried out voluntarily by all persons involved means, assuming that no harm to third parties exists, that the sexual activity is morally permissible. In defending such a view of the sufficiency of consent, Thomas Mappes writes that “respect for persons entails that each of us recognize the rightful authority of other persons (as rational beings) to conduct their individual lives as they see fit<sup>15</sup>”. Allowing the other person’s consent to control when the other may engage in sexual activity with me is to respect that person by taking his or her autonomy, his or her ability to reason and make choices, seriously, while not to allow the other to make the decision about when to engage in sexual activity with me is disrespectfully paternalistic. If the other person’s consent is taken as sufficient, that shows that I respect his or her choice of ends, or that even if I do not approve of his or her particular choice of ends, at least I show respect for his or her ends-making capability. According to such a view of the power of consent, there can be no moral objection in principle to casual sexual activity, to sexual activity with strangers, or to promiscuity, as long as the persons involved in the activity genuinely agree to engage in their chosen sexual activities.

If Mappes’s free and informed consent criterion of the morality of sexual activity is correct, we would still have to address several difficult questions. How specific must consent be? When one person agrees vaguely, and in the heat of the moment, with another person, “yes, let’s have sex,” the speaker has not necessarily consented to every type of sexual caress or coital position the second person might have in mind. And how explicit must consent be? Can consent be reliably implied by involuntarily behavior (moans, for example), and do nonverbal cues (erection, lubrication)

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<sup>15</sup> Mappes, Thomas. “Sexual Morality and the Concept of Using Another Person,” in Thomas Mappes and Jane Zembaty, eds., *Social Ethics*, 4th edition. New York: McGraw-Hill, 1992, pp. 203-26

decisively show that another person has consented to sex? Some philosophers insist that consent must be exceedingly specific as to the sexual acts to be carried out, and some would permit only explicit verbal consent, denying that body language by itself can do an adequate job of expressing the participant's desires and intentions. (See Alan Soble, "Antioch's 'Sexual Offense Policy'".)

Note also that not all philosophers agree with Mappes and others that fully voluntary consent is always necessary for sexual activity to be morally permissible. Jeffrie Murphy, for example, has raised some doubts<sup>16</sup>

Murphy implies that some threats are coercive and thereby undermine the voluntary nature of the participation in sexual activity of one of the persons, but, he adds, these types of threats are not always morally wrong. Alternatively, we might say that in the cases Murphy describes, the threats and offers do not constitute coercion at all and that they present no obstacle to fully voluntary participation. (See Alan Wertheimer, "Consent and Sexual Relations.") If so, As suggested by Murphy's examples, another debate concerns the meaning and application of the concept "voluntary." Whether consent is only necessary for the morality of sexual activity, or also sufficient, any moral principle that relies on consent to make moral distinctions among sexual events presupposes a clear understanding of the "voluntary" aspect of consent. It is safe to say that participation in sexual activity ought not to be physically forced upon one person by another. But this obvious truth leaves matters wide open. Onora O'Neill, for example, thinks that casual sex is morally wrong because the consent it purportedly involves is not likely to be sufficiently voluntary, in light of subtle pressures people commonly put on each other to engage in sexual activity (see "Between Consenting Adults").

Murphy's cases do not establish that voluntary consent is not always required for sexual activity to be morally right.

## **17. What Is "Voluntary"?**

One moral ideal is that genuinely consensual participation in sexual activity requires not a hint of coercion or pressure of any sort. Because engaging in sexual activity can be risky or dangerous in many ways, physically, psychologically, and

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<sup>16</sup> "Some Ruminations on Women, Violence, and the Criminal Law," p. 218

metaphysically, we would like to be sure, according to this moral ideal, that anyone who engages in sexual activity does so perfectly voluntarily. Some philosophers have argued that this ideal can be realized only when there is substantial economic and social equality between the persons involved in a given sexual encounter. For example, a society that exhibits disparities in the incomes or wealth of its various members is one in which some people will be exposed to economic coercion. If some groups of people (women and members of ethnic minorities, in particular) have less economic and social power than others, members of these groups will be therefore exposed to sexual coercion in particular, among other kinds. One immediate application of this thought is that prostitution, which to many sexual liberals is a business bargain made by a provider of sexual services and a client and is largely characterized by adequately free and informed consent, may be morally wrong, if the economic situation of the prostitute acts as a kind of pressure that negates the voluntary nature of his or her participation. Further, women with children who are economically dependent on their husbands may find themselves in the position of having to engage in sexual activity whether they want to or not, for fear of being abandoned; these women, too, may not be engaging in sexual activity fully voluntarily. The woman who allows herself to be nagged into sex by her husband worries that if she says “no” too often, she will suffer economically, if not also physically and psychologically.

The view that the presence of any kind of pressure at all is coercive, negates the voluntary nature of participation in sexual activity, and hence is morally objectionable has been expressed by Charlene Muehlenhard and Jennifer Schrag (see their “Nonviolent Sexual Coercion”). They list, among other things, “status coercion” (when women are coerced into sexual activity or marriage by a man’s occupation) and “discrimination against lesbians” (which discrimination compels women into having sexual relationships only with men) as forms of coercion that undermine the voluntary nature of participation by women in sexual activity with men. But depending on the kind of case we have in mind, it might be more accurate to say either that some pressures are not coercive and do not appreciably undermine voluntariness, or that some pressures are coercive but are nevertheless not morally objectionable. Is it always true that the presence of any kind of pressure put on one person by another amounts to coercion that negates the voluntary nature of consent, so that subsequent sexual activity is morally wrong?

## **18. Conceptual Analysis**

Conceptual philosophy of sexuality is concerned to analyze and to clarify concepts that are central in this area of philosophy: sexual activity, sexual desire, sexual sensation, sexual perversion, and others. It also attempts to define less abstract concepts, such as prostitution, pornography, and rape. I would like to illustrate the conceptual philosophy of sexuality by focusing on one particular concept, that of “sexual activity,” and explore in what ways it is related to another central concept, that of “sexual pleasure.” One lesson to be learned here is that conceptual philosophy of sexuality can be just as difficult and contentious as normative philosophy of sexuality, and that as a result firm conceptual conclusions are hard to come by.

## **19. Sexual Activity vs. “Having Sex”**

According to a notorious study published in 1999 in the *Journal of the American Medical Association* (“Would You Say You ‘Had Sex’ If . . .?” by Stephanie Sanders and June Reinisch), a large percent of undergraduate college students, about 60%, do not think that engaging in oral sex (fellatio and cunnilingus) is “having sex.” This finding is at first glance very surprising, but it is not difficult to comprehend sympathetically. To be sure, as philosophers we easily conclude that oral sex is a specific type of sexual activity. But “sexual activity” is a technical concept, while “having sex” is an ordinary language concept, which refers primarily to heterosexual intercourse. Thus, when Monica Lewinsky told her confidant Linda Tripp that she did not “have sex” with William Jefferson Clinton, she was not necessarily self-deceived, lying, or pulling a fast one. She was merely relying on the ordinary language definition or criterion of “having sex,” which is not identical to the philosopher’s concept of “sexual activity,” does not always include oral sex, and usually requires genital intercourse.

Another conclusion might be drawn from the JAMA survey. If we assume that heterosexual coitus by and large, or in many cases, produces more pleasure for the participants than does oral sex, or at least that in heterosexual intercourse there is greater mutuality of sexual pleasure than in one-directional oral sex, and this is why ordinary thought tends to discount the ontological significance of oral sex, then perhaps we can use this to fashion a philosophical account of “sexual activity” that is at once consistent with ordinary thought.

## **20. Sexual Activity and Sexual Pleasure**

In common thought, whether a sexual act is nonmorally good or bad is often associated with whether it is judged to be a sexual act at all. Sometimes we derive little or no pleasure from a sexual act (say, we are primarily giving pleasure to another person, or we are even selling it to the other person), and we think that even though the other person had a sexual experience, we didn't. Or the other person did try to provide us with sexual pleasure but failed miserably, whether from ignorance of technique or sheer sexual crudity. In such a case it would not be implausible to say that we did not undergo a sexual experience and so did not engage in a sexual act. If Ms. Lewinsky's performing oral sex on President Clinton was done only for his sake, for his sexual pleasure, and she did it out of consideration for his needs and not hers, then perhaps she did not herself, after all, engage in a sexual act.

Robert Gray is one philosopher who has taken up this line of ordinary thought and has argued that "sexual activity" should be analyzed in terms of the production of sexual pleasure. He asserts that "any activity might become a sexual activity" if sexual pleasure is derived from it, and "no activity is a sexual activity unless sexual pleasure is derived from it" ("Sex and Sexual Perversion," p. 61). Perhaps Gray is right, since we tend to think that holding hands is a sexual activity when sexual pleasure is produced by doing so, but otherwise holding hands is not very sexual. A handshake is normally not a sexual act, and usually does not yield sexual pleasure; but two lovers caressing each other's fingers is both a sexual act and produces sexual pleasure for them

There is another reason for taking seriously the idea that sexual activities are exactly those that produce sexual pleasure. What is it about a sexually perverted activity that makes it sexual? The act is unnatural, we might say, because it has no connection with one common purpose of sexual activity, that is, procreation. But the only thing that would seem to make the act a sexual perversion is that it does, on a fairly reliable basis, nonetheless produce sexual pleasure. Undergarment fetishism is a sexual perversion, and not merely, say, a "fabric" perversion, because it involves sexual pleasure. Similarly, what is it about homosexual sexual activities that makes them sexual? All such acts are nonprocreative, yet they share something very important in common with procreative heterosexual activities: they produce sexual pleasure, and the same sort of sexual pleasure.

## **a. Sexual Activity Without Pleasure**

Suppose I was to ask you, “How many sexual partners have you had during the last five years”? If you were on your toes, you would ask me, before answering, “What counts as a sexual partner?” (Maybe you are suspicious of my question because you had read Greta Christina’s essay on this topic, “Are We Having Sex Now or What?”) At this point I should give you an adequate analysis of “sexual activity,” and tell you to count anyone with whom you engaged in sexual activity according to this definition. What I should definitely not do is to tell you to count only those people with whom you had a pleasing or satisfactory sexual experience, forgetting about, and hence not counting, those partners with whom you had nonmorally bad sex. But if we accept Gray’s analysis of sexual activity, that sexual acts are exactly those and only those that produce sexual pleasure, I should of course urge you not to count, over those five years, anyone with whom you had a nonmorally bad sexual experience. You will end up reporting to me fewer sexual partners than you in fact had. Maybe that will make you feel better.

The general point is this. If “sexual activity” is logically dependent on “sexual pleasure,” if sexual pleasure is thereby the criterion of sexual activity itself, then sexual pleasure cannot be the gauge of the nonmoral quality of sexual activities. That is, this analysis of “sexual activity” in terms of “sexual pleasure” conflates what it is for an act to be a sexual activity with what it is for an act to be a nonmorally good sexual activity. On such an analysis, procreative sexual activities, when the penis is placed into the vagina, would be sexual activities only when they produce sexual pleasure, and not when they are as sensually boring as a handshake. Further, the victim of a rape, who has not experienced nonmorally good sex, cannot claim that he or she was forced to engage in sexual activity, even if the act compelled on him or her was intercourse or fellatio.

I would prefer to say that the couple who have lost sexual interest in each other, and who engage in routine sexual activities from which they derive no pleasure, are still performing a sexual act. But we are forbidden, by Gray’s proposed analysis, from saying that they engage in nonmorally bad sexual activity, for on his view they have not engaged in any sexual activity at all. Rather, we could say at most that they tried to engage in sexual activity but failed to do so. It may be a sad fact about our sexual world that we can engage in sexual activity and not derive any or much pleasure

from it, but that fact should not give us reason for refusing to call these unsatisfactory events “sexual.”

## **Nature v Nurture**

Scholars have debated, asserted and posited that the source of homosexuality in both gay men and lesbian women is found either in nature or nurture, Nature meaning that someone is born into it or nurture meaning that someone is raised up into it. The debate as to the source of homosexuality being natural or nurtured has orbited the issue area of human sexuality since studies into this area were delved into by scholars like Benkert, Ellis, Kinsey, Ulrich and Hirschfield<sup>17</sup>

While some scholars posited that homosexuality was a natural predisposition in the spectrum of sexual attraction, others asserted that homosexuality was a learned behaviour and was subject to change and/or modification to date, this debate regarding gender identity continues within the social sciences This chapter puts forward the question of whether homosexuality is natural or is nurtured.

A study Half of Americans in Gallup's 2018 Values and Beliefs poll say that being gay or lesbian is a trait from birth, easily eclipsing the 30% who believe it is a product of upbringing and environment. This is consistent with findings over the past few years. Another 10% say both explanations play a role, while 4% attribute being gay to something else and 6% are unsure.

When Gallup first asked this "nature vs. nurture" question in 1977, a majority of U.S. adults (56%) said being gay or lesbian was due to people's upbringing and environment, and only 13% saw it as a birth trait. Attitudes didn't shift markedly until after 1989. Between 1989 and Gallup's next update in 1996, the percentage believing sexual orientation is determined at birth jumped from 19% to 31%, and reached 40% by 2001. Opinion remained steady for the next 12 years, as Americans were roughly split between the two positions. Since 2012, the percentage assigning sexual orientation to nature rather than nurture has inched up another 10 percentage points.

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<sup>17</sup> (McConaghy, 1987; Edwards, 1994; Jenkins, 2006).

A Values and Beliefs poll, conducted May 1-10, also shows 67% of Americans in favor of same-sex marriages being legal -- a new high for that viewpoint. Separately, Gallup recently reported that the percentage of Americans identifying as lesbian, gay, bisexual or transgender has increased a full point since 2012 and is now 4.5%.

The perception that a person is born gay rather than it being the result of upbringing or other factors has increased among all demographic and political groups. But, according to a comparison of aggregated data from 2001 to 2003 vs. 2015 to 2018, the change in beliefs has been most pronounced among politically left-leaning groups, including young adults (aged 18 to 34), college graduates, Democrats, liberals and those who seldom or never attend weekly religious services.

The groups showing the biggest increases in adherence to the "nature" explanation are, for the most part, those who tend to be more inclined toward this view to begin with. One exception is young adults -- in the early 2000s, they were a bit less likely than older adults to hold this view, but they have since become the most likely of all age groups.

Despite the increases, support for the nature position remains low among Republicans (36%), conservatives (34%) and weekly churchgoers (36%)

## **Nature and Nurture Perspectives of Homosexuality**

Various scholars have attributed the source of homosexuality to nature and have argued that it was related to heritability, biology, hormones and genetics; in other words that homosexuality was innate (Alanko et al., 2010; Jannini et al., 2010; Morgan, 2012). Bailey et al. (2013) argued that homosexuality had a high heritability rate, was partly genetic, was related to an in-utero experience and was biologically determined as did Zietsch et al. (2008). Goodman (1997) asserted that homosexuality was a genetically heritable family trait and tentatively identified a region of the X chromosome as the cause of same-sex sexual attraction. Other scholars had noted incidents of high heritability of homosexuality<sup>18</sup> that implied that there was a biological/genetic component to the same-sex sexual attractions of gay men<sup>19</sup>.

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<sup>18</sup> Bailey et al., 1991; Bailey & Bell, 1993; Bailey et al., 1999.

<sup>19</sup> Blanchard et al., 1996) or hormonal (Schwartz et al., 2010; Blanchard, 2012; Alanko et al., 2013; Diamond, 2013

Aside from heritability, arguments that homosexuality was formed biologically, hormonally or genetically were put forward by various scholars such as Rice et al., (2012). Mondimore (1996) posited specifically that the third interstitial nuclei of the anterior hypothalamus (INAH3) brain functions and anterior commissure of gay men differed from those of heterosexual men, therefore forming a biological argument that attraction to men by homosexual men and heterosexual women was biologically determined. A study conducted by Witelson et al. (2008) in the USA found that the isthmus of the corpus callosum in homosexual men was greater than in heterosexual men.

The isthmus of the corpus callosum was thought to determine sexual attraction, thus again supporting the biological argument for homosexuality.

Based on a study conducted across five nations, namely the USA, the UK, Canada, Australia and New Zealand, Lippa (2007) suggested that exposure to the hormone androgen during gestation caused same-sex sexual attraction in males. While the study by Lippa supports the argument for a hormonal cause of homosexuality, research conducted by Turner (1995) hypothesised that homosexuality was genetically determined by a gene at Xq28 of the human DNA structure. Perhaps the most provocative argument for a biological, genetic and hormonal source of homosexuality has been put forward by Whitam (1983) based on a cross-cultural study that found that homosexual men appeared in all societies, that the percentage of homosexual men in most societies were the same and remained stable over time, that homosexual subcultures appeared in all societies where there was enough of an aggregation of people and that social norms did not impede or facilitate the emergence of homosexuality.

Conversely, other scholars have asserted that homosexuality was learnt or nurtured. Taylor (1999) asserted that sexual identity was defined by the meaning attributed to it by an individual. The crux of what Taylor asserted suggested that homosexuality was nurtured through attribution by external sources (such as media, see Vandenbosch & Eggermont, 2014) and not sourced from a natural predisposition within homosexuals. Matthei (1995) argued that sexual identity was formed via engagement in gendered professions, asserting that environment engendered homosexuality. For Wilkerson, Ross and Brooks (2009), heteronormativity (the acceptance that heterosexuality, heterosexual norms and heterosexual values were

superior to homosexuality, homosexual norms and homosexual values) constructed homosexuality as inferior and therefore, homosexuality was adopted and nurtured in those who did not meet the superior standards of a society. More recently, studies by Bailey, Hoskins, Green and Ritchie (2014) asserted that environment played a part in sexual inclination and behaviour in different social contexts, and a study by Crowson and Goulding (2013) raised questions that supported the need for socialisation to occur in order for homosexuality to be manifested.

## **Nature: Genetics and Homosexuality**

The findings gave credence to the assertions of scholars who have asserted that the source of homosexuality is genetic and is not constructed by a process of nurturing. This is seen through the verbatim interview excerpts of the following three respondents on their belief that their homosexuality is genetic.

I would think that most of it comes from genes, we are born with it. It is a genetic thing. Scientists are trying to study this. They have not found the gay gene, but I believe we are wired that way. One study has shown that the gay male brain is similar to that of a straight woman. I think the size of the brain or the chemicals in the brain have something to do with it. I think it is biological, I think it is genetic. I have cousins who are gay and uncles whom I suspect are gay because they have never gotten married. – Ben, Self-employed, 44 years of age.

The source for me is something internal. I cannot quite put my finger on it, what or how the whole thing is initiated, so to me it is quite genetically programmed that way. – Joe, Entrepreneur, 39 years of age.

It is from my blood. It is the attraction to males. You like the smell of a male. You feel the satisfaction of holding his hand, or cuddling or hugging him. The trust and feeling of being with a man are much better than being with a woman. – Mike, Entertainer, 27 years of age.

## **Nature: Natural and Inherent**

The data collected from the respondents suggested that they believed homosexuality to be natural to them. The source of the respondents' sexual attraction to other men is not attributed to a passing phase, a trend or an external source of influence. Rather,

based on the data collected, the respondents had much to say to support the assertion that the source of their same-sex sexual attractions came from within themselves. The respondents used terms such as “born like this,” “naluri” (natural instinct) and “in my blood” to describe their belief that their same-sex sexual attraction is natural to them. Examples of this belief in the natural cause of homosexuality are found in the following three interview excerpts.

I am born this way. I definitely believe this. There is always a tell-tale sign of who I am and how feminine I am when I was young. Then again it was all a big confusion when I was in school. From there I start to believe and start to recognize what I am. – Jack, Graphic Designer, 31 years of age.

It is naluri. At the time I started to realise what I am I did not know any other gay guys. It is just me. When I am close to a guy I feel something. I am very interested in guys and I think when I am near a guy I think of sexual things. I think of guys in a certain (same-sex attracted) way. – Kamal, Undergraduate, 22 years of age.

I think it is part of my nature and it is not something nurtured. You are who you are. It (homosexuality) is natural; I mean who is there to nurture you as a gay man? Think about it, when we were children did anyone walk into a classroom and say this is how you can be gay and this is how to be a gay? – Karl, Professional, 40 years of age.

### **Nature: Surfacing of a Natural Inclination**

Additionally, the belief of the respondents was that homosexuality is inherent, and as fluid as sexuality may be, a person’s nature will come to the fore. The responses on this finding are presented below:

I feel that there are some people who become gay because they have been hurt by a girl but to me my homosexuality has been there since I was young. If I look at my past I can see that I have been looking at guys since I was in kindergarten. I know that there are some people who are born gay and some people who become gay after being hurt by a girl. But for me being gay has been there my whole life. – George, Hotelier, 23 years of age.

I have met a lot of people who from heterosexual become homosexual. I have heard that there are some people who have been influenced to be gay but I do not think this is real. I have tried to make some people gay but this did not happen. It is a very individual experience. – Bobby, Entrepreneur, late 30s.



## CHAPTER TWO

### **Nurture: Nurturing a Health Perspective of Homosexuality**

However, the findings also pointed out that nurturing was necessary to developing sexual attraction to fruition as part of an integrated and whole identity for the individual. As stated by the respondents, their homosexuality was not nurtured. Rather, forces external to them assisted in nurturing a healthy perspective of their homosexuality. Namely, these forces were peers, role models, friendship with other gay men and environments that are nurturing of homosexuality and the media. The following interview excerpts are examples of these forces and the way they nurtured the homosexuality of the respondents.

I think whether you are gay or not you should really have a very passionate lifestyle and express it and nurture it. If I map out from there to my gay friends I find them more colourful. Colourful in the sense that they put in a lot of effort, they are all very hardworking people, they understand their passion and they actually nurture that. I actually admire that kind of expression of each and every one of my friends' passions. This is in comparison to my straight friends or my siblings who get married at a young age. With marriage came a lot of responsibilities. They give up a part of themselves, their passion, because they have to live up to their responsibilities and to their children. So, when comparing the gay friends, I have and the straight friends I have, straight people are less colourful. Between the two I would gravitate more to the colourful people. – Joe, Entrepreneur, 39 years of age.

I had a three-year relationship with my ex-boyfriend who was much older than me. He is an exboyfriend because he passed away quite unexpectedly. We were happy together and lived together for three years. He taught me a lot about how to be a gay guy because I started at a young age and he was of a more mature age. He molded me to be a confident and strong gay person. Not just in terms of being confident, but also to be mature in my way of thinking. It is important to be mature in my way of

thinking so that I will be able to make good decisions in my life instead of just enjoying short-term things. – George, Hotelier, 23 years of age.

I think I have a very good role model in the sense that I have an elder brother who is also gay. There is a very big age difference between us and when I was going through my formative years he was overseas and I did not see much of him. But I knew he was gay and subconsciously it has allowed me to think that it is alright to be gay. This is because I see that he is happy and all that. – Alex, Professional, 46 years of age.

Through where I studied and worked in Australia. I was surrounded by people who are more open. In a big city I would get people who are more able to be open, whereas when you work in a smaller town people tended to cover up. I think that a lot of gay men are more creative than the straight ones. You tend to have flair which combines the masculine and the feminine. You are not too hard and you are not too soft, you are in between. It gives you the opportunity to be close to gay people who are already successful, so they tend to be more open-minded and they tend to help each other out. – Peter, Educator, 36 years of age.

When I was growing up I needed to fund my own education. So, I started working in this restaurant where the owner, manager and most of the other staff are gay. They gave me a sense of security and allowed me to see that it was okay to be what I am and to accept who I am. The people around me at this workplace helped me develop security in who I am. – Chai, Professional, 36 years of age.

When I was in school I mixed around with friends who are the same as me (homosexual). We had the same interests, the same behaviors. Initially we were not so open to sharing that we had sexual interests in men but after we mixed around more the issue of sexual interest in became normal and was not seen as weird. When I moved to the city I became more exposed to gay men and sex between two men. In my kampong (village) it is difficult to see gay male couples, but in a big city it is easier to see such a thing. It makes me think that it is okay for me to be a gay man. – Badrul, Undergraduate, 22 years of age.

I have never thought of being gay as something different, or being the only one, or the only one who has it, or being the only gay on the planet. When I was young I watched a lot of TV and my first image of a gay man was Boy George. This gave

me the reinforcement that I am not the only one out there. This made me comfortable with myself. – Dennis, Professional, 35 years of age.

I grew up in a village. Actually, it is Alor Setar (the state capital of the state of Kedah Darul Aman, Malaysia) but I call it a village. I could not explore who I am as a gay man in such a village. So, I used the Internet and from there I read a lot about male sexuality; whether it is heterosexuality, bisexuality or homosexuality. Then I decided for myself based on what I read that I am attracted to men only.

– Mike, Entertainer, 27 years of age.

## **DISCUSSION**

The data suggested that while the respondents recognised that the source of their homosexuality was inborn and/or genetic and therefore natural, the respondents as a whole also recognise that nurture was necessary for self-acceptance, personal growth and self-discovery. Analysis of the data suggested that the biological, hormonal and genetic assertions as the source of homosexuality put forward by past scholars are shared by the respondents. As seen from the verbatim responses shared with the researcher, the respondents claimed that their homosexuality was inborn and that they did not in any way nurture their sexual/romantic/affectionate attraction to members of their own sex. Additionally, the analysis of the data showed that to some of the respondents, their homosexuality was neither caused by nor was it an effect of an external catalyst such as rejection by members of the opposite sex that nurtured their same-sex attractions. The natural instinct of the respondents is to be sexually drawn to other men and to recognise other men as sexual beings. It may be conceded that while the responses of the respondents did not pinpoint the exact internal source of their homosexuality, the variety of expressions of the perceived source of their homosexuality may be grouped thematically into that of an internally intuitive response.

When viewed through the theoretical lens of phenomenology, the lived experience of the respondents allowed them to ascertain that the source of their homosexuality was not found in an external lived experience but in an internal lived experience. This suggested that the intersubjective meaning (hermeneutics) of the homosexuality of the respondents was not only in the evaluation and reflection of the source of their homosexuality with other members of society and their peers but also with

themselves. Additionally, the details provided to the researcher verbatim indicated that the source of the homosexuality of the respondents was one that they were comfortable with, and more importantly, there was acceptance that homosexuality was natural to them (existentialist) and required no external confirmation as valid and acceptable. The findings showed that phenomenology as a philosophy and a theory that orbits around heuristics and existentialism is not only an external process. Rather, an internal process of reflection is possible wherein the individual weighs and balances two polar perspectives of a lived experience and reaches a conclusion of the reality of that lived experience. The use of phenomenology as a theoretical framework then becomes more valuable as a tool for exploring the underlying experiential process of individuals as they create individualised meaning of their lived experience.

However, the data also suggested that while the respondents identified the source of their homosexuality to be internal, they also expressed that external factors or players were relevant to their homosexuality. The characteristics of these external factors or players, based on the interviews, were supportive, affirming and nourishing of the homosexuality of the respondents. In identifying that both the recognition of the internal source of homosexuality and the relevance of the external factors or players to the respondents in the context of their homosexuality, it is plausible to state that nature and nurture are necessary to a holistic development of homosexuality. The findings above point out that although past scholars and scientists may make assertions on the source of homosexuality being natural, for the respondents there was no need for scientific absolutism as they were living their homosexuality. They could state with certainty that it was natural to them. When viewed through the lens of phenomenology, what is additionally found is that it is not the source of the homosexuality that requires nurturing but rather the continued development of the individual as a selfidentified gay man.

## **CONCLUSION**

The findings of this research add the dimension of complementarity of nature and nurture to studies of homosexuality. Based on the literature reviewed, this complementarity is relatively untouched and understudied in the social sciences of human sexuality. The implications of this are twofold: First, that studies in human sexuality may need to be viewed from the standpoint of complementarity instead of

dogmatism so that new paradigms in human sexuality may be put forward; and second, that a more in-depth understanding of homosexuality is contingent not only on the source of the homosexuality but also social factors that encourage further exploration, development and self-acceptance.



## **CHAPTER THREE**

### **Natural Law theory on Homosexuality.**

The theory of natural law believes that our civil laws should be based on morality, ethics, and what is inherently correct.

Today natural law theory offers the most common intellectual defense for differential treatment of gays and lesbians, and as such it merits attention. The development of natural law is a long and very complicated story. A reasonable place to begin is with the dialogues of Plato, for this is where some of the central ideas are first articulated, and, significantly enough, are immediately applied to the sexual domain. For the Sophists, the human world is a realm of convention and change, rather than of unchanging moral truth. Plato, in contrast, argued that unchanging truths underpin the flux of the material world. Reality, including eternal moral truths, is a matter of phusis “nature”

Its argued that even though there is clearly a great degree of variety in conventions from one city to another, there is still an unwritten standard, or law from God, that humans should live under.

In the *Laws*, Plato applies the idea of a fixed, natural law to sex, and takes a much harsher line than he does in the *Symposium* or the *Phaedrus*. In Book One he writes about how opposite-sex sex acts cause pleasure by nature, while same-sex sexuality is “unnatural” (636c).

In Book Eight, the Athenian speaker considers how to have legislation banning homosexual acts, masturbation, and illegitimate procreative sex widely accepted. He then states that this law is according to nature. Probably the best way of understanding Plato’s discussion here is in the context of his overall concerns with the appetitive part of the soul and how best to control it. Plato clearly sees same-sex passions as especially strong, and hence particularly problematic, although in the

Symposium that erotic attraction is presented as potentially being a catalyst for a life of philosophy, rather than base sensuality<sup>20</sup>

Accordingly, other natural law proponents such as Aristotle developed the natural law theory, He makes emphasis upon reason as the distinctive human function, The Stoics also made their emphasis upon human beings as a part of the natural order of the cosmos, both of which shape the natural law perspective which says that “True law is right reason in agreement with nature,” as put forward by Cicero.

Aristotle, in his approach, did allow for change to occur according to nature, and therefore the way that natural law is embodied could itself change with time, which was an idea Aquinas later incorporated into his own natural law theory. Aristotle did not write extensively about sexual issues, since he was less concerned with the appetites than Plato, Probably the best reconstruction of his views places him in mainstream Greek society as outlined above; his main concern was with an active versus a passive role, with only the latter problematic for those who either are or will become citizens.

Zeno, the founder of Stoicism, was, according to his contemporaries, only attracted to men, and his thought did not have prohibitions against same-sex sexuality. In contrast, Cicero, a later Stoic, was dismissive about sexuality in general, with some harsher remarks towards same-sex pursuits<sup>21</sup>.

The most influential formulation of natural law theory was made by Thomas Aquinas in the thirteenth century. He integrated the Aristotelian approach with Christian theology, Aquinas emphasized the centrality of certain human goods, including marriage and procreation. While Aquinas did not write much about same-sex sexual relations, he did write at length about various sex acts as sins. For Aquinas, sexuality that was within the bounds of marriage and which helped to further what he saw as the distinctive goods of marriage, mainly love, companionship, and legitimate offspring, was permissible, and even good. Aquinas did not argue that procreation was a necessary part of moral or just sex; married couples could enjoy sex without the motive of having children, and sex in marriages

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<sup>20</sup> Cf. Dover, 1989, 153–170; Nussbaum, 1999, esp. chapter 12.

<sup>21</sup> Cicero, 1966, 407-415.

where one or both partners is sterile (perhaps because the woman is postmenopausal).

Aquinas, in a significant move, adds a requirement that for any given sex act to be moral it must be of a generative kind. The only way that this can be achieved is via vaginal intercourse by way of opposite sex, since only the emission of semen in a vagina can result in natural reproduction, only sex acts of that type are generative, even if a given sex act does not lead to reproduction, and even if it is impossible due to infertility.

The consequence of the above addition was to rule out the possibility, that homosexual sex could ever be moral (even if done within a loving marriage), in addition to forbidding any non-vaginal sex for opposite-sex married couples. What is the justification for this important addition? This question is made all the more pressing in that Aquinas does allow that how broad moral rules apply to individuals may vary considerably, since the nature of persons also varies to some extent. That is, since Aquinas allows that individual natures vary, one could simply argue that one is, by nature, emotionally and physically attracted to persons of one's own gender, and hence to pursue same-sex relationships is 'natural' (Sullivan, 1995). Unfortunately, Aquinas does not spell out a justification for this generative requirement.

More recent natural law theorists, however, have presented a couple of different lines of defense for Aquinas' 'generative type' requirement. The first is that sex acts that involve either homosexuality, heterosexual sodomy, or which use contraception, frustrate the purpose of the sex organs, which is reproductive. This argument, often called the 'perverted faculty argument', is perhaps implicit in Aquinas. It has, however, come in for sharp attack (see Weitham, 1997), and the best recent defenders of a Thomistic natural law approach are attempting to move beyond it (e.g., George, 1999a, dismisses the argument). If their arguments fail, of course, they must allow that some homosexual sex acts are morally permissible (even positively good), although they would still have resources with which to argue against casual gay (and straight) sex.

Although the specifics of the second sort of argument offered by various contemporary natural law theorists vary, they possess common elements (Finnis,

1994; George, 1999a). As Thomists, their argument rests largely upon an account of human goods. The two most important for the argument against homosexual sex (though not against homosexuality as an orientation which is not acted upon, and hence in this they follow official Catholic doctrine; see George, 1999a, ch.15) are personal integration and marriage. Personal integration, in this view, is the idea that humans, as agents, need to have integration between their intentions as agents and their embodied selves. Thus, to use one's or another's body as a mere means to one's own pleasure, as they argue happens with masturbation, causes 'dis-integration' of the self. That is, one's intention then is just to use a body (one's own or another's) as a mere means to the end of pleasure, and this detracts from personal integration. Yet one could easily reply that two persons of the same sex engaging in sexual union does not necessarily imply any sort of 'use' of the other as a mere means to one's own pleasure. Hence, natural law theorists respond that sexual union in the context of the realization of marriage as an important human good is the only permissible expression of sexuality. Yet this argument requires drawing how marriage is an important good in a very particular way, since it puts procreation at the center of marriage as its "natural fulfillment" (George, 1999a, 168). Natural law theorists, if they want to support their objection to homosexual sex, have to emphasize procreation. If, for example, they were to place love and mutual support for human flourishing at the center, it is clear that many same-sex couples would meet this standard. Hence their sexual acts would be morally just.

There are, however, several objections that are made against this account of marriage as a central human good. One is that by placing procreation as the 'natural fulfillment' of marriage, sterile marriages are thereby denigrated. Sex in an opposite-sex marriage where the partners know that one or both of them are sterile is not done for procreation. Yet surely it is not wrong. Why, then, is homosexual sex in the same context (a long-term companionate union) wrong (Macedo, 1995)?

The natural law rejoinder is that while vaginal intercourse is a potentially procreative sex act, considered in itself (though admitting the possibility that it may be impossible for a particular couple), oral and anal sex acts are never potentially procreative, whether heterosexual or homosexual<sup>22</sup>. But is this biological distinction also morally relevant, and in the manner that natural law theorists assume? Natural

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<sup>22</sup> George 1999.

law theorists, in their discussions of these issues, seem to waver. On the one hand, they want to defend an ideal of marriage as a loving union wherein two persons are committed to their mutual flourishing, and where sex is a complement to that ideal. Yet that opens the possibility of permissible gay sex, or heterosexual sodomy, both of which they want to oppose. So, they then defend an account of sexuality which seems crudely reductive, emphasizing procreation to the point where literally a male orgasm anywhere except in the vagina of one's loving spouse is impermissible. Then, when accused of being reductive, they move back to the broader ideal of marriage.

Natural law theory, at present, has made significant concessions to mainstream liberal thought. In contrast certainly to its medieval formulation, most contemporary natural law theorists argue for limited governmental power, and do not believe that the state has an interest in attempting to prevent all moral wrongdoing.

Still, most proponents of the "New Natural Law Theory" do argue against homosexuality, and against legal protections for gays and lesbians in terms of employment and housing, even to the point of serving as expert witnesses in court cases or helping in the writing of amicus curie briefs. They also argue against same sex marriage<sup>23</sup>.

There have however been some attempts, however, to reconcile natural law theory and homosexuality (see, for example, Lago, 2018; Goldstein, 2011). While maintaining the central aspects of natural law theory and its account of basic human goods, they typically either argue that marriage itself is not a basic good (Lago), or that the sort of good it is, when understood in a less narrow, dogmatic fashion, is such that same-sex couples can enjoy it. Part of the theoretical interest in these arguments is that they allow for a moral evaluation of sexuality, still requiring it to realize the basic good of friendship if it is to be permissible, while avoiding what seem to be the various problematic aspects of contemporary natural law theorists' denigration of same-sex sexuality in any form.

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<sup>23</sup> Bradley, 2001 and George, 1999.

## **The natural law theory in ethics and its prescriptions**

The claim that human beings are governed by certain innate or basic laws rather than legislated laws has been the central assumption of the natural law theory in ethics. According to this theory, there are several basic goods appropriate to the nature of persons. These goods are ends toward which persons are naturally inclined. They include, for example, life and health, knowledge and truth, friendship and society .

Aquinas believes that everyone should always be open to the realization of these goods and hence never oppose them. According to him: We should be positively oriented towards these goods and promote them as much as we can because it is the first precept of law that good is to be done and promoted and evil is to be avoided. All other precepts of the natural law are based upon this: so that all the things which the practical reason naturally apprehends as man's good belong to the precepts of the natural law under the form of things to be done or avoided<sup>24</sup>.

Thomas Aquinas (1988) further maintains that the first principle of nature which emphasizes the promotion of good and the avoidance of evil is self-evident not only because nature has bestowed this and other practical principles on us, but also because human beings can discover what these moral laws of nature are by using their reason just as they can discover the laws of logic.

These laws serve as the foundation of moral reasoning. Not only do they apply to rational creatures that are capable of understanding and following the moral laws of nature, they are the same everywhere and are established by nature rather than by human beings<sup>25</sup>. They operate independently of what people believe, desire, want, need or feel. If the first principle of the moral law of nature is that good is to be done and evil is to be avoided, then good has the nature of an end, and evil, the nature of the contrary. All those things to which man has a natural inclination should naturally be apprehended by reason as good and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance. Therefore 'the order of the precepts of the natural law is according to the order of natural inclinations'<sup>26</sup>

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<sup>24</sup> Baumgarth and Regan, 1988:47

<sup>25</sup> Barcalow, 1994: 151.

<sup>26</sup> Baumgarth and Regan, 1988:47.

The centrality of Aquinas natural law theory of morality is that each kind of thing or species has its own characteristic way of life and way of behaving that is part of its inherent nature. If this is case, then an organism's inherent nature provides norms or standards of what is good for things of that kind. Some ways of life, conditions or forms of behavior enables members of a species to survive and flourish; others do not. For instance, it is good for a shark but not for a cat to live in water; it is also good for a lion but not for a cow to eat meat<sup>27</sup>. For human beings, reason dictates how they should act and acting in accordance with reason means acting in conformity with nature.

Hence whatever is contrary to reason is unnatural and therefore immoral. It is on the basis of this that Aquinas has condemned homosexual practices as special sins which are contrary to nature. According to him, contrary to heterosexual intercourse, which is natural to all animals, is male homosexual union which has received the special name of the unnatural vice<sup>28</sup>.

The natural law theory of morality has existed in both classical and thomistic forms. In its classical form, Moral laws are conceived as varying from nation to nation and are viewed as positive laws, that is, as laws prescribed by legislative authorities. Hence, they are mere artifacts of society and conventions which are not really binding. This conventionalist view, an early cultural relativism, was opposed from the time of Plato and Aristotle to Cicero and beyond. For them, morality is natural not conventional. This is because there is a natural law that must be obeyed whether it is written down by legislative authorities or not.

On the thomistic account, 'natural law theory is a theory about the relationship between morality and human nature, the theory that who we are determines how we ought to act. There is a way of living that is in accordance with human nature, this kind of natural law theory holds, and morality prescribes that we live such as life'.

Aquinas understood human nature to be defined by reason and freedom; 'it is our ability to reason and to make our own free choices, after all, that sets us apart from animals. Whereas material objects and animals without free will do by nature, deterministically, as God wills them to do, we who have free will may choose either

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<sup>27</sup> (Barcalow, 1994:150)

<sup>28</sup> (see Baumgarth and Regan, 1988:47)

to play our part in God's plan or not. Reason can tell us what this part is; our purpose is discoverable. With freedom comes responsibility to do as we were made to do'<sup>29</sup>

If the classical view of the natural law theory of morality is to be considered, the implication would be that moral principles are valid relative to a particular individual or society. To this end, same sex marriage will be viewed as morally acceptable relative to the individual who engages in such practice or relative to the group of people who are homosexuals. Since there are no objective standards through which actions can be assessed going by this classical view, then actions are considered right relative to different standards.

Similarly, one may want to argue based on the Thomistic account that if human nature is truly defined by reason and freedom, then homosexual acts are actions that consenting individuals of the same sex who are also rational have voluntarily agreed to partake. In this sense, their actions will not be considered contrary to nature because they are acting in accordance with what, in their own view, human nature defines. They may argue that since reason sets the path to follow and that it is only left to them to discover that path, they have chosen to thread the path of being a homosexual which for them is what reason dictates. They may further argue that based on their own understanding and interpretation of the concept of 'the inherent nature of an organism or organisms of the same species acting in accordance with what nature defines', as human beings, it inheres in their nature either as an individual or as a group to be attracted to each other. This one of the problems of the Thomistic account of the natural law theory of morality. But it goes beyond this. There is therefore need to provide a more convincing account of the idea of 'the inherent nature of human beings' so that it will be easier to specify actions that are condemned because they are contrary to the nature of human beings. In order to avoid the double-standard conclusion arrived at by the classical account and to foster a better understanding and interpretation of the idea of 'the inherent nature of human beings', a Thomistic approach to the natural law theory of morality will be employed for the purpose of this book.

Central to the Thomistic approach is the claim that what is consistent with moral laws of nature is right and what is not in keeping with these laws is wrong. According to this approach, human beings have reasoning faculties and the Laws of Nature are

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<sup>29</sup> Holt, T., (2008), 'Philosophy of Religion: Natural Law Theory'.

discernable by human reason. Thus, humans are morally obliged to use their reasoning faculties to discern what the laws are and then to act in conformity with them. Human beings have a natural drive to eat, drink, sleep and procreate. These actions are in accordance with a natural law for species survival and procreation. But while activities in conformity with such laws are morally good, those that work contrary to them are morally wrong. What can be inferred from this is that the natural law theory of morality derives from a rational deduction of what would be consistent with what appear to reason to be the laws of nature governing human behavior

(Pecorino, 2000). What are the laws of nature that provide guidance for human actions? Pecorino highlights some of them as including: the law of survival, the natural action for living things to maintain themselves and to reproduce, and so on (Pecorino, 2000), though some critics are of the view that it is a major problem for this theory to determine what exactly those laws are and how they apply to human circumstances<sup>30</sup>.

From the discussion thus far, one would see why the natural law theory of morality is significant for the homosexuality debate. Dianne Irving (2000) has provided reasons why the natural law theory of morality is useful in many ethical dilemmas. First, natural law ethical theory aids in understanding which human actions are morally right or wrong through the aid of human reason alone without referring to divine revelation<sup>31</sup>. Also, natural law ethical theory is objectively grounded in what one can describe as our objectively knowable human nature. That is, in what is really good or bad for us as human beings, as individuals and as members of human communities<sup>32</sup>. Furthermore, the natural law theory of morality is not deduced from non-empirically derived and questionable philosophical premises or religious dogmas, or from variable emotions or personal opinions. For example, it is wrong to use cocaine because our human natures are such that cocaine harms, sometimes even destroys the body, mind and spirit. It can also seriously harm others close to us as well as to our human society at large. That is just the way we human beings are "made"; and we can know this fact objectively and empirically<sup>33</sup> (Irving, 2000). Because the basic assumptions of natural law theory are proximately grounded on

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<sup>30</sup> The "Homosexuality" Debate: Two Streams of Biblical Interpretation'. Peace Theology.

<sup>31</sup>Irving, D.N (2000), 'Abortion: Correct Application of Natural Law theory'.

<sup>32</sup> see Fagothey, 1963: pp. 128-131.

<sup>33</sup> Ibid.

an objectively knowable human nature, they are applicable to all human beings, precisely because we all possess such human nature.

The possession of natures which are specifically human is precisely what we all have in common. This is true regardless of time, culture, background, race, sex, religion or political affiliation (Irving, 2000) Thus, if properly understood and applied, natural law theory should be ideal for our pluralistic society since presumably, we are human beings and that holds at least in common for all. What is fundamentally good or bad for human beings in general will hold for everybody. Although secondary differences must be taken into consideration, the primary precept of the natural law will be the same for everybody by virtue of their common humanity, and these precepts cannot be changed because our human nature and what is objectively and fundamentally good or bad for them cannot change.

However, Fagothey has identified three determinants of human action in natural law ethical theory which not only determine its rightness or wrongness but must be good for an action to be considered good. These are: the act itself, the motive or intention and the circumstances. The act itself (what the agent wills) may be good, evil, or neutral by its very nature. There exist acts which in themselves are always seriously wrong by reason of their object, independent of circumstances (that is, the kind of act willed).

Fagothey gave examples of such acts as include whatever is hostile to life itself, such as any kind of homicide, genocide, abortion, euthanasia and voluntary suicide; whatever violates the integrity of the human person, such as mutilation, physical and mental torture and attempts to coerce the spirit; whatever is offensive to human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution and trafficking in women and children; degrading conditions of work which treat laborers as mere instruments of profit, and not as free responsible persons; all these acts and the like are a disgrace, and so long as they infect human civilization they contaminate those who inflict them more than those who suffer injustice ...<sup>34</sup>.

Fagothey also notes that there is the motive or intention (consciously willed) which the agent wants to achieve by the act, that is, the end, purpose or goal of the action

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<sup>34</sup> (Fagothey, 1963, 94-98)

and why the action is performed, finally are the circumstances which are the accidental surroundings of the act which also include the consequences of the act. For instance, the act of intercourse with a willing spouse or forcibly with a stranger or one's child; or that there are no other medical treatments available. Going by these three determinants, it is important to note that an action which is evil in itself (by its nature) cannot be made good or indifferent by any intentions, goals or circumstances - no matter how good or praiseworthy these are per se. On the other hand, an action which is good in itself (by its nature) can be morally ruined by any gravely bad intentions or circumstances<sup>35</sup>.

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<sup>35</sup> Fagothey, A. (1963), *Right and Reason* (2nd or 3rd editions only) (St. Louis: The C.V. Mosby Company).



## **CHAPTER FOUR**

### **THE HOMOSEXUALITY DEBATE AND THE MORAL ABHORRENCE OF THE ACT**

Are homosexual relationships truly contrary to the laws of nature? If the answer is yes, some may want to argue that homosexual practices be condemned completely because it is unnatural. Barcalow argues that if one considers the argument of the natural law theory of morality which says that ‘each kind of thing or species has its own characteristic way of life and way of behaving that is part of its inherent nature’ (Barcalow,1994:150), then one may be tempted to want to hold that homosexuals are members of the same species in which case one may also want to consider the genetic make-up that characterizes homosexuals which makes it somewhat natural to find members of the same sex attractive<sup>36</sup>.

This is because an organism’s inherent nature provides norms or standards of what is good for things of that kind (Barcalow, 1994:150). One cannot rule out the possibility of both biological and environmental influences that predispose actors to same sex relationships. Some biological factors which help explain some causes of homosexuality include hormonal differences, DNA traits, as well as the size of the hypothalamus in comparison between a homosexual man and a heterosexual man. In an attempt to attribute the causes of homosexual behavior to nature, Ashleigh (2012) referred to the experiment conducted by D.F Swaab in 1900 which became the first experiment to document a physiological difference in the anatomical structure of a homosexual person’s brain.

While conducting post-mortem examinations, Swaab discovered that a portion of the hypothalamus was structurally different in a homosexual person’s brain than in a heterosexual person’s brain; finding that the suprachiasmatic nucleus (SCN), a small portion of the hypothalamus was generally twice as large as the

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<sup>36</sup> Barcalow,1994:150.

suprachiasmatic nucleus (SCN) in heterosexual males. Ashleigh further explains that as at the same time Swaab conducted his experiment, another scientist, Laura Allen, made a quite similar discovery in the hypothalamus also; finding that the anterior commissure (AC) of the hypothalamus was also significantly larger in the homosexual subjects than that of the heterosexuals (see Ashleigh, 2012).

The centrality of Ashleigh's argument is that homosexual and heterosexual men differ in the central neuronal mechanisms that control sexual behavior. The difference in anatomy was no product of upbringing or environment, but rather pre-natal cerebral development and structural differentiation.

Homosexuality is therefore caused by a person's biological and genetic foundation because it has to do with brain anatomy and genetics and this further explains why sexual orientation is not due to environmental factors.

Contrastively, some social scientists are of the opinion that homosexual behaviors are consequences of environmental factors. For these people, homosexuality is essentially the primary responsibility of the social and cultural environment in which individuals find themselves. Family influences shape us at those influential stages in our life which determine our ways of life predisposing us to certain sexual orientations be it heterosexual, homosexual or bisexual. Just as variables of the family process are predictors of child adjustment so also do family support has a crucial impact on adolescent health and adjustment<sup>37</sup>.

The primary task of parenting lies in the ability to nurture and protect one's child. Children have different upbringings, education, religions and culture, psychosocial backgrounds, socio-economic attributes and emotional or traumatic events, which impact and mold who and what that child is and the way in which the parents or parent copes with these challenges is reflected on their child. For that reason, the qualities of the relationship are better predictors of child adjustment than variables of family structure<sup>38</sup>.

Homosexuality is an issue that concerns both Muslims and Christians because both religions share almost the same values. What are the concerns of these religions as they relate to the homosexual debate? The Bible and the Qur'an have rejected

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<sup>37</sup> (See Rhon, 2012)

<sup>38</sup> (See Rhon, 2012)

homosexual practices not only on religious grounds but also on grounds of not conforming to what one can describe as appropriate human sexual expression.

What constitutes appropriate human sexual expression and how does one describe it? Responding to this question, Thomas Schmidt (1995) opines that a fundamental problematic underlies the controversy regarding the homosexuality debate and in order to have a proper understanding of this problematic, it is important to analyze what appropriate human sexual expression would be.

The creation account of **Genesis 1–2** and its later use by Jesus has been viewed by some authors as significant in establishing how an appropriate human sexual expression ought to be,<sup>39</sup> In complementation of Schmidt’s account, Ted Grimsrud opines that our understanding of appropriate human sexual expression should follow from **Genesis** particularly its emphasis on creation which serves to make four crucial points regarding sexuality.

These are: that reproduction is good, that sex is good, that marriage is good and that male and female are necessary sexual counterparts<sup>40</sup>. The implication of these for the homosexuality debate is that same sex sexual relationships are problematic not only because this act reflects an implicit rejection of the very order of creation (which consequently implies a rejection of God), but also because it undermines the sanctity of opposite-sex marriage. Because it is implicit in homosexual acts that a different expression of sexuality outside of the God-created intent for human beings is good, such a rejection of God’s wills is unacceptable for all Christians who accept the authority of the Bible<sup>41</sup>. **Leviticus 18:22-23** and **20:13** express the most direct teaching in the Old Testament against same-sex sexual relationships.

**Leviticus 18:22** says ‘you shall not lie with a male as with a woman. It is an abomination’ while **Leviticus 18: 23** says: ‘Nor shall you mate with any animal, to defile yourself with it. Nor shall any woman stand before an animal to mate with, Similarly, **Leviticus 20:13** says that: ‘If a man lies with a male as he lies with a woman, both of them have committed abomination. They shall surely be put to death. Their blood shall be upon them’

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<sup>39</sup> Schmidt, 1995: 43

<sup>40</sup> Ted Grimsrud (2012)

<sup>41</sup> (Schmidt, 1995:48),

The main reason the Bible speaks so clearly against same sex sexual activity which does not occur within the context of opposite-sex marriage, According to Schmidt's view is that illicit sexual activity is understood to be a threat to the very social foundations of the Bible's faith communities. Hence, if God's intent for opposite-sex marriage is the only appropriate context for sexual relationships, then the denials of the exclusivity of this context implicit in same-sex relationships means rejecting God<sup>42</sup>.

In a similar account to that offered by Grimsrud and Schmidt, Richard Hays, explains that 'the practice of same-sex sex may be understood as a type of "sacrament" for the contra-faith of those who reject God as creator and ruler of the universe. Faith in God includes, by definition, an acceptance of the order God has created and 'to blatantly deny the exclusive normativity of male/female sexuality is par excellence, an expression of the refusal to honor God as God<sup>43</sup>.

Speaking in a similar vein, Stanley Grenz, opines that 'our direction as human beings may be seen in the fact that God created human beings as male and female' in **Genesis 1:27**. Also, **Genesis 2:18** tells us that 'simply as male, the first human being was incomplete and God created created Eva for Adam. To be complete therefore, human living must include both sexes, different from one another and yet complimentary'<sup>44</sup>.

Grenz describes sexual intercourse as an act that has profound symbolic meaning with three fundamental messages as its core. First, sexual intercourse symbolizes the exclusive bond between husband and wife – reflecting the biblical confession that the person of faith has an exclusive bond with God. It also symbolizes the mutuality of the marriage relationship – each partner finding pleasure in the intimacy and seeking to foster the other's pleasure. Lastly, sexual intercourse symbolizes the married couple's openness to new life emerging from their relationship through the birth of children<sup>45</sup>. Grenz stresses that legitimate and appropriate sexual intimacy must always be symbolic in these ways, and that the institution of marriage is meant to foster such rich symbolism. In doing so, marriage serves as a crucial element in the life of the faith community (Grimsrud, 2012). If this is the case, then same-sex

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<sup>42</sup>(Grimsrud, 2012)

<sup>43</sup> Richard Hays (1996)

<sup>44</sup> (Grenz, 1998: 103)

<sup>45</sup> Grenz, 1998: 108.

covenant relationships simply cannot share in the richness of this symbolism. The conclusion to be drawn from this is that same sex covenant relationships among Christians should not be allowed because they devalue the sacred institution of marriage. In spite of the above arguments, there are also arguments making a case for homosexual practices. As quoted by Ted Grimstrum (2012), Daniel Helminiak (1994: 32) for instance argues that regarding present day issues, we must not draw strong conclusions about the applicability of biblical texts. This according to him is because we do not have adequate historical background to determine what the texts meant to their writers when they wrote them and even first readers. This uncertainty he says, applies to many biblical texts that appear to address issues of same sex sexuality. Helminiak further argues that when properly examined, biblical teachings concerning same sex sexuality as seen in the Bible was not addressing the same type of relations that are under scrutiny in today's context. According to him, 'the Bible did not know of homosexuality as a sexual orientation; only of homogenital acts. Hence, it gives no answer about spontaneous affection for people of the same sex and about the ethical possibility of expressing that affection in loving, sexual relationships'.

Myers and Scanzoni (2005) opine that the Bible does not use the actual word "homosexuality". The few references to same sex sexual acts take into cognizance other kinds of related problems such as idolatry, violent rape, lust, exploitation and promiscuity. The Bible seems to have no awareness of our contemporary understandings of homosexual orientation or the possibility of covenanted same-sex partnerships (Myers and Scanzoni, 2005, 84-85). It is as a result of this that Grimstrum (2012) sounds a note of caution. According to him, to force people of same sex who are attracted to each other to enter into heterosexual marriages may be highly problematic. In doing this, a significant number to people may be consigned to lives that will be less fulfilling and fruitful than they could be. Similarly,

Myers and Scanzoni opine that the notion of innate sexual differences and the need for heterosexual marriage to provide the context for a needed complementarity that uniquely allows for human wholeness in practice, tends to foster a continued attitude of the dependence of women on men for their completeness<sup>46</sup>. Such approach

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<sup>46</sup> Myers and Scanzoni, 2005:111.

according to them hinders everyone's call to be whole persons who can develop both their active and affective sides.

In a similar development, Rogers argues that the Bible's condemnation of sexual contact between two men reflects historical cultural assumptions that saw such conduct as a confusion of sex roles; assumptions totally ignorant of what we understand today to be the innate sexual orientation of many who are attracted to those of their same sex. Having examined arguments making a case for homosexual acts, one may want to know whether the Leviticus is reflecting an underlying, universal, creation-based principle as the basis for the prohibition of male/male sex, or whether it is reflecting instead time-bound contextual concerns that no longer are directly relevant for Christians<sup>47</sup>.

Rogers (2006) respond by stressing that: Although the Bible's strongest anti-male/male sexual relationship statements are found in the book of Leviticus, the cultural context for those statements then was the need Israelites felt for strong cohesiveness as a means of sustaining their identity as a people in relation to the Egyptians and Canaanites. A major aspect of maintaining this separation was to avoid "mixing" in any way with Canaanites and their social and religious practices. The need not to mix came to apply to a wide range of behaviors, not having more than one kind of seed in a field and not having more than one kind Lanre-AbassBolatito: Natural Law Theory & the Homosexuality Debate 198 of fabric in one's clothing. For two men to have sex would be to mix sex roles, one taking on the role of a woman, thus crossing a cultural boundary in intolerable ways. Thus, the condemnation of male/male sex in Leviticus applied to a specific cultural context. It was not a timeless, absolute directive<sup>48</sup>

Apart for the religious tenets of Christianity, Islam also forbids homosexual behavior. There are two major references to homosexual behavior in the Quran although there are also other related ones. The two main references are **Qur'an 7: 80- 81 and 26:165**. In **Qur'an 7: 80-81**, Allah explains that "We also sent Lut: He said to his people: "Do ye commit lewdness such as no people in creation (ever) committed before you? For ye practice your lusts on men in preference to women: ye are indeed a people transgressing beyond bounds." (**Qur'an7:80-81**). Similarly,

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<sup>47</sup> Grimstrum, 2012.

<sup>48</sup> Rogers, 2006: 72.

**Qur'an 26:165-166** holds that "Of all the creatures in the world, will ye approach males, and leave the whom Allah has created for you to be your mates? Nay, ye are a people transgressing (all limits)!". Other verses include **Qur'an 27:55 and 29:28-29**. **Qur'an 27:55** holds that 'Would ye really approach men in your lusts rather than women? Nay, ye are a people (grossly) ignorant!' while **Qur'an 29:28-29** says 'And (remember) Lut: behold, he said to his people: "Ye do commit lewdness, such as no people in Creation (ever) committed before you. Do ye indeed approach men, and cut off the highway and practice wickedness (even) in your councils?" But his people gave no answer but this: they said: "Bring us the Wrath of God if thou tell the truth".

Also, in the hadith, mention was made of same sex gay and lesbian acts. The Hadith are collections of sayings attributed to Muhammad (S.A.W). Many Hadiths (ahadith) discuss liwat (sexual intercourse between males). Two examples are: "When a man mounts another man, the throne of God shakes" and "Kill the one that is doing it and also kill the one that it is being done to" (referring here to the active and passive partners in homosexual sexual intercourse) ([www.thereligionofpeace.com](http://www.thereligionofpeace.com)). Just as mention was made of gay acts, so also was there at least one mention of lesbian behavior in the Hadith: "Sihaq (lesbian sexual activity) of women is zina (illegitimate sexual intercourse) among them." ([www.missionislam.com](http://www.missionislam.com)). As narrated by Abu Sa'id al-Khudr, 'the Prophet (S.A.W) said: A man should not look at the private parts of another man, and a woman should not look at the private parts of another woman. A man should not lie with another man without wearing lower garment under one cover; and a woman should not lie with another woman without wearing lower garment under one cover. (Abu Dawood) (see [www.missionislam.com](http://www.missionislam.com)).

Similarly, as narrated by Abu Hurayrah: 'the Prophet. (S.A.W) said: A man should not lie with another man and a woman should not lie with another woman without covering their private parts except a child or a father'<sup>49</sup>. Also, Abu Dawud (4462) reports that: The Messenger of Allah (peace and blessings of Allah be upon him) said, "Whoever you find doing the action of the people of Lot, execute the one who does it and the one to whom it is done." Again, Abu Dawud (4448) narrates that "If a man who is not married is seized committing sodomy, he will be stoned to death." (Note the implicit approval of sodomizing one's wife). **Bukhari (72:774)** also

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<sup>49</sup> [www.missionislam.com](http://www.missionislam.com).

reports that "The Prophet cursed effeminate men (those men who are in the similitude (assume the manners of women) and those women who assume the manners of men, and he said, 'Turn them out of your houses' The Prophet turned out such-and-such man, and 'Umar turned out such-and-such woman." Finally, Al-Tirmidhi, Sunan 1:152 reports that Muhammad said, "Whoever is found conducting himself in the manner of the people of Lot, kill the doer and the receiver." It is pertinent to note that both Christianity and Islam are religions that regulate the lives of African people and they derive their values from both religions. In Islam for example, it often said that even though this religion allows some latitude to ponder and reconsider some issues, homosexuality is clearly and explicitly condemned by the Quran (see **Qur'an 7:80-83, 11:77-79**). The Prophet and his progeny once said, 'when we have a conflict with the Quran, which is the word of God verbatim, we do not ask where the Quran went wrong but rather why are we, limited beings, in conflict with the wisdom of the absolute, God Almighty'. What follows from this is that Muslims do not make up their religion but receive and obey it. This is not to say that Muslims hate the homosexual person but rather that they find the behavior morally repugnant. Their interests lie in helping those who have these tendencies or practice such behavior and at the same time showing love and care. This has become imperative because everything has been created in pairs by God and each is endowed with physical and psychological characteristics to complement and complete one another. The **Quran chapter 4 verse 1** for instance states that 'human beings have been created from one living entity (nafs) which represents the origin of both the male and the female. The human species though has included male and female since its existence. The "mating" or "spousing" of male and female sexes is original in human nature and out of this instinctive relationship the human race develops, continues and spreads'. Also, 'between the two sexes a gravitating combination of love, tenderness, and care is engendered, so that each finds in the other completeness, tranquility, and support' (**Quran 30:21**). This is because 'having children and loving them represents another fulfillment of human nature (**Quran 42:49-50**)' and 'it is through this spousal complementation and completion, that each spouse achieves comfort, and enjoys peace of mind, satisfaction, and fulfillment. These relationships extend beyond the physical sexual contact and to psychological, spiritual relations' (**Quran, 7:189**). However, the blessings of this completeness are not the end of such accomplishment:

They continue and develop through bringing forth children, raising them, and providing the whole family with material, emotional, and moral needs. The pleasures of completion and procreation may well be extended and multiplied, when one is granted grandchildren, who not only represent genealogical continuation, but are also a dynamic revitalization of the human race. Such physical- psychological-spiritual development through spousing and mating, followed by procreation which may continue for more than one generation, ought to lead every sensible human being to be grateful to God for His successive and multiplying favors with his own family throughout his lifetime. Such persons and their happy veritable families would be models for the whole society; Quran **25:72**.

The above indented quotation tends to make one want to know whether homosexual act is in any way beneficial to humanity at large. In what way (s) is this act likely to advance or retard humanity? Even if there is a genetic propensity towards homosexuality as some would claim, the nobility of the human spirit can overcome it. Some people may have a strong urge to have a homosexual contact, a heterosexual contact with one other than one's own spouse, or to steal or kill. The nobility of the human spirit is to resist all these and this is what elevates human beings to a greater status above that of animals. It is interesting to note that both Islam and Christianity as religions are committed not only to upholding the family unit and its values but also to protecting it as one of the most important and socially viable nuclei of any society without neglecting the need to maintain a balance between the rights of individual and society's wellbeing. Both religions place a higher value on society's wellbeing than an individual's right to actively promote counter values that will ultimately damage the society at large ([www.missionislam.com](http://www.missionislam.com)). Members of a particular society have the right to resist the introduction of any value that is likely to constitute a threat to the wellbeing of its members and ensure the protection of certain important values against such an onslaught. This resistance should never be an aggression against any individual or groups, but a firm and principled stand against the counter values being promoted, while promoting those important values with conviction but in a subtle manner within the society. In what way (s) has the Yoruba culture been able to collectively promote some of these values and counter the threat of homosexuality? Values placed on the institution of marriage and procreation in the Yoruba culture an important moral question to be raised in the homosexuality debate is: when two people of the same sex interact to produce

orgasms, what are the likely benefits of such relationship? Homosexual practice is often considered a morally abhorrent act in many countries particularly in Africa where the purpose of orgasms is not only for sexual gratification but also to produce offspring. Certain values are placed on marriage and procreation in Africa.

According to Alexander Abasili, Marriage and procreation are intertwined and inseparable in Africa. It is almost always presumed that readiness for marriage is readiness for procreation; to get married is an opportunity to contribute freely, through procreation, to the survival of the lineage and society at large. During marriage (both traditional, Islamic and Christian), one of the most appreciated and common gestures of good-will shown to the newly married couple is praying for them for the fruit of the womb: 'may God grant you many children', 'you shall give birth to male and female', 'in nine months we shall gather to celebrate the birth of your baby'. In these wishes, both the societal perception of marriage and the use of sexuality in marriage as primarily geared toward the begetting of progeny are encapsulated<sup>50</sup>.

From the above, one would see that the significance of marriage and procreation cannot be underestimated in many African societies. Traditionally, the purpose of marriage was procreation. Children were regarded as the seal of marriage. Parents had the role of looking after the well-being and development of their children, yet the whole community shared responsibility for child rearing

To this end, Gecaga a sociologist stressed that: In traditional African society there was a procreative emphasis on marriage due to the value attached to children. Marriage was believed to be divinely instituted and sanctioned. Child bearing was a sacred duty that had to be carried out because transmitting life meant sharing in the divine prerogative of creation itself. In some countries like Uganda, the name of God is often made part of the children's name. For example, ByaKatonda means 'for or by the creator'. This shows how people associated God with the continuation of life through the birth of children. Moreover, children served to perpetuate the family name and maintain the link between ancestors and the living.

A woman's status in society was determined by the children she bore and her entire life was centered on them. Because marriage rites are followed so strictly in Africa,

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<sup>50</sup> Abasili, 2012.

African marriage rites are considered very important to the African people. Marriage symbolizes the beginning of a new life: In African Traditional Religion, marriage is a cherished fecundity and is intended for procreation. Marriage involves not only interpersonal relations but also intercommunity relations. The survival of kinship in the social structure depends on marriage; marriage always establishes very strong bonds between the individuals belonging to different families and clans, especially when children are born. When a community seeks out a wife or a son-in-law, they look for one that lives up to their expectations; a person with good moral qualities, industrious in physical work, respectful towards their elders and a good reputation. Physical attractiveness doesn't matter as much as the community's expectations.

Fertility is the central requirement in marriage the purpose of marriage is the social reproduction of the kinship group. The entire community, including living and deceased, are involved in the marriage process. There are certain rituals and taboos that must be observed in regard to marriage. Respect of in-laws and the observance of distance between in-laws, just to name a few. Prayers and sacrifices are offered to the ancestors on behalf of the groom and the bride. Fertility and healthy deliveries are prayed for. A marriage ceremony takes place over a certain period of time. There are stages of marriage which differ from community to community. But the basic stages include: friendship between the groom and the bride, courtship though this may not be needed in some communities and finally, the marriage proper which involves paying bride price to the bride's family. Once a child is delivered after the marriage, the marriage is complete.

Through the birth of a child, the marriage union is complete and a husband and wife belong completely to one another. This consequently seals the bond between the two families and communities. Life in African communities is when the husband and the wife are together, alone one is considered for instance, The Yoruba culture places great value on the need to marry and procreate. The homeland of Yoruba culture is West Africa. This homeland spans the four West African countries of Nigeria, Benin Republic, Togo and Ghana (Abimbola, 2006:35). The Yoruba people occupy the southwestern part of Nigeria with an estimated population of fifteen million in Lagos and thirty-five million in southwestern parts of Nigeria due to their large concentration (Abimbola, 2006:35).

There are many stories, myths and legends in the sacred text of Yoruba religion (Ifa) which serve to explain that Ile-Ife is the place where the earth and all its inhabitants were created. Although their language is mainly Yoruba, there are over fifty different dialects of Yoruba language in West Africa and the diaspora. The preference for marriage and procreation among the Yoruba has been discussed by Oyeronke Olajubu (2012) who also describes the essence of sex in this culture in her work: *A social-cultural analysis of celibacy among the Yoruba*. According to her, the proper use of sex aims at just one goal: to have children and this is done in order to ensure continuity of the human race. Sex is recognized as a gift from the creator to both men and women, but its use is monitored to avoid abuse. The Yoruba do not attach any form of guilt to sexual feelings except where they are not properly utilized, such as in incestuous relationships or when they violate specific religious values such as sex on the bare ground or in the afternoon (Olajubu, 2012). Similarly, the Yoruba would frown at same sex relationships mainly because this is contrary to values which are highly valued among them. One can add that the high value placed on marriage and procreation accounts for why homosexual act is often seen as highly degrading and abominable among the Yoruba. Such act is likely to subvert and damage certain traditional African socio-cultural values and practices particularly as they relate to marriage and procreation in Yoruba land. Marriage is the prescribed setting for the exercise of human sexuality among the Yoruba (Olajubu, 2012).

In order to further illustrate the importance of marriage in the Yoruba society, Olajubu explains that: Marriage is a duty expected of all adult male and female members of Yoruba society. Marriage is one of the characteristics of a mature person, because to be unmarried is perceived as a feature of childhood, irrespective of the individual's age. Marriage conveys a status of responsibility, which may not be true of an unmarried person. This status at marriage is manifested at different levels for the male as well as the female. For the Yoruba woman, marriage is an indication of her maturity because she is able to change residence from her father's house to that of her husband. In addition, it shows her ability to manage both human and natural resources. Also, it bestows on her the privilege to belong to the league of mothers. Marriage for the man is an indication of maturity because he now becomes a provider and guardian of others in the family....

Again, the status that marriage bestows on both male and female in Yorubaland transcends this life into the hereafter because on it hinges the phenomenon of the

ancestors. Marriage is a rhythm of life in which everyone must participate: the ancestors, the living, and the yet unborn. (Olajubu, 2012). Marriage and procreation are inextricably linked in the Yorubaculture. For instance, a typical Yoruba would say *omoniyi* (having a child is prestigious), *omoboni* (metaphorically, children are like coverings, they are assurances in old age), *omolayo* (children symbolize happiness), *omo l'eere aye* (children are one's gain on earth). Children are so important in Yoruba culture because according to them, *Bi okete ba d'agba, omu omo re nii maa mu* (literally meaning when a squirrel grows old, it sucks from the breastmilk of the child. *Okete* here is used metaphorically to mean human beings and *omuhere* is used to denote things like food, clothing, shelter and all other necessary things needed to take care of the elderly especially at old age. A child is expected to take care of the elderly at this stage of life; this defines one of the essences of procreation. A typical Yoruba values child more than any other material possession. This is often expressed in a proverb that says: *bi a l'ogun eru, bi a l'ogbon iwofa, omo eni ni omoeni* (if a person has twenty slaves and thirty pawns, his child will always remain his child. It is in a similar vein that Oyeronke Olajubu explains that: Having children is essential in Yoruba marriages. Children are the glory of marriages, and the more there are of them the greater the glory.

The Lanre-AbassBolatito: Natural Law Theory & the Homosexuality Debate significance of having children is frequently recorded in Yoruba oral genres including songs, stories, proverbs, dictums, and dirges. Examples of some sayings on the importance of procreation in Yoruba oral genres are: *omoniyi*, *omonide*, *omol'aso*, *omoni i wo 'le de nil'oyo ale*, meaning “children guarantee prestige,” “children are as brass,” “children are cloths (because they shield parents from shame),” “children take care of the house (concerns) for parents in old age and after death.” (Olajubu, 2012) For the Yoruba, the need to sustain the family lineage through procreation is important. This is why a typical Yoruba would describe a childless married male or female as *olori arugun* (first in the line of destructive beings) because according to them, *Eni a bi, t'iko bi eniyan, olori arungun ni* (whosoever is given birth to by a human being and yet fails to give birth to somebody is the leader of a group of destructive beings).

The Yoruba believe that a childless person (the cause of which may be voluntary or non-voluntary is heading towards destruction). Destruction in this context has to do with the family lineage. This implies that the person is gradually tending towards the

elimination of his/her family lineage hence it is advisable to procreate to avoid this. The Yoruba would say for instance that: *esin ku o fi iru s'aiye* (when a horse dies, he leaves his tail in the world). This proverb is often used to refer to a man who is dead but left a child who can deputize for him. This is not to say that all children take care of their aged ones. It is interesting to note that even some successful children for one reason or the other, do not take care of their aged ones. For such children, proverbs like *akuku bii san jurada rada* (to be childless is better than a useless/worthless child) are often used to describe them. This is not a common phenomenon though, but in situations where we have children like this, they can be called to order by well-respected members of the community. This is made possible because the Yoruba society is communitarian in nature. Also, the fact that people have children in their early days does not mean such children will live till they are old. Advice like: *omo ko l'ayole, eni omo sin l'o bimo* (one cannot rejoice at the instance of having a child, it is the person who is buried by a child that actually has a child) are often used to caution couples who are childless and are also desperate to have children. However, with particular reference to the institution of marriage, the Yoruba believe that human beings are not homosexuals by nature and this accounts for the value placed on the institution of marriage. For instance sayings like: *a ki idagba ma l'aya, ibi aye bagbe banil'a a je e*, (a man must marry a woman no matter how late in his life time), *foforo foforo imu iyawo, oya ju iyara ofifo lo*, (it is better to marry an ugly woman than to have an empty house), and *gogoro biagba, a to bale ma l'obirin* (an adult male who refuses to have a wife reduces himself to the level of a young inexperienced boy) all serve to explain the importance of the sacred institution of marriage in Yorubaland. Also, prayers like *eyiniyawo koni mo eni* (the wife's back will not be so familiar with where she sleeps) are often used to wish the couple well after marriage. The expectation is that she gets pregnant soon after the marriage ceremony. If it turns out otherwise, then this means there is a delay in her ability to get pregnant the implication of which is that the wife's back will become familiar with where she sleeps. The Yoruba expressions thus far serve to explain not only this culture's preference for marriage and procreation in particular but also African preference in general. This is not to say that other cultures do not value marriage and procreation but in Africa, such value is so high that a childless marriage is considered a misnomer. Godfrey Tangwa (2012) puts this in *Lanre-Abass Bolatito: Natural Law Theory & the Homosexuality Debate* perspective when he explains that the value placed on procreation differs across culture. For him, Procreation is a value

for human beings in general and within all human cultures. But the ways and manner in which this value is manifested and expressed differ from place to place, from culture to culture, and these differences can be used as a rough gauge of the extent or magnitude to which the value is affirmed or upheld against competing values.

There is no part of Africa where children are not greatly valued and where, as a consequence, large families do not exist or polygamy is not practiced. Children are so highly valued in Africa that procreation is everywhere considered the main purpose of marriage and the main cause of, if not justification for, polygamy and other forms of marriage which may be considered more or less strange from the perspective of other cultures. Conversely, childlessness remains the main cause of divorce, as a childless marriage is considered to be equivalent to no marriage at all as per Tangwa.

Interestingly, many have argued that procreation should not be viewed as the only essence of marriage; companionship also gives marriage its meaning. Such minimalist account of marriage will only succeed in reducing marital sexual intercourse to its procreative functions only, which, according to some scholars like Abasili, is equivalent to ‘animalistic perception of the use of sexuality’. Consequent upon this, Waite and Gallagher explained that defining marriage solely on the basis of its procreative function strips marriage of some of its vital aspects and meaning<sup>51</sup>.

Companionship and mutual assistance between married partners are a vital purpose of marriage that also deserves attention. The companionship of married couples rooted in love constitutes enough grounds for happy married life even without children. With love for each other, married couple can also enjoy sex that is noble, and both emotionally and physically fulfilling because such pleasure is also part of marital or conjugal love and life. Granted that procreation is not the only essence of marriage, these values are no doubt cherished by a typical Yoruba. It is against this background that Alexander Abasili explains, following Lucy Mair, that the basis of African emphasis on procreation ‘is that the religious values associated with sex are concentrated on procreation and not on sexual activity as such’<sup>52</sup>. This accounts for why, for the Yoruba people, sex between married couples is seen primarily as an act of procreation not mere satisfaction. Hence the practice of voluntary childlessness

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<sup>51</sup> Waite and Gallagher, 2000:79.

<sup>52</sup> Mair, 1969:3.

among couples in some parts of the world in which couples for various reasons voluntarily abstain from having children, is foreign to many African culture particularly Yoruba culture.

When applied to the homosexuality debate therefore, the implication is that both men and women are not expected to remain unmarried not to talk of engage in same sex relationships or marriage. This accounts for why childless couples are sometimes subjected to family pressure. The parents and the relatives of such couples will consistently reiterate the consequences of dying childless or without an heir. To avoid this type of pressure, some men either divorce their wife or marry another that can give them a child or go into polygamy, while for women, some of them resign to fate or opt out of the marriage

### **Conclusion**

The natural law theory of morality is to the effect that homosexuality acts are morally wrong because according to this theory, it is only morally right for an organism to act in accordance with its inherent nature and if this is the case, then any act (homosexuality inclusive) that is contrary to human nature and reason is forbidden and therefore wrong, however a plausible account of what constitutes human nature is essential to rule out any misinterpretation, otherwise homosexuals might want to argue that it conforms to their nature to be attracted to the same sex. In this sense, the fact that homosexuality can't procreate as propounded by Thomas Aquinas runs contrary to the values of marriage and procreation which are held in high esteem by many African culture same sex marriage is morally unacceptable in many African communities because it devalues the foundation of Gods procreation under Genesis.



## **CHAPTER FIVE**

### **ORIGIN OF HOMOSEXUALITY**

This chapter will explore the various theories that have been proposed to explain the origins of homosexuality. These include the Biological theories, Psychological theories and the social theories related to genetics & hormones, childhood experiences & family dynamics and culture, religion, & politics respectively.

In an 1868 letter to Karl Heinrich Ulrichs, the terms homosexual and heterosexual were coined by Karl-Maria Kertbeny and later published in two pamphlets in 1869. These became the standard terms when used by Richard von Krafft-Ebing in his *Psychopathia Sexualis* (1886)

Although the term is new, discussions about sexuality in general, and same-sex attraction in particular, have occasioned philosophical discussion ranging from Plato's Symposium to contemporary queer theory. Since the history of cultural understandings of same-sex attraction are relevant to the philosophical issues raised by those understandings, it is necessary to review briefly some of the social history of homosexuality. Arising out of this history, at least in the West, is the idea of natural law and some interpretations of that law as forbidding homosexual sex. References to natural law still play an important role in contemporary debates about homosexuality in religion, politics, and even courtrooms. Finally, perhaps the most significant recent social change involving homosexuality is the emergence of the gay liberation movement in the West. In philosophical circles this movement is, in part, represented through a rather diverse group of thinkers who are grouped under the label of queer theory. A central issue raised by queer theory, which will be discussed below, is whether homosexuality, and hence also heterosexuality and bisexuality, is socially constructed or purely driven by biological forces.

As has been frequently noted, the ancient Greeks did not have terms or concepts that correspond to the contemporary dichotomy of 'heterosexual' and 'homosexual' (e.g., Foucault, 1980). There is a wealth of material from ancient Greece pertinent

to issues of sexuality, ranging from dialogues of Plato, such as the Symposium, to plays by Aristophanes, and Greek artwork and vases. What follows is a brief description of ancient Greek attitudes, but it is important to recognize that there was regional variation. For example, in parts of Ionia there were general laws against same-sex eros, while in Elis and Boiotia (e.g., Thebes), it was approved of and even celebrated.

## **Homosexuality in ancient Greece**

In classical antiquity, writers such as Herodotus<sup>53</sup>, Plato<sup>54</sup>, Xenophon<sup>55</sup>, Athenaeus<sup>56</sup> and many others explored aspects of homosexuality in Greek society. The most widespread and socially significant form of same-sex sexual relations in ancient Greece amongst elite circles was between adult men and pubescent or adolescent boys, known as pederasty (marriages in Ancient Greece between men and women were also age structured, with men in their thirties commonly taking wives in their early teens)<sup>57</sup>.

Nevertheless, homosexuality and its practices were still wide-spread as certain city-states allowed it while others were ambiguous or prohibited it<sup>58</sup>. Though sexual relationships between adult men did exist, it is possible at least one member of each of these relationships flouted social conventions by assuming a passive sexual role according to Kenneth Dover, though this has been questioned by recent scholars. It is unclear how such relations between same-sex partners were regarded in the general society, especially for women, but examples do exist as far back as the time of Sappho<sup>59</sup>.

The ancient Greeks did not conceive of sexual orientation as a social identifier as modern Western societies have done. Greek society did not distinguish sexual desire or behavior by the gender of the participants, but rather by the role that each participant played in the sex act, that of active penetrator or passive penetrated<sup>60</sup>.

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<sup>53</sup> Herodotus Histories 1.135.

<sup>54</sup> Plato, Phaedrus 227a.

<sup>55</sup> Xenophon, Memorabilia 2.6.28, Symposium 8.

<sup>56</sup> Athenaeus, Deipnosophistae 13:601–606.

<sup>57</sup> Xen. Oec. 7.5

<sup>58</sup> Cohen, David (1994). *Law, Sexuality, and Society: The Enforcement of Morals in Classical Athens*. Cambridge University: Cambridge University Press. p. 6. ISBN 9780521466424.

<sup>59</sup> Oxford Classical Dictionary entry on homosexuality, pp.720–723; entry by David M. Halperin.

<sup>60</sup> Oxford Classical Dictionary entry on homosexuality, pp.720–723; entry by David M. Halperin.

Within the traditions of pederasty, active/passive polarization corresponded with dominant and submissive social roles: the active (penetrative) role was associated with masculinity, higher social status, and adulthood, while the passive role was associated with femininity, lower social status, and youth<sup>61</sup>.

## **Pederasty**

The most common form of same-sex relationships between elite males in Greece was paiderastia (pederasty), meaning "boy love". It was a relationship between an older male and an adolescent youth. A boy was considered a "boy" until he was able to grow a full beard. In Athens the older man was called erastes. He was to educate, protect, love, and provide a role model for his eromenos, whose reward for him lay in his beauty, youth, and promise. Such a concept is backed up by archeological evidence experts have found throughout the years, such as a bronze plaque of an older man carrying a bow an arrow while grabbing a younger man by the arms- who is carrying a goat. Furthermore, the boy's genitals are exposed in the plaque, thus experts interpret this, and more evidence comparative to this, as the practice of pederasty<sup>62</sup>.

The roots of Greek pederasty lie in the tribal past of Greece, before the rise of the city-state as a unit of political organization. These tribal communities were organized according to age groups. When it came time for a boy to embrace the age group of the adult and to "become a man", he would leave the tribe in the company of an older man for a period of time that constituted a rite of passage. This older man would educate the youth in the ways of Greek life and the responsibilities of adulthood<sup>63</sup>.

The rite of passage undergone by Greek youths in the tribal prehistory of Greece evolved into the commonly known form of Greek pederasty after the rise of the city-state, or polis. Greek boys no longer left the confines of the community, but rather paired up with older men within the confines of the city. These men, like their earlier counterparts, played an educational and instructive role in the lives of their young companions; likewise, just as in earlier times, they shared a sexual relationship with

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<sup>61</sup> Ibid.

<sup>62</sup>Donnay, Catherine S., "Pederasty in ancient Greece: a view of a now forbidden institution" (2018). EWU Masters Thesis Collection. 506. <http://dc.ewu.edu/theses/506>.

<sup>63</sup> *ibid.*

their boys. Penetrative sex, however, was seen as demeaning for the passive partner, and outside the socially accepted norm<sup>64</sup>. In ancient Greece, sex was generally understood in terms of penetration, pleasure, and dominance, rather than a matter of the sexes of the participants.

According to Dover, pederasty was not considered to be a homosexual act, given that the 'man' would be taking on a dominant role, and his disciple would be taking on a passive one. When intercourse occurred between two people of the same gender, it still was not entirely regarded as a homosexual union, given that one partner would have to take on a passive role, and would therefore no longer be considered a 'man' in terms of the sexual union<sup>65</sup>.

Hubbard and James Davidson argue however that there is insufficient evidence that a man was considered effeminate for being passive in sex alone. For example, the lowborn protagonist of Aristophanes' play *The Knights* openly admits to having been a passive partner<sup>66</sup>.

An elaborate social code governed the mechanics of Greek pederasty. It was the duty of the adult man to court the boy who struck his fancy, and it was viewed as socially appropriate for the younger man to withhold for a while before capitulating to his mentor's desires. At first, both erastes and eromenos, show constraint and restraint their pursuit<sup>67</sup>.

Soon after, the younger man gives in to his new mentor—erastes—and receives guidance from him. Nevertheless, it is not certain that those in submission will enjoy such "trainings" from his mentor—including sexual favors<sup>68</sup>. However, it is important to note that not all pederastic relationships were sexual—many were simply forming of friendship and guidance<sup>69</sup>.

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<sup>64</sup> Martha C. Nussbaum, *Sex and Social Justice* (Oxford University Press, 1999), pp. 268, 307–308, 335; Gloria Ferrari, *Figures of Speech: Men and Maidens in Ancient Greece* (University of Chicago Press, 2002), p. 144–5.

<sup>65</sup> Davidson, James (2001). "Dover, Foucault and Greek Homosexuality: Penetration and the Truth of Sex". *Past & Present*. doi:10.1093/past/170.1.3.

<sup>66</sup> Aristophanes. *Knights*. 1255.

<sup>67</sup> Holmen, Nicole. 2010. Examining Greek Pederastic Relationships. *Inquiries Journal/Student Pulse* 2 (02).

<sup>68</sup> *ibid.*

<sup>69</sup> Marilyn B. Skinner, *Sexuality in Greek and Roman Culture* 2nd edition (United Kingdom: John Wiley & Sons, 2014), 16-18.

The age limit for pederasty in ancient Greece seems to encompass, at the minimum end, boys of twelve years of age. To love a boy below the age of twelve was considered inappropriate, but no evidence exists of any legal penalties attached to this sort of practice. Traditionally, a pederastic relationship could continue until the widespread growth of the boy's body hair, when he is considered a man. Therefore, though relationships such as this were more temporary, it had longer, lasting effects on those involved. In ancient Spartan weddings, the bride had her hair cropped short and was dressed as a man. It was suggested by George Devereux that this was to make the husband's transition from homosexual to heterosexual relationships easier<sup>70</sup>. This marks these pederasty relationships as temporary, developmental ones, not one of sexual and intimate connection like with a woman. During these times, homosexuality was seen as normal and necessary due to the power dynamic at play between an older, dominant man, and a younger, submissive one. Yet, when two men of similar age shared a similar relationship, it was deemed taboo and, in fact, perverse.

The ancient Greeks, in the context of the pederastic city-states, were the first to describe, study, systematize, and establish pederasty as a social and educational institution. It was an important element in civil life, the military, philosophy and the arts. There is some debate among scholars about whether pederasty was widespread in all social classes, or largely limited to the aristocracy.

## **IN THE MILITARY**

The Sacred Band of Thebes, a separate military unit made up of pairs of male lovers, is usually considered the prime example of how the ancient Greeks used love between soldiers in a troop to boost their fighting spirit. The Thebans attributed to the Sacred Band the power of Thebes for the generation before its fall to Philip II of Macedon, who, when he surveyed the dead after the Battle of Chaeronea (338 BC) and saw the bodies of the Sacred Band strewn on the battlefield, delivered this harsh criticism of the Spartan views of the band:

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<sup>70</sup> Cartledge, Paul (1981). "Spartan Wives: Liberation or License?". *Classical Quarterly*. 31 (1): 101. doi:10.1017/S0009838800021091. S2CID 170486308.

Perish miserably they who think that these men did or suffered aught disgraceful<sup>71</sup>. Pammenes' opinion, according to Plutarch, was that Homer's Nestor was not well skilled in ordering an army when he advised the Greeks to rank tribe and tribe...he should have joined lovers and their beloved. For men of the same tribe little value one another when dangers press; but a band cemented by friendship grounded upon love is never to be broken.

These bonds, reflected in episodes from Greek mythology, such as the heroic relationship between Achilles and Patroclus in the Iliad, were thought to boost morale as well as bravery due to the desire to impress and protect their lover. Such relationships were documented by many Greek historians and in philosophical discourses, as well as in offhand remarks such as Philip II of Macedon's recorded by Plutarch demonstrates.

It is not only the most warlike peoples, the Boeotians, Spartans, and Cretans, who are the most susceptible to this kind of love but also the greatest heroes of old: Meleager, Achilles, Aristomenes, Cimon, and Epaminondas.

During the Lelantine War between the Eretrians and the Chalcidians, before a decisive battle the Chalcidians called for the aid of a warrior named Cleomachus (glorious warrior). He answered their request, bringing his lover to watch. Leading the charge against the Eretrians he brought the Chalcidians to victory at the cost of his own life. The Chalcidians erected a tomb for him in the marketplace in gratitude.

## **LOVE BETWEEN ADULT MEN**

According to the opinion of the classicist Kenneth Dover who published *Greek Homosexuality* in 1978, given the importance in Greek society of cultivating the masculinity of the adult male and the perceived feminizing effect of being the passive partner, relations between adult men of comparable social status were considered highly problematic, and usually associated with social stigma<sup>72</sup>. This stigma, however, was reserved for only the passive partner in the relationship. According to Dover and his supporters, Greek males who engaged in passive anal sex after reaching the age of manhood—at which point they were expected to take

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<sup>71</sup>Plutarch (1917). "Pelopidas 18.5". In Bernadotte Perrin (ed.). *Plutarch's Lives*. Vol. V. W. Heinemann. pp. 385-387.

<sup>72</sup>Meredith G. F. Worthen (10 June 2016). *Sexual Deviance and Society: A Sociological Examination*. Routledge. pp. 160-. ISBN 978-1-317-59337-9.

the reverse role in pederastic relationships and become the active and dominant member—thereby were feminized or "made a woman" of themselves. Dover refers to insults used in the plays of Aristophanes as evidence 'passive' men were ridiculed.

More recent work published by James Davidson and Hubbard have challenged this model, arguing that it is reductionist and have provided evidence to the contrary<sup>73</sup>.

The legislator Philolaus of Corinth, lover of the stadion race winner Diocles of Corinth at the Ancient Olympic Games of 728 BC,[22] crafted laws for the Thebans in the 8th century BC that gave special support to male unions, contributing to the development of Theban pederasty in which, unlike other places in ancient Greece, it favored the continuity of the union of male couples even after the younger man reached adulthood, the most famous example being the Sacred Band of Thebes, composed of elite soldiers in pairs of male lovers in the 4th century BC, as was also the case with him and Diocles, who lived together in Thebes until the end of their lives<sup>74</sup>.

The romance between Pausanias and Agathon in Athens, made famous by their appearance in Plato's Symposium, also continued from the pederastic phase into adulthood as a stable and long-lasting relationship.

## **ACHILLES AND PATROCLUS**

The first recorded appearance of a deep emotional bond between adult men in ancient Greek culture was in the Iliad<sup>75</sup>. Homer does not depict the relationship between Achilles and Patroclus as sexual. The ancient Athenians emphasised the supposed age difference between the two by portraying Patroclus with a beard in paintings and pottery, while Achilles is clean-shaven, although Achilles was an almost godlike figure in Greek society. This led to a disagreement about which to perceive as erastes and which eromenos among elites such as Aeschylus and Pausanias, since Homeric tradition made Patroclus out to be older but Achilles stronger. It has been noted, however, that the depictions of characters on pottery do not represent reality and may cater to the beauty standards of ancient Athens. Other

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<sup>73</sup>Hubbard, T. K. (1998). "Popular Perceptions of Elite Homosexuality in Classical Athens". *Arion: A Journal of Humanities and the Classics*. 6 (1): 48–78. JSTOR 20163707.

<sup>74</sup>Aristotle. *Politics*, 1274a31–b5.

<sup>75</sup> (800 BC)

ancients such as Xenophon held that Achilles and Patroclus were simply close friends.

Aeschylus in the tragedy *Myrmidons* made Achilles the *erastes* since he had avenged his lover's death even though the gods told him it would cost his own life. However, the character of Phaedrus in Plato's *Symposium* asserts that Homer emphasized the beauty of Achilles, which would qualify him, not Patroclus, as *eromenos*<sup>76</sup>.

## **THESEUS AND PIRITHOUS**

Theseus and Pirithous are another famous pair of close adult male best friend of the same age whose strong bond has homoerotic connotations according to some ancient authors.

Pirithous had heard stories of Theseus's courage and strength in battle but wanted proof so he rustled Theseus's herd of cattle and drove it from Marathon and Theseus set out in pursuit. Pirithous took up his arms and the pair met to do battle but were so impressed with each other's gracefulness, beauty and courage they took an oath of friendship<sup>77</sup>.

According to Ovid, Phaedra, Theseus' wife, felt left out by her husband's love for Pirithous and she used this as an excuse to try to convince her stepson, Hippolytus, to accept being her lover, as Theseus also neglected his son because he preferred to spend long periods with his companion<sup>78</sup>.

## **ORESTES AND PYLADES**

Orestes and Pylades, similarly to Achilles and Patroclus, are cousins who grew up together from childhood to adulthood. Their relationship is stronger and more intimate than any of their relationships with other people.

The relationship between them has been interpreted by some authors from Roman times onwards as romantic or homoerotic. The dialogue *Erotes* ("Affairs of the Heart"), attributed to Lucian, compares the merits and advantages of heteroeroticism

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<sup>76</sup>Plato, *Symposium* 179–80.

<sup>77</sup>"Plutarch Theseus". [classics.mit.edu](http://classics.mit.edu). Retrieved 2022-09-11.

<sup>78</sup>"OVID, *HEROIDES IV* - Theoi Classical Texts Library". [www.theoi.com](http://www.theoi.com). Retrieved 2022-09-11.

and homoeroticism, and Orestes and Pylades are presented as the principal representatives of a loving friendship.

In 1734, George Frederic Handel's opera *Oreste* (based on Giugualberto Barlocchi's Roman libretto of 1723), was premiered in London's Covent Garden. The fame of Lucian's works in the 18th century, as well as the generally well-known tradition of Greco-Roman heroic homoeroticism, made it natural for theatre audiences of that period to have recognized an intense, romantic, if not positively homoerotic quality, to the relationship between Orestes and Pylades.

## **ALEXANDER AND HEPHAESTION**

The emblema of the Stag Hunt Mosaic, c. 300 BC, from Pella; the figure on the right is possibly Alexander the Great due to the date of the mosaic, along with the depicted upsweep of his centrally-parted hair (anastole); the figure on the left wielding a double-edged axe (associated with Hephaistos) is perhaps Hephaestion<sup>79</sup>.

Alexander the Great had a close emotional attachment to his companion, cavalry commander (hipparchus) and childhood friend, Hephaestion. He was "by far the dearest of all the king's friends; he had been brought up with Alexander and shared all his secrets."<sup>80</sup> This relationship lasted throughout their lives, and was compared, by others as well as themselves, to that of Achilles and Patroclus.

Hephaestion studied with Alexander, as did a handful of other children of Ancient Macedonian aristocracy, under the tutelage of Aristotle. Hephaestion makes his appearance in history at the point when Alexander reaches Troy. There they made sacrifices at the shrines of the two heroes Achilles and Patroclus; Alexander honoring Achilles, and Hephaestion honoring Patroclus.

According to Robin Lane Fox, Alexander and Hephaestion were possible lovers. After Hephaestion's death in Oct 324 BC, Alexander mourned him greatly and did not eat for days<sup>81</sup>. Alexander held an elaborate funeral for Hephaestion at Babylon, and sent a note to the shrine of Ammon, which had previously acknowledged Alexander as a god, asking them to grant Hephaestion divine honours. The priests declined, but did offer him the status of divine hero. Alexander died soon after

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<sup>79</sup>Chugg, Andrew (2006). *Alexander's Lovers*. Raleigh, N.C.: Lulu. ISBN 978-1-4116-9960-1, pp 78-79.

<sup>80</sup>Curtius 3.12.16.

<sup>81</sup>Fox (1980) p. 67.

receiving this letter; Mary Renault suggests that his grief over Hephaestion's death had led him to be careless with his health.

Alexander was overwhelmed by his grief for Hephaestion, so much that Arrian records that Alexander "flung himself on the body of his friend and lay there nearly all day long in tears, and refused to be parted from him until he was dragged away by force by his Companions"<sup>82</sup>. Some have suggested that they shared a homosexual relationship together, however historians have challenged that claim, stating instead that Hephaestion was "his closest and dearest friend"<sup>83</sup>.

## **LOVE BETWEEN ADULT WOMEN**

Sappho, a poet from the island of Lesbos, wrote many love poems addressed to women and girls. The love in these poems is sometimes requited, and sometimes not. Sappho is thought to have written close to 12,000 lines of poetry on her love for other women. Of these, only about 600 lines have survived. As a result of her fame in antiquity, she and her land have become emblematic of love between women.

Pedagogic erotic relationships are also documented for Sparta, together with athletic nudity for women. During the year 610 B.C., a group of teenage girls was documented singing classic hymns about their Gods and Goddesses, as well as ties to them, while involved in ploughing rituals in a mountain range. Nevertheless, such hymns would further in content as the girls flirt with and tease one another with hints of sexual energy<sup>84</sup>. Plato's Symposium mentions women who "do not care for men, but have female attachments"<sup>85</sup>. In general, however, the historical record of love and sexual relations between women is sparse<sup>86</sup>.

Probably the most frequent assumption about sexual orientation, at least by ancient Greek authors, was that persons can respond erotically to beauty in either sex. Diogenes Laertius, for example, wrote of Alcibiades, the Athenian general and politician of the 5th century B.C., "in his adolescence he drew away the husbands from their wives, and as a young man the wives from their husbands." Some persons

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<sup>82</sup>Arrian 7.14.13.

<sup>83</sup>Georgiades, Adonis (2004). Homosexuality In Ancient Greece The Myth Is Collapsing. p. 187.

<sup>84</sup>"Why were the ancient Greeks so confused about homosexuality, asks James Davidson". the Guardian. 2007-10. Retrieved 2021-10-21.

<sup>85</sup>Plato, Symposium 191e.

<sup>86</sup>Oxford Classical Dictionary entry on homosexuality, pp.720–723; entry by David M. Halperin.

were noted for their exclusive interests in persons of one gender. For example, Alexander the Great and the founder of Stoicism, Zeno of Citium, were known for their exclusive interest in boys and other men. Such persons, however, are generally portrayed as the exception.

The issue of what biological sex one is attracted to is seen as an issue of taste or preference, rather than as a moral issue. A character in Plutarch's *Erotikos* (Dialogue on Love) argues that "the noble lover of beauty engages in love wherever he sees excellence and splendid natural endowment without regard for any difference in physiological detail." Gender just becomes irrelevant "detail" and instead the excellence in character and beauty is what is most important

Even though the gender that one was erotically attracted to (at any specific time, given the assumption that persons will likely be attracted to persons of both sexes) was not important, other issues were salient, such as whether one exercised moderation. Status concerns were also of the highest importance. Given that only free men had full status, women and male slaves were not problematic sexual partners. Sex between freemen, however, was problematic for status.

The central distinction in ancient Greek sexual relations was between taking an active or insertive role, versus a passive or penetrated one. The passive role was acceptable only for inferiors, such as women, slaves, or male youths who were not yet citizens. Hence the cultural ideal of a same-sex relationship was between an older man, probably in his 20s or 30s, known as the *erastes*, and a boy whose beard had not yet begun to grow, the *eromenos* or *paidika*. In this relationship there was courtship ritual, involving gifts (such as a rooster), and other norms. The *erastes* had to show that he had nobler interests in the boy, rather than a purely sexual concern. The boy was not to submit too easily, and if pursued by more than one man, was to show discretion and pick the more noble one. There is also evidence that penetration was often avoided by having the *erastes* face his beloved and place his penis between the thighs of the *eromenos*, which is known as *intercrural sex*.

According to Dover, the relationship was to be temporary and should end upon the boy reaching adulthood. To continue in a submissive role even while one should be an equal citizen was considered troubling, although there certainly were many adult male same-sex relationships that were noted and not strongly stigmatized. While the

passive role was thus seen as problematic, to be attracted to men was often taken as a sign of masculinity. Greek gods, such as Zeus, had stories of same-sex exploits attributed to them, as did other key figures in Greek myth and literature, such as Achilles and Hercules. Plato, in the Symposium, argues for an army to be comprised of same-sex lovers. Thebes did form such a regiment, the Sacred Band of Thebes, formed of 500 soldiers. They were renowned in the ancient world for their valor in battle.



## CHAPTER SIX

### ANCIENT ROME

The "conquest mentality" of the ancient Romans shaped Roman homosexual practices<sup>87</sup>. In the Roman Republic, a citizen's political liberty was defined in part by the right to preserve his body from physical compulsion or use by others;<sup>88</sup> for the male citizen to submit his body to the giving of pleasure was considered servile<sup>89</sup>. As long as a man played the penetrative role, it was socially acceptable and considered natural for him to have same-sex relations, without a perceived loss of his masculinity or social standing<sup>90</sup>. Sex between male citizens of equal status, including soldiers, was disparaged, and in some circumstances penalized harshly<sup>91</sup>. The bodies of citizen youths were strictly off-limits, and the Lex Scantinia imposed penalties on those who committed a sex crime (*stuprum*) against a freeborn male minor<sup>92</sup>. Male slaves, prostitutes, and entertainers or others considered infames (of no social standing) were acceptable sex partners for the dominant male citizen to penetrate.

"Homosexual" and "heterosexual" were thus not categories of Roman sexuality, and no words exist in Latin that would precisely translate these concepts<sup>93</sup>. A male citizen who willingly performed oral sex or received anal sex was disparaged. In

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<sup>87</sup> Eva Cantarella, *Bisexuality in the Ancient World* (Yale University Press, 1992, 2002, originally published 1988 in Italian), p. xi; Marilyn B. Skinner, introduction to *Roman Sexualities* (Princeton University Press, 1997), p. 11.

<sup>88</sup> Thomas A.J. McGinn, *Prostitution, Sexuality and the Law in Ancient Rome* (Oxford University Press, 1998), p. 326.

<sup>89</sup> Catharine Edwards, "Unspeakable Professions: Public Performance and Prostitution in Ancient Rome," in *Roman Sexualities*, pp. 67–68.

<sup>90</sup> Amy Richlin, *The Garden of Priapus: Sexuality and Aggression in Roman Humor* (Oxford University Press, 1983, 1992), p. 225, and "Not before Homosexuality: The Materiality of the *cinaedus* and the Roman Law against Love between Men," *Journal of the History of Sexuality* 3.4 (1993), p. 525.

<sup>91</sup> Sara Elise Phang, *Roman Military Service: Ideologies of Discipline in the Late Republic and Early Principate* (Cambridge University Press, 2008), p. 93.

<sup>92</sup> Plutarch, *Moralia* 288a; Thomas Habinek, "The Invention of Sexuality in the World-City of Rome," in *The Roman Cultural Revolution* (Cambridge University Press, 1997), p. 39; Richlin, "Not before Homosexuality," pp. 545–546. Scholars disagree as to whether the Lex Scantinia imposed the death penalty or a hefty fine.

<sup>93</sup> Craig Williams, *Roman Homosexuality* (Oxford University Press, 1999, 2010), p. 304, citing Saara Lilja, *Homosexuality in Republican and Augustan Rome* (Societas Scientiarum Fennica, 1983), p. 122.

courtroom and political rhetoric, charges of effeminacy and passive sexual behaviors were directed particularly at "democratic" politicians (*populares*) such as Julius Caesar and Mark Antony<sup>94</sup>. Until the Roman Empire came under Christian rule<sup>95</sup>, there is only limited evidence of legal penalties against men who were presumably "homosexual" in the modern sense<sup>96</sup>.

## **MALE–MALE SEX IN ACIENT ROME.**

A man or boy who took the "receptive" role in sex was variously called *cinaedus*, *pathicus*, *exoletus*, *concupinus* (male concubine), *spint(h)ria* ("analist"), *puer* ("boy"), *pullus* ("chick"), *pusio*, *delicatus* (especially in the phrase *puer delicatus*, "exquisite" or "dainty boy"), *mollis* ("soft", used more generally as an aesthetic quality counter to aggressive masculinity), *tener* ("delicate"), *debilis* ("weak" or "disabled"), *effeminatus*, *discinctus* ("loose-belted"), *pisciculi*, and *morbosus* ("sick"). As Amy Richlin has noted, "'gay' is not exact, 'penetrated' is not self-defined, 'passive' misleadingly connotes inaction" in translating this group of words into English<sup>97</sup>.

Some terms, such as *exoletus*, specifically refer to an adult; Romans who were socially marked as "masculine" did not confine their same-sex penetration of male prostitutes or slaves to those who were "boys" under the age of 20<sup>98</sup>. Some older men may have at times preferred the passive role. Martial describes, for example, the case of an older man who played the passive role and let a younger slave occupy the active role<sup>99</sup>. An adult male's desire to be penetrated was considered a sickness (*morbosus*); the desire to penetrate a handsome youth was thought normal<sup>100</sup>.

## **CINAEDUS**

*Cinaedus* is a derogatory word denoting a male who was gender-deviant; his choice of sex acts, or preference in sexual partner, was secondary to his perceived

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<sup>94</sup> Catharine Edwards, *The Politics of Immorality in Ancient Rome* (Cambridge University Press, 1993), pp. 63–64.

<sup>95</sup> Michael Groneberg, "Reasons for Homophobia: Three Types of Explanation," in *Combating Homophobia: Experiences and Analyses Pertinent to Education* (LIT Verlag, 2011), p. 193.

<sup>96</sup> Williams, *Roman Homosexuality*, pp. 214–215; Richlin, "Not before Homosexuality," *passim*.

<sup>97</sup> Richlin, "Not before Homosexuality," p. 531.

<sup>98</sup> Williams, *Roman Homosexuality*, p. 85 et *passim*.

<sup>99</sup> Martial, 3.71.

<sup>100</sup> Williams, *Roman Homosexuality*, p. 200.

deficiencies as a "man" (*vir*)<sup>101</sup>. Catullus directed the slur *cinaedus* at his friend *Furius* in his notoriously obscene *Carmen 16*<sup>102</sup>. Although in some contexts *cinaedus* may denote an anally passive man<sup>103</sup> and is the most frequent word for a male who allowed himself to be penetrated anally<sup>104</sup>, a man called *cinaedus* might also have sex with and be considered highly attractive to women. *Cinaedus* is not equivalent to the English vulgarity "faggot"<sup>105</sup>, except that both words can be used to deride a male considered deficient in manhood or with androgynous characteristics whom women may find sexually alluring<sup>106</sup>.

## CONCUBINUS

The young *Antinous* was likely the primary partner of the emperor *Hadrian* despite the fact that the latter was married. Some Roman men kept a male concubine (*concupinus*, "one who lies with; a bed-mate") before they married a woman. *Eva Cantarella* has described this form of concubinage as "a stable sexual relationship, not exclusive but privileged"<sup>107</sup>. Within the hierarchy of household slaves, the *concupinus* seems to have been regarded as holding a special or elevated status that was threatened by the introduction of a wife. In a wedding hymn, *Catullus*<sup>108</sup> portrays the groom's *concupinus* as anxious about his future and fearful of abandonment<sup>109</sup>. His long hair will be cut, and he will have to resort to the female slaves for sexual gratification—indicating that he is expected to transition from being a receptive sex object to one who performs penetrative sex<sup>110</sup>.

The feelings and situation of the *concupinus* were treated as significant enough to occupy five stanzas of *Catullus*'s wedding poem. He plays an active role in the

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<sup>101</sup>*Ibid.*

<sup>102</sup>*Williams*, *Roman Homosexuality*, pp. 181ff. and 193.

<sup>103</sup>*Ibid.*

<sup>104</sup>*Ibid.*

<sup>105</sup>*Williams*, *Roman Homosexuality*, p. 6.

<sup>106</sup>*James L. Butrica*, "Some Myths and Anomalies in the Study of Roman Sexuality," in *Same-Sex Desire and Love in Greco-Roman Antiquity*, p. 223, compares *cinaedus* to "faggot" in the *Dire Straits* song "Money for Nothing", in which a singer referred to as "that little faggot with the earring and the make-up" also "gets his money for nothing and his chicks for free."

<sup>107</sup>*Cantarella*, *Bisexuality in the Ancient World*, p. 125.

<sup>108</sup>*Catullus*, *Carmen 61*, lines 119–143.

<sup>109</sup>*Butrica*, "Some Myths and Anomalies in the Study of Roman Sexuality," pp. 218, 224.

<sup>110</sup>*Richlin*, "Not before Homosexuality," p. 534; *Ronnie Ancona*, "(Un)Constrained Male Desire: An Intertextual Reading of Horace Odes 2.8 and Catullus Poem 61," in *Gendered Dynamics in Latin Love Poetry* (Johns Hopkins University Press, 2005), p. 47; *Mark Petrini*, *The Child and the Hero: Coming of Age in Catullus and Vergil* (University of Michigan Press, 1997), pp. 19–20.

ceremonies, distributing the traditional nuts that boys threw (rather like rice or birdseed in the modern Western tradition)<sup>111</sup>.

The relationship with a concubinus was discreet or more open: male concubines sometimes attended dinner parties with the man whose companion they were<sup>112</sup>. Martial even suggests that a prized concubinus might pass from father to son as an especially coveted inheritance<sup>113</sup>. A military officer on campaign might be accompanied by a concubinus<sup>114</sup>. Like the catamite or *puer delicatus*, the role of the concubine was regularly compared to that of Ganymede, the Trojan prince abducted by Jove (Greek Zeus) to serve as his cupbearer<sup>115</sup>.

The concubina, a female concubine who might be free, held a protected legal status under Roman law, but the concubinus did not, since he was typically a slave<sup>116</sup>.

## EXOLETUS

Head of Emperor Elagabalus, said to have surrounded himself with exoleti

Exoletus (pl. exoleti) is the past-participle form of the verb *exolescere*, which means "to grow up" or "to grow old"<sup>117</sup>. The term denotes a male prostitute who services another sexually despite the fact that he himself is past his prime according to the ephebic tastes of Roman homoeroticism<sup>118</sup>. Though adult men were expected to take on the role of "penetrator" in their love affairs, such a restriction did not apply to exoleti. In their texts, Pomponius and Juvenal both included characters who were adult male prostitutes and had as clients male citizens who sought their services so

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<sup>111</sup>Cantarella, *Bisexuality in the Ancient World*, pp. 125–126; Robinson Ellis, *A Commentary on Catullus* (Cambridge University Press, 2010), p. 181; Petrini, *The Child and the Hero*, p. 19.

<sup>112</sup>Quintilian, *Institutio Oratoria* 1.2.8, who disapproves of consorting with either concubini or "girlfriends" (*amicae*) in front of one's children. Ramsey MacMullen, "Roman Attitudes to Greek Love," *Historia* 31 (1982), p. 496.

<sup>113</sup>Williams, *Roman Homosexuality*, p. 24, citing Martial 8.44.16-7: *tuoque tristis filius, velis nolis, cum concubino nocte dormiet prima*. ("and your mourning son, whether you wish it or not, will lie first night sleep with your favourite")

<sup>114</sup>Caesarian Corpus, *The Spanish War* 33; MacMullen, "Roman Attitudes to Greek Love," p. 490.

<sup>115</sup>"They use the word *Catamitus* for Ganymede, who was the concubinus of Jove," according to the lexicographer Festus (38.22, as cited by Williams, *Roman Homosexuality*, p. 332, note 230.

<sup>116</sup>Butrica, "Some Myths and Anomalies in the Study of Roman Sexuality," in *Same-Sex Desire and Love in Greco-Roman Antiquity*, p. 212.

<sup>117</sup>Williams, *Roman Homosexuality*, 2nd ed., p. 91.

<sup>118</sup>Williams, *Roman Homosexuality*, 2nd ed., pp. 91–92.

they could take a "female" role in bed (see above). In other texts, however, *exoleti* adopt a receptive position<sup>119</sup>.

The relationship between the *exoletus* and his partner could begin when he was still a boy and the affair then extended into his adulthood. It is impossible to say how often this happened. For even if there was a tight bond between the couple, the general social expectation was that pederastic affairs would end once the younger partner grew facial hair. As such, when Martial celebrates in two of his epigrams the relationship of his friend, the centurion Aulens Pudens, with his slave Encolpos, the poet more than once gives voice to the hope that the latter's beard come late, so that the romance between the pair may last long. Continuing the affair beyond that point could result in damage to the master's repute. Some men, however, insisted on ignoring this convention<sup>120</sup>.

## **PATHICUS**

A young aristocrat by the name of Valerius Catullus boasted of penetrating the emperor Caligula during a lengthy intimate session<sup>121</sup>.

Pathicus was a "blunt" word for a male who was penetrated sexually. It derived from the unattested Greek adjective *pathikos*, from the verb *paskhein*, equivalent to the Latin deponent *patior*, *pati*, *passus*, "undergo, submit to, endure, suffer"<sup>122</sup>. The English word "passive" derives from the Latin *passus*.

Pathicus and *cinaedus* are often not distinguished in usage by Latin writers, but *cinaedus* may be a more general term for a male not in conformity with the role of *vir*, a "real man", while *pathicus* specifically denotes an adult male who takes the sexually receptive role<sup>123</sup>. A *pathicus* was not a "homosexual" as such. His sexuality was not defined by the gender of the person using him as a receptacle for sex, but rather his desire to be so used. Because in Roman culture a man who penetrates another adult male almost always expresses contempt or revenge, the *pathicus* might be seen as more akin to the sexual masochist in his experience of pleasure. He might

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<sup>119</sup>Williams, *Roman Homosexuality*, 2nd ed., p. 91.

<sup>120</sup>Paul Veyne (1992). "The Roman Empire". *A History of Private Life, Volume I: From Pagan Rome to Byzantium*. Belknap Press, Harvard University Press. p. 79. ISBN 978-0674399747.

<sup>121</sup>Suetonius. "Life of Caligula". University of Chicago.

<sup>122</sup>Williams, *Roman Homosexuality*, p. 193.

<sup>123</sup>Holt N. Parker, "The Teratogenic Grid," in *Roman Sexualities*, p. 56; Williams, *Roman Homosexuality*, p. 196.

be penetrated orally or anally by a man or by a woman with a dildo, but showed no desire for penetrating nor having his own penis stimulated. He might also be dominated by a woman who compels him to perform cunnilingus.

## **PUER**

In the discourse of sexuality, puer ("boy") was a role as well as an age group<sup>124</sup>. Both puer and the feminine equivalent puella, "girl", could refer to a man's sexual partner, regardless of age. As an age designation, the freeborn puer made the transition from childhood at around age 14, when he assumed the "toga of manhood", but he was 17 or 18 before he began to take part in public life.

## **PUER DELICATUS**

The puer delicatus was an "exquisite" or "dainty" child-slave chosen by his master for his beauty as a "boy toy"<sup>125</sup>, also referred to as *deliciae* ("sweets" or "delights")<sup>126</sup>. Unlike the freeborn Greek *eromenos* ("beloved"), who was protected by social custom, the Roman *delicatus* was in a physically and morally vulnerable position<sup>127</sup>. The "coercive and exploitative" relationship between the Roman master and the *delicatus*, who might be prepubescent, can be characterized as pedophilic, in contrast to Greek *paiderasteia*<sup>128</sup>.

Funeral inscriptions found in the ruins of the imperial household under Augustus and Tiberius also indicate that *deliciae* were kept in the palace and that some slaves, male and female, worked as beauticians for these boys. One of Augustus' *pueri* is known by name: *Sarmentus*<sup>129</sup>.

The boy was sometimes castrated in an effort to preserve his youthful qualities; the emperor Nero's eunuch *Sporus*, whom he castrated and married, may have been a *puer delicatus*<sup>130</sup>.

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<sup>124</sup>Richlin, "Not before Homosexuality," p. 535.

<sup>125</sup>Elizabeth Manwell, "Gender and Masculinity," in *A Companion to Catullus* (Blackwell, 2007), p. 118.

<sup>126</sup>Guillermo Galán Vioque, *Martial, Book VII: A Commentary* (Brill, 2002), p. 120.

<sup>127</sup>Manwell, "Gender and Masculinity," p. 118.

<sup>128</sup>Beert C. Verstraete and Vernon Provenal, introduction to *Same-Sex Desire and Love in Greco-Roman Antiquity and in the Classical Tradition* (Haworth Press, 2005), p. 3.

<sup>129</sup>Williams, *Roman Homosexuality*, 2nd ed., p. 35.

<sup>130</sup>Caroline Vout, *Power and Eroticism in Imperial Rome* (Cambridge University Press, 2007), p. 136 (for *Sporus* in Alexander Pope's poem "Epistle to Dr Arbuthnot", see Who breaks a butterfly upon a wheel?).

Pueri delicati might be idealized in poetry and the relationship between him and his master may be painted in what his master viewed as strongly romantic colors. In the *Silvae*, Statius composed two epitaphs to commemorate the relationship of two of his friends with their respective delicati upon the death of the latter. These poems have been argued to demonstrate that such relationships could have an emotional dimension, and it is known from inscriptions in Roman ruins that men could be buried with their delicati, which is evidence of the degree of control that masters would not relinquish, even in death, as well as of a sexual relationship in life<sup>131</sup>.

## **EMPEROR DOMITIAN**

Both Martial and Statius in a number of poems celebrate the freedman Earinus, a eunuch, and his devotion to the emperor Domitian. [123] Statius goes as far as to describe this relationship as a marriage. In the *Satyricon*, the tastelessly wealthy freedman Trimalchio stated that as a child-slave he had been a puer delicatus serving both the master and, secretly, the mistress of the household<sup>132</sup>.

## **SUBCULTURE**

Latin had such a wealth of words for men outside the masculine norm that some scholars argue for the existence of a homosexual subculture at Rome; that is, although the noun "homosexual" has no straightforward equivalent in Latin, literary sources reveal a pattern of behaviors among a minority of free men that indicate same-sex preference or orientation. Plautus mentions a street known for male prostitutes<sup>133</sup>. Public baths are also referred to as a place to find sexual partners. Juvenal states that such men scratched their heads with a finger to identify themselves.

Apuleius indicates that cinaedi might form social alliances for mutual enjoyment, such as hosting dinner parties. In his novel *The Golden Ass*, he describes one group who jointly purchased and shared a concubinus. On one occasion, they invited a

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<sup>131</sup>Christian Laes (2003). "Desperately Different? Delicia Children in the Roman Household". In David L. Balch; Carolyn Osiek (eds.). *Early Christian Families in Context: An Interdisciplinary Dialogue*. William B. Eerdmans Publishing Company. p. 318. ISBN 978-0802839862.

<sup>132</sup>William Fitzgerald, *Slavery and the Roman Literary Imagination* (Cambridge University Press, 2000), p. 54.

<sup>133</sup>Plautus, *Curculio* 482-84.

"well-endowed" young hick (*rusticanus iuvenis*) to their party, and took turns performing oral sex on him.

Other scholars, primarily those who argue from the perspective of "cultural constructionism", maintain that there is not an identifiable social group of males who would have self-identified as "homosexual" as a community.

## **MARRIAGE BETWEEN MALES**

### **EMPEROR NERO**

Although in general the Romans regarded marriage as a male–female union for the purpose of producing children, a few scholars believe that in the early Imperial period some male couples were celebrating traditional marriage rites in the presence of friends. Male–male weddings are reported by sources that mock them; the feelings of the participants are not recorded. Both Martial and Juvenal refer to marriage between males as something that occurs not infrequently, although they disapprove of it. Roman law did not recognize marriage between males, but one of the grounds for disapproval expressed in Juvenal's satire is that celebrating the rites would lead to expectations for such marriages to be registered officially. As the empire was becoming Christianized in the 4th century, legal prohibitions against marriage between males began to appear.

Various ancient sources state that the emperor Nero celebrated two public weddings with males, once taking the role of the bride (with a freedman Pythagoras), and once the groom (with Sporus); there may have been a third in which he was the bride. The ceremonies included traditional elements such as a dowry and the wearing of the Roman bridal veil. In the early 3rd century AD, the emperor Elagabalus is reported to have been the bride in a wedding to his male partner. Other mature men at his court had husbands, or said they had husbands in imitation of the emperor. Although the sources are in general hostile, Dio Cassius implies that Nero's stage performances were regarded as more scandalous than his marriages to men<sup>134</sup>.

The earliest reference in Latin literature to a marriage between males occurs in the *Philippics* of Cicero, who insulted Mark Antony for being promiscuous in his youth until Curio "established you in a fixed and stable marriage (*matrimonium*), as if he

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<sup>134</sup>Dio Cassius 63.22.4; Williams, *Roman Homosexuality*, p. 285.

had given you a stola", the traditional garment of a married woman. Although Cicero's sexual implications are clear, the point of the passage is to cast Antony in the submissive role in the relationship and to impugn his manhood in various ways; there is no reason to think that actual marriage rites were performed.

## **MALE–MALE RAPE**

Roman law addressed the rape of a male citizen as early as the 2nd century BC, [159] when it was ruled that even a man who was "disreputable and questionable" (*famosus*, related to *infamis*, and *suspiciosus*) had the same right as other free men not to have his body subjected to forced sex<sup>135</sup>. The *Lex Julia de vi publica*,<sup>136</sup> recorded in the early 3rd century AD but probably dating from the dictatorship of Julius Caesar, defined rape as forced sex against "boy, woman, or anyone"; the rapist was subject to execution, a rare penalty in Roman law<sup>137</sup>. Men who had been raped were exempt from the loss of legal or social standing suffered by those who submitted their bodies to use for the pleasure of others; a male prostitute or entertainer was *infamis* and excluded from the legal protections extended to citizens in good standing. [163] As a matter of law, a slave could not be raped; he was considered property and not legally a person. The slave's owner, however, could prosecute the rapist for property damage.

Fears of mass rape following a military defeat extended equally to male and female potential victims. According to the jurist Pomponius, "whatever man has been raped by the force of robbers or the enemy in wartime" ought to bear no stigma<sup>138</sup>.

The threat of one man to subject another to anal or oral rape (*irrumatio*) is a theme of invective poetry, most notably in Catullus's notorious *Carmen 16*<sup>139</sup>, and was a form of masculine *braggadocio*. Rape was one of the traditional punishments

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<sup>135</sup>As recorded in a fragment of the speech *De Re Floria* by Cato the Elder (frg. 57 Jordan = Aulus Gellius 9.12.7), as noted and discussed by Richlin, "Not before Homosexuality," p. 561.

<sup>136</sup>Digest 48.6.3.4 and 48.6.5.2.

<sup>137</sup>Richlin, "Not before Homosexuality," pp. 562–563. See also Digest 48.5.35 [34] on legal definitions of rape that included boys.

<sup>138</sup>Digest 3.1.1.6, as noted by Richlin, "Not before Homosexuality," p. 559.

<sup>139</sup>Richlin, *The Garden of Priapus*, pp. 27–28, 43 (on Martial), 58, et passim.

inflicted on a male adulterer by the wronged husband<sup>140</sup>, though perhaps more in revenge fantasy than in practice<sup>141</sup>.

In a collection of twelve anecdotes dealing with assaults on chastity, the historian Valerius Maximus features male victims in equal number to female<sup>142</sup>. In a "mock trial" case described by the elder Seneca, an *adulescens* (a man young enough not to have begun his formal career) was gang-raped by ten of his peers; although the case is hypothetical, Seneca assumes that the law permitted the successful prosecution of the rapists<sup>143</sup>. Another hypothetical case imagines the extremity to which a rape victim might be driven: the freeborn male (*ingenuus*) who was raped commits suicide<sup>144</sup>. The Romans considered the rape of an *ingenuus* to be among the worst crimes that could be committed, along with parricide, the rape of a female virgin, and robbing a temple<sup>145</sup>.

## **SAME-SEX RELATIONS IN THE MILITARY**

The Roman soldier, like any free and respectable Roman male of status, was expected to show self-discipline in matters of sex. Augustus (reigned 27 BC – 14 AD) even prohibited soldiers from marrying, a ban that remained in force for the Imperial army for nearly two centuries<sup>146</sup>.

Other forms of sexual gratification available to soldiers were prostitutes of any gender, male slaves, war rape, and same-sex relations<sup>147</sup>. The *Bellum Hispaniense*, about Caesar's civil war on the front in Roman Spain, mentions an officer who has a male concubine (*concubinus*) on campaign. Sex among fellow soldiers, however, violated the Roman *decorum* against intercourse with another freeborn male. A

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<sup>140</sup>Williams, *Roman Homosexuality*, pp. 27, 76 (with an example from Martial 2.60.2).

<sup>141</sup>Catharine Edwards, *The Politics of Immorality in Ancient Rome* (Cambridge University Press, 1993), pp. 55–56.

<sup>142</sup>Valerius Maximus 6.1; Richlin, "Not before Homosexuality," p. 564.

<sup>143</sup>Richlin, "Not before Homosexuality," p. 564.

<sup>144</sup>Quintilian, *Institutio oratoria* 4.2.69–71; Richlin, "Not before Homosexuality," p. 565.

<sup>145</sup>Richlin, "Not before Homosexuality," p. 565, citing the same passage by Quintilian.

<sup>146</sup>Men of the governing classes, who would have been officers above the rank of centurion, were exempt. Pat Southern, *The Roman Army: A Social and Institutional History* (Oxford University Press, 2006), p. 144; Sara Elise Phang, *The Marriage of Roman Soldiers (13 B.C.–A.D. 235): Law and Family in the Imperial Army* (Brill, 2001), p. 2.

<sup>147</sup>Phang, *The Marriage of Roman Soldiers*, p. 3.

soldier maintained his masculinity by not allowing his body to be used for sexual purposes<sup>148</sup>.

In warfare, rape symbolized defeat, a motive for the soldier not to make his body sexually vulnerable in general<sup>149</sup>. During the Republic, homosexual behavior among fellow soldiers was subject to harsh penalties, including death<sup>150</sup>, as a violation of military discipline. Polybius (2nd century BC) reports that the punishment for a soldier who willingly submitted to penetration was the *fustuarium*, clubbing to death<sup>151</sup>.

Roman historians record cautionary tales of officers who abuse their authority to coerce sex from their soldiers, and then suffer dire consequences<sup>152</sup>. The youngest officers, who still might retain some of the adolescent attraction that Romans favored in male–male relations, were advised to beef up their masculine qualities by not wearing perfume, nor trimming nostril and underarm hair<sup>153</sup>.

An incident related by Plutarch in his biography of Marius illustrates the soldier's right to maintain his sexual integrity despite pressure from his superiors. A good-looking young recruit named Trebonius<sup>154</sup> had been sexually harassed over a period of time by his superior officer, who happened to be Marius's nephew, Gaius Lusius. One night, after having fended off unwanted advances on numerous occasions, Trebonius was summoned to Lusius's tent. Unable to disobey the command of his superior, he found himself the object of a sexual assault and drew his sword, killing Lusius. A conviction for killing an officer typically resulted in execution. When brought to trial, he was able to produce witnesses to show that he had repeatedly had to fend off Lusius, and "had never prostituted his body to anyone, despite offers of

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<sup>148</sup>Sara Elise Phang, *Roman Military Service: Ideologies of Discipline in the Late Republic and Early Principate* (Cambridge University Press, 2008), p. 93.

<sup>149</sup>Phang, *Roman Military Service*, p. 94. See section above on male rape: Roman law recognized that a soldier might be raped by the enemy, and specified that a man raped in war should not suffer the loss of social standing that an infamis did when willingly undergoing penetration; Digest 3.1.1.6, as discussed by Richlin, "Not before Homosexuality," p. 559.

<sup>150</sup>Thomas A.J. McGinn, *Prostitution, Sexuality and the Law in Ancient Rome* (Oxford University Press, 1998), p. 40.

<sup>151</sup>Polybius, *Histories* 6.37.9 (translated as *bastinado*).

<sup>152</sup>Phang, *The Marriage of Roman Soldiers*, pp. 280–282.

<sup>153</sup>Phang, *Roman Military Service*, p. 97, citing among other examples Juvenal, *Satire* 14.194–195.

<sup>154</sup>The name is given elsewhere as Plotius.

expensive gifts". Marius not only acquitted Trebonius in the killing of his kinsman, but gave him a crown for bravery<sup>155</sup>.

Ancient Rome had many parallels to ancient Greece in its understanding of same-sex attraction, and sexual issues more generally. This is especially true under the Republic. Yet under the Empire, Roman society slowly became more negative in its views towards sexuality, probably due to social and economic turmoil, even before Christianity became influential.

Exactly what attitude the New Testament has towards sexuality in general, and same-sex attraction in particular, is a matter of sharp debate. John Boswell argues, in his fascinating *Christianity, Social Tolerance, and Homosexuality*, that many passages taken today as condemnations of homosexuality are more concerned with prostitution, or where same-sex acts are described as “unnatural” the meaning is more akin to ‘out of the ordinary’ rather than as immoral<sup>156</sup>. Yet others have criticized, sometimes persuasively, Boswell’s scholarship, arguing that the conventional contemporary reading is more plausible (see Greenberg, 1988, ch.5). What is clear, however, is that while condemnation of same-sex attraction is marginal to the Gospels and only an intermittent focus in the rest of the New Testament, early Christian church fathers were much more outspoken. In their writings there is a horror at any sort of sex, but in a few generations these views eased, in part due no doubt to practical concerns of recruiting converts. By the fourth and fifth centuries the mainstream Christian view allowed only for procreative sex.

This viewpoint, that procreative sex within marriage is allowed, while every other expression of sexuality is sinful, can be found, for example, in St. Augustine. This understanding of permissible sexual relationships leads to a concern with the gender of one’s partner that is not found in previous Greek or Roman views, and it clearly forbids homosexual acts. Soon this attitude, especially towards homosexual sex, came to be reflected in Roman Law. In Justinian’s Code, promulgated in 529, persons who engaged in homosexual sex were to be executed, although those who were repentant could be spared. Historians agree that the late Roman Empire saw a

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<sup>155</sup>Plutarch, *Life of Marius* 14.4–8; see also Valerius Maximus 6.1.12; Cicero, *Pro Milone* 9, in Dillon and Garland, *Ancient Rome*, p. 380; and Dionysius of Halicarnassus 16.4. Discussion by Phang, *Roman Military Service*, pp. 93–94, and *The Marriage of Roman Soldiers*, p. 281; Cantarella, *Bisexuality in the Ancient World*, pp. 105–106.

<sup>156</sup>Boswell, 1980, ch.4.

rise in intolerance towards homosexuality, although there were again important regional variations.

With the decline of the Roman Empire, and its replacement by various barbarian kingdoms, a general tolerance (with the sole exception of Visigothic Spain) for homosexual acts prevailed. As one prominent scholar puts it, “European secular law contained few measures against homosexuality until the middle of the thirteenth century.”<sup>157</sup> Even while some Christian theologians continued to denounce nonprocreative sexuality, including same-sex acts, a genre of homophilic literature, especially among the clergy, developed in the eleventh and twelfth centuries<sup>158</sup> The latter part of the twelfth through the fourteenth centuries, however, saw a sharp rise in intolerance towards homosexual sex, alongside persecution of Jews, Muslims, heretics, and others. While the causes of this are somewhat unclear, it is likely that increased class conflict alongside the Gregorian reform movement in the Catholic Church were two important factors. The Church itself started to appeal to a conception of “nature” as the standard of morality, and drew it in such a way so as to forbid homosexual sex<sup>159</sup>. For example, the first ecumenical council to condemn homosexual sex, Lateran III of 1179, stated “Whoever shall be found to have committed that incontinence which is against nature” shall be punished, the severity of which depended upon whether the transgressor was a cleric or layperson<sup>160</sup>. This appeal to natural law (discussed below) became very influential in the Western tradition. An important point to note, however, is that the key category here is the ‘sodomite,’ which differs from the contemporary idea of ‘homosexual’. A sodomite was understood as act-defined, rather than as a type of person. Someone who had desires to engage in sodomy, yet did not act upon them, was not a sodomite. Also, persons who engaged in heterosexual sodomy were also sodomites. There are reports of persons being burned to death or beheaded for sodomy with a spouse<sup>161</sup>. Finally, a person who had engaged in sodomy, yet who had repented of his sin and vowed to never do it again, was no longer a sodomite. The gender of one’s partner is again not

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<sup>157</sup> (Greenberg, 1988, 260)

<sup>158</sup> (Boswell, 1980, chapters 8 and 9).

<sup>159</sup> (as well as extramarital sex, nonprocreative sex within marriage, and often masturbation)

<sup>160</sup> (quoted in Boswell, 1980, 277)

<sup>161</sup> (Greenberg, 1988, 277)

of decisive importance, although some medieval theologians single out same-sex sodomy as the worst type of sexual crime<sup>162</sup>.

For the next several centuries in Europe, the laws against homosexual sex were severe in their penalties. Enforcement, however, was episodic. In some regions, decades would pass without any prosecutions. Yet the Dutch, in the 1730s, mounted a harsh anti-sodomy campaign (alongside an anti-Roma pogrom), even using torture to obtain confessions. As many as one hundred men and boys were executed and denied burial<sup>163</sup>. Also, the degree to which sodomy and same-sex attraction were accepted varied by class, with the middle class taking the most restrictive view, while the aristocracy and nobility often accepted public expressions of alternative sexualities. At times, even with the risk of severe punishment, same-sex oriented subcultures would flourish in cities, sometimes only to be suppressed by the authorities. In the 19th century there was a significant reduction in the legal penalties for sodomy. The Napoleonic code decriminalized sodomy, and with Napoleon's conquests that Code spread. Furthermore, in many countries where homosexual sex remained a crime, the general movement at this time away from the death penalty usually meant that sodomy was removed from the list of capital offenses.

In the 18th and 19th centuries an overtly theological framework no longer dominated the discourse about same-sex attraction. Instead, secular arguments and interpretations became increasingly common. Probably the most important secular domain for discussions of homosexuality was in medicine, including psychology. This discourse, in turn, linked up with considerations about the state and its need for a growing population, good soldiers, and intact families marked by clearly defined gender roles. Doctors were called in by courts to examine sex crime defendants<sup>164</sup>. At the same time, the dramatic increase in school attendance rates and the average length of time spent in school, reduced transgenerational contact, and hence also the frequency of transgenerational sex. Same-sex relations between persons of roughly the same age became the norm.

Clearly the rise in the prestige of medicine resulted in part from the increasing ability of science to account for natural phenomena on the basis of mechanistic causation.

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<sup>162</sup> (Crompton, 2003, ch.6)

<sup>163</sup> (Greenberg, 1988, 313–4)

<sup>164</sup> (Foucault, 1980; Greenberg, 1988)

The application of this viewpoint to humans led to accounts of sexuality as innate or biologically driven. The voluntarism of the medieval understanding of sodomy, that sodomites chose sin, gave way to the prevailing though contested modern notion of homosexuality as a deep, unchosen characteristic of persons, regardless of whether they act upon that orientation. The idea of a ‘latent sodomite’ would not have made sense, yet under this new view it does make sense to speak of a person as a ‘latent homosexual.’ Instead of specific acts defining a person, as in the medieval view, an entire physical and mental makeup, usually portrayed as somehow defective or pathological, is ascribed to the modern category of ‘homosexual.’ Although there are historical precursors to these ideas (e.g., Aristotle gave a physiological explanation of passive homosexuality), medicine gave them greater public exposure and credibility<sup>165</sup>. The effects of these ideas cut in conflicting ways. Since homosexuality is, by this view, not chosen, it makes less sense to criminalize it. Persons are not choosing evil acts. Yet persons may be expressing a diseased or pathological mental state, and hence medical intervention for a cure is appropriate. Hence doctors, especially psychiatrists, campaigned for the repeal or reduction of criminal penalties for consensual homosexual sodomy, yet intervened to “rehabilitate” homosexuals. They also sought to develop techniques to prevent children from becoming homosexual, for example by arguing that childhood masturbation caused homosexuality, hence it must be closely guarded against.

In the 20th century sexual roles were redefined once again. For a variety of reasons, premarital intercourse slowly became more common and eventually acceptable. With the decline of prohibitions against sex for the sake of pleasure even outside of marriage, it became more difficult to argue against gay sex. These trends were especially strong in the 1960s, and it was in this context that the gay liberation movement took off.

Although gay and lesbian rights groups had been around for decades, the low-key approach of the Mattachine Society (named after a medieval secret society) and the Daughters of Bilitis had not gained much ground. This changed in the early morning hours of June 28, 1969, when the patrons of the Stonewall Inn, a gay bar in Greenwich Village, rioted after a police raid. In the aftermath of that event, gay and lesbian groups began to organize around the country. Gay Democratic clubs were

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<sup>165</sup> (Greenberg, 1988, ch.15)

created in every major city, and one fourth of all college campuses had gay and lesbian groups<sup>166</sup> Large gay urban communities in cities from coast to coast became the norm. The American Psychiatric Association removed homosexuality from its official listing of mental disorders. The increased visibility of gays and lesbians has become a permanent feature of American life despite the two critical setbacks of the AIDS epidemic and an anti-gay backlash (see Berman, 1993, for a good survey). The post-Stonewall era has also seen marked changes in Western Europe, where the repeal of anti-sodomy laws and legal equality for gays and lesbians has become common. In the 21st century, the legal recognition of same-sex marriage has become widespread.

The increasing acceptance of same-sex relations prompted new theoretical debates, such as whether a “post-gay” culture will emerge due to widespread assimilation of gays and lesbians. Generally, what is meant by the term “post-gay” is that of LGBTQIA+ persons have full legal and social equality, that level of acceptance makes it so sexual orientation is no longer a defining aspect of one’s identity or social position. The LGBTQIA+ acronym stands for Lesbian, Gay, Bisexual, Transgender, Queer/ Questioning, Intersex, Asexual and + (Plus) which signifies the other gender identities/ sex orientations such as Pansexual, non-binary, Objectophilia among others which letters can’t fully describe yet.

While it seems unlikely that gay, lesbian, or queer persons of color, or who live in rural areas, or are otherwise in a marginalized position will achieve such assimilation in the foreseeable future, the debate is still of theoretical interest. For instance, post-gay can be conceptualized as either a specific political order, characterized by equality across sexual orientations, or it can be seen as a specific type of identity, where persons understand and accept themselves as same-sex oriented but as not in any way defined by that. Post-gay can also be a time, an era marked by widespread assimilation, or a space, where persons are fully treated as equals. Some regard the variety of meanings given to the term as evidence of confusion (Kampler and Connell, 2018). A better understanding, however, is that the term is being used to rival ends. For some, post-gay marks the culmination of the gay rights movement, which all along, they contend, was an effort to be treated as equals. For others, it

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<sup>166</sup> (Shilts, 1993, ch.28).

opens a space where sexual labels can be resisted, renegotiated, and made fluid and non-binary (Coleman-Fountain, 2014).

## **HISTORIOGRAPHICAL DEBATES.**

Broader currents in society have influenced the ways in which scholars and activists have approached research into sexuality and same-sex attraction. Some early 20th century researchers and equality advocates, seeking to vindicate same-sex relations in societies that disparaged and criminalized it, put forward lists of famous historical figures attracted to persons of the same sex. Such lists implied a common historical entity underlying sexual attraction, whether one called it ‘inversion’ or ‘homosexuality.’ This approach (or perhaps closely related family of approaches) is commonly called essentialism. Historians and researchers sympathetic to the gay liberation movement of the late 1960s and 1970s produced a number of books that implicitly relied on an essentialist approach. In the 1970s and 1980s John Boswell raised it to a new level of methodological and historical sophistication, although his position shifted over time to one of virtual agnosticism between essentialists and their critics. Crompton’s work (2003) is a notable contemporary example of an essentialist methodology.

Essentialists claim that categories of sexual attraction are observed rather than created. For example, while ancient Greece did not have terms that correspond to the heterosexual/homosexual division, persons did note men who were only attracted to person of a specific sex, hence the lack of terminology need not be taken as evidence of a lack of continuity in categories. Through history and across cultures there are consistent features, albeit with meaningful variety over time and space, in sexual attraction to the point that it makes sense of speak of specific sexual orientations. According to this view, homosexuality is a specific, natural kind rather than a cultural or historical product. Essentialists allow that there are cultural differences in how homosexuality is expressed and interpreted, but they emphasize that this does not prevent it from being a universal category of human sexual expression.

In contrast, in the 1970s and since a number of researchers, often influenced by Mary McIntosh or Michel Foucault, argued that class relations, the human sciences, and other historically constructed forces create sexual categories and the personal

identities associated with them. For advocates of this view, such as David Halperin, how sex is organized in a given cultural and historical setting is irreducibly particular (Halperin, 2002). The emphasis on the social creation of sexual experience and expression led to the labeling of the viewpoint as social constructionism, although more recently several of its proponents have preferred the term ‘historicism.’ Thus homosexuality, as a specific sexual construction, is best understood as a solely modern, Western concept and role. Prior to the development of this construction, persons were not really ‘homosexual’ even when they were only attracted to persons of the same sex. The differences between, say, ancient Greece, with its emphasis on pederasty, role in the sex act, and social status, and the contemporary Western role of ‘gay’ or ‘homosexual’ are simply too great to collapse into one category.

In a manner closely related to the claims of queer theory, discussed below, social constructionists argue that specific social constructs produce sexual ways of being. There is no given mode of sexuality that is independent of culture; even the concept and experience of sexual orientation itself are products of history. For advocates of this view, the range of historical sexual diversity, and the fluidity of human possibility, is simply too varied to be adequately captured by any specific conceptual scheme.

There is a significant political dimension to this seemingly abstract historiographical debate. Social constructionists argue that essentialism is the weaker position politically for at least two reasons. First, by accepting a basic heterosexual/homosexual organizing dichotomy, essentialism wrongly concedes that heterosexuality is the norm and that homosexuality is, strictly speaking, abnormal and the basis for a permanent minority. Second, social constructionists argue that an important goal of historical investigations should be to put into question contemporary organizing schemas about sexuality. The acceptance of the contemporary heterosexual/homosexual dichotomy is conservative, perhaps even reactionary, and forecloses the exploration of new possibilities. (There are related queer theory criticisms of the essentialist position, discussed below.) In contrast, essentialists argue that a historicist approach forecloses the very possibility of a ‘gay history.’ Instead, the field of investigation becomes other social forces and how they ‘produce’ a distinct form or forms of sexuality. Only an essentialist approach can maintain the project of gay history, and minority histories in general, as a force for liberation.

*The Strix Mythology Demystified*



## **CHAPTER SEVEN**

### **PROMINENT FIGURES WHO ENGAGED IN HOMOSEXUALITY**

#### **KING JAMES I of ENGLAND (1566 - 1625)**

One of the prominent homosexual figures was King James I of England who was described by historian Micheal B. Young as the most prominent homosexual figure in the early modern period. Despite his marriage with Anne of Denmark, King James is thought to have had relationships with several male courtiers – most notably, George Villiers, whom he made the Earl and later the Duke of Buckingham.

“To the shock of many courtiers, the pair was demonstratively affectionate to each other in public, despite James’ various proclamations against homosexuality,” Daniel Smith wrote in “Love Letters of Kings and Queens<sup>167</sup>.”

According to Ankenberg & Weldon popular epigram at the time compared the Jacobean monarch to his Tudor predecessor, Elizabeth 1, decalring, “Elizabeth was King, now James is Queen.” Fending off claims of favouritism, James proclaimed, you maybe sure that I love the Earl of Buckingham more than anyone else” ‘I wishto not to have it thought to be a defect, he added, for Jesus Christ did the same, and therefore I cannot be blamed. Christ had John, and I have George<sup>168</sup>’.

In the early 2000s, restoration work on Apethorpe Palace revealed a secret passageway connecting James’ and Villiers’ bedchambers. Originally built in 1470-80 by Sir Guy Wolston, it then sold to Sir Walter Mildmay and stayed in his family for 350 years. Its stately apartments were where James I indulged in "more commodious entertainment... and princely recreation" with his favourite, George

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<sup>167</sup> Love letters of Kings and Queens, Daniel Smith Quercus Publishing, 4 Feb 2021.

<sup>168</sup> Ankenberg, J & Weldon, J (1996) The facts on King James only debate, OR: Harvest House Publishers.

Villiers, later to become the Duke of Buckingham. Workers uncovered a passage connecting the pair's bedchambers during the recent renovations<sup>169</sup>.

## **KING EDWARD II OF ENGLAND (1284 - 1327)**

King Edward II of England's intense relationship with Piers Gaveston drew the ire of many nobles at court and forced Edward to send his favorite away more than once.

In "The Chronicle of the Civil Wars of Edward II," historian George Haskins describes the then-prince as entranced by Gaveston from their first meeting in 1297.

"When the king's son gazed upon him, he straightaway felt so much love for him that he entered into a covenant of brotherhood with him and chose and firmly resolved to bind himself to him, before all mortals, in an unbreakable bond of love," wrote one chronicler at the time.

The sexual nature of their relationship has been alluded to in Christopher Marlowe's 1592 play, "Edward II," and addressed more directly in queer filmmaker Derek Jarman's 1991 film of the same name.

But even contemporaries were claiming the two men were unusually close, with some nicknaming Gaveston a "second king."

According to English Heritage, which manages historic British monuments, "It is impossible to know the exact nature of their relationship, but there is strong evidence to suggest it was a romantic one."

Eventually, their relationship estranged Edward from his wife, Isabella of France, and her allies at court. After he returned from exile a third time in 1311, Gaveston was hunted down and decapitated by a group of noblemen, including Edward's cousin Thomas, the Earl of Lancaster.

In 1326, Isabella and her possible lover, Roger Mortimer, seized power and had Edward deposed and imprisoned. He died at Berkeley Castle in Gloucestershire a year later.

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<sup>169</sup> By Fiona Graham, BBC News Magazine ([news.bbc.com.uk](http://news.bbc.com.uk))

## **EMPEROR HADRIAN OF ROME (76 - 138 A.D.)**

Another leader who showered his male lover with attention, Hadrian was in a politically arranged marriage to the great-niece of his predecessor — a loveless union that bore no children. It wasn't unusual for high-powered Romans to have male partners in addition to their wives, but Hadrian was almost slavishly devoted to his young consort, Antinous.

When Antinous mysteriously drowned in the Nile in 130 A.D., Hadrian was so grief-stricken he had the young man deified and put up monuments to him everywhere.

“Hadrian was clearly bereaved and he had lots of images put up,” Thorsten Opper, who curated an exhibit on the emperor at the British Museum, told *The Independent* in 2008. “When a city [in Egypt] was founded close to the spot where Antinous drowned, he named it Antinopolis. It was a sort of hero cult-worship of Antinou

## **ARCHDUKE LUDWIG VIKTOR OF AUSTRIA (1842 - 1919)**

Being the younger brother of Austrian Emperor Franz Joseph I didn't save Ludwig Viktor from ruin when he made an unwelcome pass at a man at Vienna's Centralbad bathhouse.

“It appears there was a row, and the Archduke was knocked down by one of the bathers, an athletic young man of the middle classes,” *The Chicago Tribune* reported in 1906. “According to witnesses, the young man's actions were justified.”

Ludwig was banished from Vienna for the remainder of the emperor's life. “He has also been forced to resign his patronages, and most of his staff have been moved to other positions,” the *Tribune* reported, adding that the archduke has been “virtually ostracized” from society.

“The Viennese are very tolerant of scandals in imperial and aristocratic circles,” the paper wrote, “but Ludwig Viktor's affairs proved to be too much even for them.”

The archduke spent the rest of his life in seclusion at Klessheim Palace near Salzburg, where he died at the age of 76 in 1919, three years after his brother's death and one year after the Austro-Hungarian Empire was dissolved after the end of World War I.

## **Emperor Ai of Han (27 - 1 B.C.)**

He became Emperor of the Han Dynasty at age 20, Ai was initially well received by his subjects but eventually became associated with corruption and incompetence. He was also widely known to have been romantically involved with one of his ministers, Dong Xian, though both men were married to women.

In the “Hanshu,” or “Book of Han,” Dong and Ai’s relationship is referred to as “the passion of the cut sleeve.” As the story went, the pair had fallen asleep together on a mat and, upon waking, the emperor cut the sleeve off his robe rather than disturb his lover. (The term “cut sleeve” remained a Chinese euphemism for male homosexuality for centuries.)

Dong was granted many honors, eventually being made commander of the military, and he and his family lived inside the imperial compound.

According to historian Brent Hinsch, many Han emperors reportedly had “male favorites” who were listed in both the “Book of Han” and the “Shiji,” or “Records of the Grand Historian.”

“It is not women alone who can use their looks to attract the eyes of the ruler,” the “Shiji” reads, according to Ban Gu’s “History of Early China.” “Courtiers and eunuchs can play that game as well. Many were the men of ancient times who gained favor this way.”

## **AL-HAKAM II OF CÓRDOBA (915 - 976)**

A 10th century caliph in Córdoba, Spain, Al-Hakam known for his largely peaceful reign and his love of learning provided sanctuary to many writers and philosophers.

The caliph’s sexuality has been the source of some debate: According to the French medievalist Évariste Lévi-Provençal, the phrase “hubb al-walad,” found in 16th-century historian Ahmed Mohammed al-Maqqari’s compendium “Nafh at-Tib” in reference to Al-Hakam II, translates as a “preference for boys,” though other scholars maintain it refers to paternal love.

The Medieval Europe scholar Francisco Prado-Vilar wrote that knowledge of Al-Hakam’s homosexuality in the court of Córdoba “encouraged the ambitions of the factions gathered around his much younger brother, Prince al-Mughira.”

“In his youth his loves seem to have been entirely homosexual,” queer studies scholar Louis Crompton wrote in “Male Love and Islamic Law in Arab Spain.” “This exclusivity was a problem when he succeeded to the throne, since it was incumbent upon the new caliph to produce a male heir.”

Despite rumors of having a male harem, Al-Hakam did marry a Basque concubine named Subh, but reportedly gave her the masculine nickname Jafar. Subh is said to have worn the short hair and trousers of a ghulam, or young man, to garner her husband’s attention.

### **QUEEN ANA NZINGA OF NDONGO (1583 - 1663)**

The gender-nonconforming ruler of Ndongo and Matamba in modern-day Angola, Nzinga fought off Portuguese colonialists, alternately through diplomacy, trade and guerrilla warfare, welcomed runaway slaves and European-trained African soldiers, and adopted kilombo, a military strategy in which male youths were taken from their families and raised communally in militias.

She was described by her Dutch bodyguard Captain Fuller, in a 1670 book as wearing “men’s apparel” during ritual sacrifice, “hanging about her the skins of beasts ... with a sword about her neck, an axe at her girdle, and a bow and arrows in her hand, kept a cadre of young men dressed in women’s clothing

According to Mikael Owunna, a Nigerian American photographer while being interviewed, Queen Nzinga ruled and dressed in full male clothing as a king, had a harem of young men dressed as women and were her wives.

### **FREDERICK THE GREAT OF PRUSSIA (1712 - 1786)**

Even in his lifetime, this Prussian royal was widely rumored to be a homosexual, though that term wouldn’t be coined till nearly 90 years after his death.

Two years after the king’s death, his physician Johann Georg Ritter von Zimmermann published a book in which he desperately tried to dispel gossip Frederick had a “Grecian taste in love.”

Blanning writes that Zimmermann claimed the king had a minor deformity on his penis that rendered him impotent. And rather than let that secret out, Frederick pretended to be gay, “so that he would continue to appear virile and capable of sexual intercourse, albeit with men<sup>170</sup> .

## **QUEEN ANNE OF ENGLAND (1665 - 1714)**

Anne, who suffered from frail health throughout her life, met Sarah Churchill when the two were girls. They quickly became close confidants, embarking on a relationship that lasted well into adulthood.

“If I could tell how to hinder myself from writing to you every day I would,” Anne wrote to her friend. “But really I cannot ... when I am from you I cannot be at ease without enquiring after you<sup>171</sup>.”

When Anne became queen in 1707, she made Sarah and her husband the Duke and Duchess of Marlborough and appointed Sarah the Keeper of the Privy Purse. Anne was married to Prince George of Denmark, but rumors circulated that the two women were having a secret romance.

Eventually Sarah became a bit too accustomed to her access and influence and Anne became more drawn to Sarah’s cousin, Abigail Masham.

Sarah got jealous and circulated political writings in 1708 such as *Dark deeds at night* which disclosed Queen Anne’s lesbian secrets between Abigail and the queen. After a final falling out at Kensington Palace in 1710, Sarah and Anne never spoke again.

“*The Favourite*,” a somewhat fictionalized 2018 account of Anne’s relationships with Sarah and Abigail — complete with lesbian liaisons — earned Olivia Colman a best actress Oscar as the conflicted queen<sup>172</sup>.

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<sup>170</sup> Frederick the Great: King of Prussia, T.C.W.

<sup>171</sup> Queen Anne; *The Politics of Passion*, Anne Somerset.

<sup>172</sup> *The Favorite* 2018, A play about Queen Anne’s weird and wonderful world.

## **PRINCESS ISABELLA OF PARMA (1741 - 1763)**

Though married to Archduke Joseph of Austria, Isabella was rumored to truly be in love with Joseph's sister, Archduchess Maria Christina, known affectionately as Mimi.

She spent all her time at court in Vienna with the archduchess, rather than her husband, and the two exchanged hundreds of letters. Maria Christina's were destroyed after her death, but Isabella's make her ardor apparent: "I am told that the day begins with God," she wrote in one. "I, however, begin the day by thinking of the object of my love, for I think of her incessantly<sup>173</sup>."

The relationship was also a great source of conflict for Isabella, because it meant betraying her duties as the wife of a prince. More significantly, though, Isabella realized this was the great love of her life, but she knew that for Mimi, it was more of a youthful dalliance

## **MWANGA II OF BUGANDA (1868 - 1903)**

In the 19th century the king, of Buganda allegedly had sexual relationships with men along with his 16 wives.

In 1886, Mwanga II ordered the brutal torture and deaths of dozens of courtiers and pages, with many burned alive. While some sources claimed the incident stemmed from the victims' attempt to save a British missionary, The New York Times reported the massacre was sparked by "the refusal of a Christian lad acting as the king's page to commit an abominable crime."

According to Andrew Kiwanuka, who witnessed the massacre, that crime involved "the works of Sodom" Modern historians suggested that Mwanga saw their refusal to have sex as an unfathomable act of disobedience to his absolute authority.

Whatever the cause, the mass slaughter earned international condemnation and further destabilized Mwanga's rule, leading to his eventual exile and British annexation of Uganda in the 1890s.

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<sup>173</sup> A Treasury of Royal Scandals: The Shocking True Stories History's Wickedest Most Wanton Kings Queens, Michael Farquhar. Penguin Publishing Group, 1 May 2001.

More than a century later, right-wing religious and political leaders such as HE Yoweri Kaguta Museveni told a crowd of thousands on Martyr Day in 2010, the Atlantic reported. “This was not part of our culture. I hear he learnt it from the Arabs. But the martyrs refused these falsehoods and went for the truth, which is why we are honoring them today.” This clerly shows that Kabaka Mwanga was gay.



## **CHAPTER EIGHT**

### **SPARTACUS SERIES THAT DEPICTED SEXUALITY IN ANCIENT ROME.**

The main storyline was about the clashes between the already consolidated army of rebel slaves led by Spartacus, and the Roman legions, until the end of the conflict. The program was oriented towards an adult audience, as it contained graphic violence, adult language, and explicit sex scenes. In other words, we're watching something so violent and sex obsessed, it might have actually done well in Ancient Rome in terms of storytelling because sex has gone mainstream in modern America as much as it had in Rome.

Featuring an army of scantily clad, gorgeous gladiators, Spartacus is a series that easily caught the attention of LGBT fans from the first episode. However, it takes more than a serving of skin to turn a TV show into the pop culture phenomenon Spartacus has become. The series quickly unfolded into an intriguing tale of power, honor, vengeance, and romance -- romance which includes the love story that began last season between two gay rebel warriors, Agron (played by Dan Feuerriegel) and Nasir (Pana Hema-Taylor)<sup>174</sup>.

Starz's Spartacus was one of the earlier shows to fill home screens with violence and sexuality that rivaled the movies. What is intriguing about the portrayal of sex in Spartacus is how it mimics the openness about sex and sexuality that was present in Ancient Rome. It tells the story of a time where sex was openly viewed as something fun and natural, as opposed to the taboo that it has become in today's society. However, the show's

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<sup>174</sup> The Gay Action Hero on Spartacus is Back, <https://www.advocate.com/television>.

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In an interview with Reuters, The Sparctus content creator defended the sexuality in the show by arguing that it was and is parcel of this world now. If people want to stop watching the show because two guys kiss, well, I shrug my shoulders. You know, that that will always be in there”

According to the show Spartacus portrays a lot of Roman debauchery. How much of that was really going on? To be clear, I'm well aware of the fact that Starz' Spartacus turned the sex and violence up to 11. However, the idea that the Romans were particularly decadent and cruel has been around for a long time. So, how much casual murder and rampant sex (including rape) was actually going on, if at all? If it was, during what periods?

According to Roman Archaeology, the idea of Roman "decadence" actually has a somewhat strange history. Its root can be found in an extensive body of moral literature produced by Roman authors which often took bodily depravity as a theme. Juvenal and Seneca were well known and fairly straightforward practitioners of this genre, but you can also find more interesting examples like Lucian's "The Dependent Scholar" which describes the life led by a scholar attached to prominent Roman households. However, these cannot be taken at face value, as they exist as critiques of society from within the society and were not meant as complete portraits of Roman life.

The aftermath of Roman literature, however, was through monasteries and the works that were transmitted tend to be those that fit a particular purpose. In this case, the purpose would be demonstrating the moral failings of pagan society, as well as the general moral programs of monastic society.

The grotesque portrait of Rome painted by Juvenal was extremely popular for just this very reason. The specific critiques of aspects of Roman society was thus transformed into a general critique of non-Christian morality.

**Vertex of life** argued that the final step came with the raise of pornography but pornography would often be set in some sort of exoticized location--there has been a lot of work on how "the orient" was eroticized through this, but also things like the eroticization of Roma or other travelers was based on a setting, that was both very familiar and deeply associated with a highly sexually charged body of literature, Ancient Rome was the most suitable site given the huge amount of erotic art and literature that took place in ancient Rome, for instance; the works of Paul Avril and paintings set in ancient Rome would have an erotic element, for example Alma-Tadema's paintings which often emphasize the sensual liberality of the Roman bath.

There are many different "Romes" in the collective historical conscious, often rather contradictory. Through the twists a turn of historical circumstance, one of these Romes is one of a highly sexual nature.

## **COMPARISON WITH OTHER SPECIES**

Scientists perceive homosexual behavior in animals to different degrees. According to Bruce Bagemihl, same-sex behavior (comprising courtship, sexual, pair-bonding, and parental activities) has been documented in over 450 species of animals worldwide<sup>175</sup>.

Although same-sex interactions involving genital contact have been reported in hundreds of animal species, they are routinely manifested in only a few, including humans<sup>176</sup>. Simon LeVay stated that "although homosexual behavior is very common in the animal world, it seems to be very uncommon that individual animals have a long-lasting predisposition to engage in such behavior to the exclusion of heterosexual activities. Thus, a homosexual orientation, if one can speak of such thing in animals, seems to be a rarity."<sup>177</sup>

In 1910, a team of scientists set off on the Terra Nova Expedition to explore Antarctica. Among them was George Murray Levick, a zoologist and photographer

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<sup>175</sup> Bagemihl B (1999). *Biological Exuberance: Animal Homosexuality and Natural Diversity* (Stone Wall Inn ed.). New York City: St. Martin's Press. ISBN 9780312253776. "Homosexual behavior occurs in more than 450 different kinds of animals worldwide, and is found in every major geographic region and every major animal group."

<sup>176</sup> Bailey JM, Vasey PL, Diamond LM, Breedlove SM, Vilain E, Epprecht M (September 2016). "Sexual Orientation, Controversy, and Science". *Psychological Science in the Public Interest*. 17 (2): 45–101. doi:10.1177/1529100616637616. PMID 27113562. S2CID 42281410.

<sup>177</sup> Levay S (1996). *Queer Science: The Use and Abuse of Research into Homosexuality*. Cambridge, Massachusetts: MIT Press. p. 207. ISBN 9780262121996.

who would be the first researcher to study the world's largest Adélie penguin colony. He chronicled the animals' daily activities in great detail.

In his notebooks, Murray described their sexual behaviour, including sex between male birds. However, none of these notes would appear in Levick's published papers. Concerned by the graphic content, he only printed 100 copies of *Sexual Habits of the Adélie Penguin* to circulate privately. The last remaining copy was recently unearthed providing valuable insights into animal homosexuality research.

According to The Imperial Lodon College, same sex behaviour ranging from co-parenting to sex has been observed in over 1,000 species with likely many more as researchers begin to look for the behaviour explicitly. Homosexuality is widespread, with bisexuality even more prevalent across species<sup>178</sup>.

The first “museum dedicated to gay animals” opened in 2006 at the University of Oslo (Norway). It was called *Against Nature? An Exhibition on Animal Homosexuality* and claimed to prove that animals develop “long-lasting [gay] partnerships, Museum exhibition shows gay animal kingdom<sup>179</sup>.

From the wires: OSLO (Reuters) – The birds and the bees may be gay, according to the world’s first museum exhibition about homosexuality among animals. With documentation of gay or lesbian behavior among giraffes, penguins, parrots, beetles, whales and dozens of other creatures<sup>180</sup>.

Lesbian star, Rosie O’Donnell, makes a similar claim that “In every animal kingdom and every species, 10 percent of the population is homosexual<sup>181</sup>

The term homosexual was coined by the Hungarian writer and campaigner Karl Maria Kertbeny in 1868 to describe same-sex sexual attraction and sexual behavior in humans<sup>182</sup>. Its use in animal studies has been controversial for two main reasons: animal sexuality and motivating factors have been and remain poorly understood,

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<sup>178</sup> Scientists explore the evolution of animal homosexuality by Juanita Bawagan.

<sup>179</sup> <http://www.nhm.uio.no/besok-oss/utstillinger/skiftende/againstnature/index-eng.html>.

<sup>180</sup> <https://www.wired.com/2006/10/museum-exhibiti/>

<sup>181</sup> <http://www.foxnews.com/story/0,2933,48821,00.html>

<sup>182</sup> The first known use of the word Homosexual is found in Benkert Kertbeny, K. M. (1869): Paragraph 143 des Preussischen Strafgesetzbuches vom 14/4-1851 und seine Aufrechterhaltung als Paragraph 152 im Entwurf eines Strafgesetzbuches für den Norddeutschen Bundes, Leipzig, 1869. Reprinted in *Jahrbuch für sexuelle Zwischenstufen* 7 (1905), pp. 1–66.

and the term has strong cultural implications in western society that are irrelevant for species other than humans<sup>183</sup>.

Thus, homosexual behavior has been given a number of terms over the years. According to Bruce Bagemihl, when describing animals, the term homosexual is preferred over gay, lesbian, and other terms currently in use, as these are seen as even more bound to human homosexuality<sup>184</sup>.

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<sup>183</sup> Dorit R (September–October 2004). "Rethinking Sex". *American Scientist*. Retrieved 2007-09-11.

<sup>184</sup> Bagemihl 1999, pp. 122–166.



## CHAPTER NINE

### HOMOSEXUALITY APPLICATION TO ANIMALS.

In animals, this has been used to refer to same-sex behavior that is not sexual in character (e.g. 'homosexual tandem running' in termites), same-sex courtship or copulatory behavior occurring over a short period of time (e.g. 'homosexual mounting' in cockroaches and rams) or long-term pair bonds between same-sex partners that might involve any combination of courting, copulating, parenting and affectional behaviors (e.g. 'homosexual pair bonds' in gulls). In humans, the term is used to describe individual sexual behaviors as well as long-term relationships, but in some usages connotes a gay or lesbian social identity. Scientific writing would benefit from reserving this anthropomorphic term for humans and not using it to describe behavior in other animals, because of its deeply rooted context in human society.

Animal preference and motivation is always inferred from behavior. In wild animals, researchers will as a rule not be able to map the entire life of an individual, and must infer from frequency of single observations of behavior.

The term homosexuality has been applied to all sexual behavior (copulation, genital stimulation, mating games and sexual display behavior) between animals of the same sex. In most instances, it is presumed that the homosexual behavior is but part of the animal's overall sexual behavioral repertoire, making the animal "bisexual" rather than "homosexual" as the terms are commonly understood in humans<sup>185</sup>.

The observation of homosexual behavior in animals can be seen as both an argument for and against the acceptance of homosexuality in humans, and has been used especially against the claim that it is a peccatum contra naturam "sin against nature". For instance, homosexuality in animals was cited by the American Psychiatric

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<sup>185</sup> Sommer V, Vasey PL (2006). *Homosexual Behaviour in Animals, An Evolutionary Perspective*. Cambridge: Cambridge University Press. ISBN 978-0-521-86446-6.

Association and other groups in their amici curiae brief to the United States Supreme Court in *Lawrence v. Texas*, which ultimately struck down the sodomy laws<sup>186</sup>.

Majority research concerning homosexual behavior in animals lacks specification between animals that exclusively exhibit same-sex tendencies and those that participate in heterosexual and homosexual mating activities interchangeably. This lack of distinction has led to differing opinions and conflicting interpretations of collected data amongst scientists and researchers. For instance, Bruce Bagemihl, author of the book *Biological Exuberance: Animal Homosexuality and Natural Diversity*, emphasizes that there are no anatomical or endocrinological differences between exclusively homosexual and exclusively heterosexual animal pairs<sup>187</sup>.

However, if the definition of "homosexual behavior" is made to include animals that participate in both same-sex and opposite-sex mating activities, hormonal differences have been documented among key sex hormones, such as testosterone and estradiol, when compared to those who participate solely in heterosexual mating.

Many of the animals used in laboratory-based studies of homosexuality do not appear to spontaneously exhibit these tendencies often in the wild. Such behavior is often elicited and exaggerated by the researcher during experimentation through the destruction of a portion of brain tissue, or by exposing the animal to high levels of steroid hormones prenatally. Information gathered from these studies is limited when applied to spontaneously occurring same-sex behavior in animals outside of the laboratory.

Homosexual behaviour in animals has been discussed since classical antiquity. The earliest written mention of animal homosexuality appears to date back to 2,300 years ago, when Aristotle (384–322 BC) described copulation between pigeons, partridges and quails of the same sex<sup>188</sup>. The Hieroglyphics of Horapollo, written in the 4th century AD by the Egyptian writer Horapollo, mentions "hermaphroditism" in

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<sup>186</sup> "Brief for Amici Curiae in Support of Petitioners, *Lawrence v. Texas*"

<sup>187</sup> Bagemihl B (1999). *Biological Exuberance: Animal Homosexuality and Natural Diversity*. New York: St. Martin's Press.

<sup>188</sup> Riccucci M (2011). "Same-sex sexual behaviour in bats". *Hystrix It. J. Mammal.* 22 (1): 139–47. doi:10.4404/hystrix-22.1-4478.

hyenas and homosexuality in partridges. The first review of animal homosexuality was written by the zoologist Ferdinand Karsch-Haack in 1900<sup>189</sup>.

Academic research into the ubiquity of same-sex sexual behavior was not carried out on a large scale, possibly due to observer bias caused by social attitudes to same-sex sexual behavior, innocent confusion, lack of interest, distaste, scientists fearing loss of their grants or even from a fear of "being ridiculed by their colleagues<sup>190</sup>".

Georgetown University biologist Janet Mann states "Scientists who study the topic are often accused of trying to forward an agenda, and their work can come under greater scrutiny than that of their colleagues who study other topics."<sup>191</sup> They also noted "Not every sexual act has a reproductive function ... that's true of humans and non-humans." Studies have demonstrated homosexual behavior in a number of species, but the true extent of homosexuality in animals is not known.

Some researchers believe this behavior to have its origin in male social organization and social dominance, similar to the dominance traits shown in prison sexuality. Others, particularly Bagemihl, Joan Roughgarden, Thierry Lodé<sup>192</sup> and Paul Vasey suggest the social function of sex (both homosexual and heterosexual) is not necessarily connected to dominance, but serves to strengthen alliances and social ties within a flock. While reports on many such mating scenarios are still only anecdotal, a growing body of scientific work confirms that permanent homosexuality occurs not only in species with permanent pair bonds<sup>193</sup>, but also in non-monogamous species like sheep. One report on sheep found that 8% of rams exhibited homosexual preferences—that is, even when given a choice, they chose male over female partners. In fact, apparent homosexual individuals are known from all of the traditional domestic species, from sheep, cattle and horses to cats, dogs and budgerigars<sup>194</sup>.

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<sup>189</sup> Riccucci M (2011). "Same-sex sexual behaviour in bats". *Hystrix It. J. Mammal.* 22 (1): 139–47. doi:10.4404/hystrix-22.1-4478.

<sup>190</sup> "1,500 Animal Species Practice Homosexuality". *News-medical.net.* 2006-10-23. Archived from the original on May 28, 2007. Retrieved 2007-09-10.

<sup>191</sup> Moskowitz C (19 May 2008). "Homosexuality Common in the Wild, Scientists Say". *Fox News.* Retrieved 2008-07-02.

<sup>192</sup> Thierry Lodé *La guerre des sexes chez les animaux* Eds O Jacob, Paris, 2006, ISBN 2-7381-1901-8

<sup>193</sup> Douglas K (December 7, 2009). "Homosexual selection: The power of same-sex liaisons". *New Scientist.* Retrieved 2009-12-21.

<sup>194</sup> Bagemihl B (1999). *Biological Exuberance: Animal Homosexuality and Natural Diversity.* St. Martin's Press. ISBN 978-0312253776.

Homosexual and bisexual behaviors occur in a number of other animal species. Such behaviors include sexual activity, courtship, affection, pair bonding, and parenting, and are widespread; a 1999 review by researcher Bruce Bagemihl shows that homosexual behavior has been documented in about 500 species, ranging from primates to gut worms<sup>195</sup>.

Animal sexual behavior takes many different forms, even within the same species. The motivations for and implications of these behaviors have yet to be fully understood, since most species have yet to be fully studied. [255] According to Bagemihl, "the animal kingdom [does] it with much greater sexual diversity—including homosexual, bisexual and nonreproductive sex—than the scientific community and society at large have previously been willing to accept". [256] as discussed below.

## **BONOBOS**

Roughly 60% of all bonobo sexual activity occurs between two or more females. While the homosexual bonding system in bonobos represents the highest frequency of homosexuality known in any primate species, homosexuality has been reported for all great apes, as well as a number of other primate species<sup>196</sup>.

Accordingly, Bonobos form a matriarchal society, unusual among apes. They are fully bisexual: both males and females engage in hetero- and homosexual behavior, being noted for female–female sex in particular,<sup>197</sup> including between juveniles and adults<sup>198</sup>. Roughly 60% of all bonobo sexual activity occurs between two or more females. While the homosexual bonding system in bonobos represents the highest frequency of homosexuality known in any primate species, homosexuality has been

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<sup>195</sup> Aristotle; Pliny (transl. Rackham, 1947, Vol. 3: 399; Aristotle, transl. Peck, 1970, Vol. 2: 233; see also: Aelian, transl. Wilson, 1997: 37). "Oxford Academic Zoologic Journal".

<sup>196</sup> de Waal FB (March 1995). "Bonobo Sex and Society: The behavior of a close relative challenges assumptions about male supremacy in human evolution" (PDF). *Scientific American*. 272 (3): 82–88. Bibcode:1995SciAm.272c..82W. doi:10.1038/scientificamerican0395-82. PMID 7871411. Archived from the original (PDF) on 1 August 2016. Retrieved 10 March 2019.

<sup>197</sup> Elmér M, Nørgaard JP, Djurhuus JC, Adolffsson T (May 1988). "Terodiline in the treatment of diurnal enuresis in children". *Scandinavian Journal of Primary Health Care*. 6 (2): 119–24. doi:10.3109/02813438809009301. PMID 3291041.

<sup>198</sup> de Waal FB (March 1995). "Bonobo Sex and Society: The behavior of a close relative challenges assumptions about male supremacy in human evolution" (PDF). *Scientific American*. 272 (3): 82–88. Bibcode:1995SciAm.272c..82W. doi:10.1038/scientificamerican0395-82. PMID 7871411. Archived from the original (PDF) on 1 August 2016. Retrieved 10 March 2019.

reported for all great apes, as well as a number of other primate species<sup>199</sup>. and domestic sheep are the only animals conclusively proven to exhibit a homosexual orientation<sup>200</sup>.

## **GIRAFFES**

Male giraffes have been observed to engage in remarkably high frequencies of homosexual behavior. After aggressive "necking", it is common for two male giraffes to caress and court each other, leading up to mounting and climax. Such interactions between males have been found to be more frequent than heterosexual coupling<sup>201</sup>. In one study, up to 94% of observed mounting incidents took place between two males. The proportion of same sex activities varied between 30 and 75%, and at any given time one in twenty males were engaged in non-combative necking behavior with another male. Only 1% of same-sex mounting incidents occurred between females.

## **GORILLAS**

Homosexual behavior among male gorillas has been studied<sup>202</sup>. This behavior occurs more often in all-male bachelor packs in the wild and it is believed to play a role in social bonding. Homosexual behavior among female mountain gorillas has also been documented<sup>203</sup>.

## **Penguins**

Penguins have been observed to engage in homosexual behaviour since at least as early as 1911. George Murray Levick, who documented this behaviour in Adélie penguins at Cape Adare, described it as "depraved". The report was considered too shocking for public release at the time, and was suppressed. The only copies that

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<sup>199</sup> Dawkins R (2004). "Rendezvous I: Chimpanzees". *The Ancestor's Tale: A Pilgrimage to the Dawn of Life*. Houghton Mifflin (US). pp. 92–93. ISBN 978-1-155-16265-2.

<sup>200</sup> The first known use of the word Homosexuell is found in Benkert Kertbeny, K. M. (1869): Paragraph 143 des Preussischen Strafgesetzbuches vom 14/4-1851 und seine Aufrechterhaltung als Paragraph 152 im Entwurf eines Strafgesetzbuches für den Norddeutschen Bundes, Leipzig, 1869. Reprinted in *Jahrbuch für sexuelle Zwischenstufen* 7 (1905), pp. 1–66

<sup>201</sup> Coe MJ (1967). "'Necking' behavior in the giraffe". *Journal of Zoology*. 151 (3): 313–321. doi:10.1111/j.1469-7998.1967.tb02117.x.

<sup>202</sup> Yamagiwa J (1987-01-01). "Intra- and inter-group interactions of an all-male group of virunga mountain gorillas (*Gorilla gorilla beringei*)". *Primates*. 28 (1): 1–30. doi:10.1007/BF02382180. ISSN 1610-7365. S2CID 24667667.

<sup>203</sup> Grueter CC, Stoinski TS (2016-05-11). "Homosexual Behavior in Female Mountain Gorillas: Reflection of Dominance, Affiliation, Reconciliation or Arousal?". *PLOS ONE*. 11 (5): e0154185. Bibcode:2016PLoSO..1154185G. doi:10.1371/journal.pone.0154185. PMC 4864209. PMID 27167861.

were made available privately to researchers had the English text partly written in Greek letters, to prevent this knowledge becoming more widely known. The report was unearthed only a century later, and published in *Polar Record* in June 2012<sup>204</sup>.

A case in point is a gay penguin couple known as Roy and Silo, in early February 2004, *The New York Times* reported that Roy and Silo, a male pair of chinstrap penguins in the Central Park Zoo in New York City, had successfully hatched and fostered a female chick from a fertile egg they had been given to incubate<sup>205</sup>. Other penguins in New York zoos have also been reported to have formed same-sex pairs<sup>206</sup>.

Another example is that of Sphen and Magic, where two male Gentoo penguins, recently made headlines when they 'adopted' an egg. Gentoos are closely related to Adélie penguins, the species Levick first observed in 1911. After the two penguins bonded and began creating a nest, zookeepers at the Sea Life Sydney Aquarium decided to give them an egg that had been abandoned by a pair of heterosexual penguins in the group. On October 19, 2018, Baby Sphengic was born.

## **ELEPHANTS**

African and Asian male elephants engage in same-sex bonding and mounting. Such encounters are often associated with affectionate interactions, such as kissing, trunk intertwining, and placing trunks in each other's mouths. Male elephants, who often live apart from the general herd, often form "companionships", consisting of an older individual and one or sometimes two younger males with sexual behavior being an important part of the social dynamic. Unlike heterosexual relations, which are always of a fleeting nature, the relationships between males may last for years. The encounters are analogous to heterosexual bouts, one male often extending his trunk along the other's back and pushing forward with his tusks to signify his intention to mount. Same-sex relations are common and frequent in both sexes, with Asiatic

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<sup>204</sup> "Unearthed study on 'sexual depravity' in penguins". *abc.net.au*. 10 June.

<sup>205</sup> Smith D (February 7, 2004). "Love That Dare Not Squeak Its Name". *The New York Times*.

<sup>206</sup> "They're in love. They're gay. They're penguins... And they're not alone". Columbia University. *Columbia News Service*. June 10, 2002. Archived from the original on January 23, 2009.

elephants in captivity devoting roughly 45% of sexual encounters to same-sex activity<sup>207</sup>.

## **AMAZON DOLPHINS**

The Amazon river dolphin or boto has been reported to form up in bands of 3–5 individuals engaging in sexual activity. The groups usually comprise young males and sometimes one or two females. Sex is often performed in non-reproductive ways, using snout, flippers and genital rubbing, without regard to gender.[73] In captivity, they have been observed to sometimes perform homosexual and heterosexual penetration of the blowhole, a hole homologous with the nostril of other mammals, making this the only known example of nasal sex in the animal kingdom<sup>208</sup>. The males will sometimes also perform sex with males from the tucuxi species, a type of small porpoise<sup>209</sup>.

## **AMERICAN BISONS**

The American bison is a bovine mammal which displays homosexual behavior and Courtship, mounting, with full anal penetration between bulls has been noted to occur among American bison. The Mandan nation Okipa festival concludes with a ceremonial enactment of this behavior, to "ensure the return of the buffalo in the coming season"<sup>210</sup>. Also, mounting of one female by another (known as "bulling") is extremely common among cattle. The behaviour is hormone driven and synchronizes with the emergence of estrus (heat), particularly in the presence of a bull.

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<sup>207</sup> Bagemihl 1999, pp. 427–430.

<sup>208</sup> Sylvestre, J.-P. (Some Observations on Behavior of Two Orinoco Dolphins (*Inia geoffrensis humboldtiaba* [Pilleri and Gühr 1977]), in Captivity, at Duisburg Zoo. Aquatic mammals no 11, pp. 58–65 article

<sup>209</sup> Bagemihl 1999, pp. 339–348.

<sup>210</sup> Bagemihl B (May 2000). "Left-Handed Bears & Androgynous Cassowaries: Homosexual/transgendered animals and indigenous knowledge". Whole Earth Magazine (archived by archive.org).

## **REPTILES**

Lizards

Several species of whiptail lizard (especially in the genus *Aspidoscelis*) consist only of females that have the ability to reproduce through parthenogenesis<sup>211</sup>. Females engage in sexual behavior to stimulate ovulation, with their behavior following their hormonal cycles; during low levels of estrogen, these (female) lizards engage in "masculine" sexual roles. Those animals with currently high estrogen levels assume "feminine" sexual roles. Some parthenogenetic lizards that perform the courtship ritual have greater fertility than those kept in isolation due to an increase in hormones triggered by the sexual behaviors. So, even though asexual whiptail lizards' populations lack males, sexual stimuli still increase reproductive success. From an evolutionary standpoint, these females are passing their full genetic code to all of their offspring (rather than the 50% of genes that would be passed in sexual reproduction). Certain species of gecko also reproduce by parthenogenesis<sup>212</sup>.

Some species of sexually reproducing geckos have also been found to display homosexual behavior, e.g. the day geckos *Phelsuma laticauda* and *Phelsuma cepediana*<sup>213</sup>.

## **TORTOISES**

Jonathan, the world's oldest tortoise (an Aldabra giant tortoise), had been mating with another tortoise named Frederica since 1991. In 2017, it was discovered that Frederica was actually probably male all along, and was renamed Frederic<sup>214</sup>.

## **INSECTS AND ARACHNIDS**

There is evidence of same-sex sexual behavior in at least 110 species of insects and arachnids. Scharf et al. says: "Males are more frequently involved in same-sex sexual (SSS) behavior in the laboratory than in the field, and isolation, high density, and exposure to female pheromones increase its prevalence. SSS behavior is often

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<sup>211</sup> Cole CJ, Townsend CR (9 May 2005). "Parthenogenetic lizards as vertebrate systems". *Journal of Experimental Zoology*. 256 (S4): 174–176. doi:10.1002/jez.1402560436. PMID 1974787.

<sup>212</sup> Anon (9 June 2005). "Geckos: It's Not Always About Sex". *Science Daily*. Lewis & Clark College.

<sup>213</sup> Budzinski RM (1997). "Homosexuelles Verhalten bei Geckos der Gattung *Phelsuma*". *Sauria*. 19 (3): 33–34.

<sup>214</sup> Binyon M (October 19, 2017). "St Helena tortoise has a gay old time". *The Times*.

shorter than the equivalent heterosexual behavior. Most cases can be explained via mistaken identification by the active (courting/mounting) male. Passive males often resist courting/mating attempts<sup>215</sup>”.

Scharf et al. continues: "SSS behavior has been reported in most insect orders, and Bagemihl (1999) provides a list of ~100 species of insects demonstrating such behavior. Yet, this list lacks detailed descriptions, and a more comprehensive summary of its prevalence in invertebrates, as well as ethology, causes, implications, and evolution of this behavior, remains lacking"<sup>216</sup>.

## **DRAGONFLIES**

Male homosexuality has been inferred in several species of dragonflies (the order Odonata). The cloacal pinchers of male damselflies and dragonflies inflict characteristic head damage to females during sex<sup>217</sup>. A survey of 11 species of damsel and dragonflies has revealed such mating damages in 20 to 80% of the males too, indicating a fairly high occurrence of sexual coupling between males<sup>218</sup>.

## **FRUIT FLIES**

Male *Drosophila melanogaster* flies bearing two copies of a mutant allele in the fruitless gene court and attempt to mate exclusively with other males<sup>219</sup>. The genetic basis of animal homosexuality has been studied in the fly *D. melanogaster*<sup>220</sup>. Here, multiple genes have been identified that can cause homosexual courtship and

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<sup>215</sup> Scharf I, Martin OY (2013). "Same-sex sexual behavior in insects and arachnids: prevalence, causes, and consequences". *Behavioral Ecology and Sociobiology*. 67 (11): 1719–1730. doi:10.1007/s00265-013-1610-x. S2CID 10899013.

<sup>216</sup> Ibid.

<sup>217</sup> Dunkle SW (1991). "Head damage from mating attempts in dragonflies (Odonata:Anisoptera)". *Entomological News*. 102 (1): 37–41.

<sup>218</sup> Utzeri C, Belfiore C (1990). "Anomalous tandems in Odonata". *Fragmenta Entomologica*. 22 (2): 271–288.

<sup>219</sup> Gailey DA, Hall JC (April 1989). "Behavior and cytogenetics of fruitless in *Drosophila melanogaster*: different courtship defects caused by separate, closely linked lesions". *Genetics*. 121 (4): 773–85. doi:10.1093/genetics/121.4.773. PMC 1203660. PMID 2542123.

<sup>220</sup> Yamamoto D, Nakano Y (November 1999). "Sexual behavior mutants revisited: molecular and cellular basis of *Drosophila* mating". *Cellular and Molecular Life Sciences*. 56 (7–8): 634–46. doi:10.1007/s000180050458. PMID 11212311. S2CID 22055533.

mating<sup>221</sup>. These genes are thought to control behavior through pheromones as well as altering the structure of the animal's brains<sup>222</sup>.

These studies have also investigated the influence of environment on the likelihood of flies displaying homosexual behavior<sup>223</sup>.

## **BED BUGS**

Male bed bugs (*Cimex lectularius*) are sexually attracted to any newly fed individual and this results in homosexual mounting. This occurs in heterosexual mounting by the traumatic insemination in which the male pierces the female abdomen with his needle-like penis. In homosexual mating this risks abdominal injuries as males lack the female counteradaptive spermatheca structure. Males produce alarm pheromones to reduce homosexual mating

## **JAPANESE MACAQUE**

With the Japanese macaque, also known as the "snow monkey", same-sex relations are frequent, though rates vary between troops. Females will form "consortships" characterized by affectionate social and sexual activities. In some troops up to one quarter of the females form such bonds, which vary in duration from a few days to a few weeks. Often, strong and lasting friendships result from such pairings. Males also have same-sex relations, typically with multiple partners of the same age. Affectionate and playful activities are associated with such relations.

## **ORANGUTANS**

Homosexual behavior forms part of the natural repertoire of sexual or sociosexual behavior of orangutans. Male homosexual behavior occurs both in the wild and in captivity, and it occurs in both adolescent and mature individuals. Homosexual behavior in orangutans is not an artifact of captivity or contact with humans.

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<sup>221</sup> Yamamoto D, Ito H, Fujitani K (October 1996). "Genetic dissection of sexual orientation: behavioral, cellular, and molecular approaches in *Drosophila melanogaster*". *Neuroscience Research*. 26 (2): 95–107. doi:10.1016/S0168-0102(96)01087-5. PMID 8953572. S2CID 36582275.

<sup>222</sup> Yamamoto D, Fujitani K, Usui K, Ito H, Nakano Y (May 1998). "From behavior to development: genes for sexual behavior define the neuronal sexual switch in *Drosophila*". *Mechanisms of Development*. 73 (2): 135–46. doi:10.1016/S0925-4773(98)00042-2. PMID 9622612. S2CID 14531382.

<sup>223</sup> Zhang SD, Odenwald WF (June 1995). "Misexpression of the white (w) gene triggers male-male courtship in *Drosophila*". *Proceedings of the National Academy of Sciences of the United States of America*. 92 (12): 5525–9. Bibcode:1995PNAS...92.5525Z. doi:10.1073/pnas.92.12.5525. PMC 41728. PMID 7777542.

## **MONKEYS**

Among monkeys, Lionel Tiger and Robin Fox conducted a study on how Depo-Provera contraceptives lead to decreased male attraction to females.

## **SHEEP**

Several observations indicate that male–male sexual preference in rams is sexually motivated. Rams routinely perform the same courtship behaviors (including foreleg kicks, nudges, vocalizations, anogenital sniffs and flehmen prior to mounting other males as observed when other rams court and mount estrous females. Furthermore, pelvic thrusting and ejaculation often accompany same-sex mounts by rams<sup>224</sup>.

A number of studies have reported differences in brain structure and function between male-oriented and female-oriented rams, suggesting that sexual partner preferences are neurologically hard-wired<sup>225</sup>. A 2003 study by Dr. Charles E. Roselli et al. (Oregon Health and Science University), states that homosexuality in male sheep is associated with a region in the rams' brains which the authors call the "ovine Sexually Dimorphic Nucleus" (OSDN) which is half the size of the corresponding region in heterosexual male sheep<sup>226</sup>.

Scientists found that, "The OSDN in rams that preferred females was significantly larger and contained more neurons than in male-oriented rams and ewes. In addition, the OSDN of the female-oriented rams expressed higher levels of aromatase, a substance that converts testosterone to estradiol, a form of estrogen which is believed to facilitate typical male sexual behaviors. Aromatase expression was no different between male-oriented rams and ewes [...] The dense cluster of neurons that comprise the OSDN express cytochrome P450 aromatase. Aromatase mRNA levels in the OSDN were significantly greater in female-oriented rams than in ewes, whereas male-oriented rams exhibited intermediate levels of expression." These results suggest that "... naturally occurring variations in sexual partner preferences may be related to differences in brain anatomy and its capacity for estrogen

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<sup>224</sup> Roselli CE, Larkin K, Schruck JM, Stormshak F (November 2004). "Sexual partner preference, hypothalamic morphology and aromatase in rams". *Physiology & Behavior*. 83 (2): 233–45. doi:10.1016/j.physbeh.2004.08.017. PMID 15488542. S2CID 156571.

<sup>225</sup> Ibid.

<sup>226</sup> Roselli CE, Larkin K, Resko JA, Stellflug JN, Stormshak F (February 2004). "The volume of a sexually dimorphic nucleus in the ovine medial preoptic area/anterior hypothalamus varies with sexual partner preference". *Endocrinology*. 145 (2): 478–83. doi:10.1210/en.2003-1098. PMID 14525915.

synthesis."<sup>227</sup> As noted before, given the potential unaggressiveness of the male population in question, the differing aromatase levels may also have been evidence of aggression levels, not sexuality. It should also be noted that the results of this particular study have not been confirmed by other studies.

Studies have failed to identify any compelling social factors that can predict or explain the variations in sexual partner preferences of domestic rams. Homosexual orientation and same-sex mounting in rams is not related to dominance, social rank or competitive ability. Indeed, male-oriented rams are not more or less dominant than female-oriented rams<sup>228</sup>. Homosexual orientation in rams is also not affected by rearing conditions, i.e., rearing males in all-male groups, rearing male and female lambs together, early exposure of adolescent males to females and early social experiences with females do not promote or prevent homosexual orientation in rams. Male-oriented partner preference also does not appear to be an artifact caused by captivity or human management of sheep<sup>229</sup>.

## **SPOTTED HYENAS**

The spotted hyena is matriarchal, and has dominance relationships with strong sexual elements routinely observed between related females. Due largely to the female spotted hyena's unique urogenital system, which looks more like a penis rather than a vagina, early naturalists thought hyenas were hermaphroditic males who commonly practiced homosexuality.

Early writings such as Ovid's *Metamorphoses* and the *Physiologus* suggested that the hyena continually changed its sex and nature from male to female and back again. In *Paedagogus* Clement of Alexandria noted that the hyena (along with the hare) was

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<sup>227</sup> Roselli CE, Larkin K, Resko JA, Stellflug JN, Stormshak F (February 2004). "The volume of a sexually dimorphic nucleus in the ovine medial preoptic area/anterior hypothalamus varies with sexual partner preference". *Endocrinology*. 145 (2): 478–83. doi:10.1210/en.2003-1098. PMID 14525915.

<sup>228</sup> Roselli CE; Reddy RC; Kaufman KR (2011). "The development of male-oriented behavior in rams". *Front. Neuroendocrinol.* 32 (2): 164–9. doi:10.1016/j.yfrne.2010.12.007. PMC 3085551. PMID 21215767. Roselli CE; Reddy RC; Kaufman KR (2011). "The development of male-oriented behavior in rams". *Front. Neuroendocrinol.* 32 (2): 164–9. doi:10.1016/j.yfrne.2010.12.007. PMC 3085551. PMID 21215767.

<sup>229</sup> Roselli CE, Larkin K, Schrunk JM, Stormshak F (November 2004). "Sexual partner preference, hypothalamic morphology and aromatase in rams". *Physiology & Behavior*. 83 (2): 233–45. doi:10.1016/j.physbeh.2004.08.017. PMID 15488542. S2CID 156571.

"quite obsessed with sexual intercourse". Many Europeans associated the hyena with sexual deformity, prostitution, and deviant sexual behavior.

## **VULTURES**

In 1998, two male griffon vultures named Dashik and Yehuda, at the Jerusalem Biblical Zoo, engaged in "open and energetic sex" and built a nest. The keepers provided the couple with an artificial egg, which the two parents took turns incubating, and 45 days later, the zoo replaced the egg with a baby vulture. The two male vultures raised the chick together<sup>230</sup>. A few years later, however, Yehuda became interested in a female vulture that was brought into the aviary. Dashik became depressed, and was eventually moved to the zoological research garden at Tel Aviv University where he too set up a nest with a female vulture<sup>231</sup>.

Two male vultures at the Allwetter Zoo in Muenster built a nest together, although they were picked on and their nest materials were often stolen by other vultures. They were eventually separated to try to promote breeding by placing one of them with female vultures, despite the protests of German homosexual groups.

## **PIGEONS**

Both male and female pigeons sometimes exhibit homosexual behavior. In addition to sexual behavior, same-sex pigeon pairs will build nests, and hens will lay (infertile) eggs and attempt to incubate them.

## **Black swans**

An estimated one-quarter of all black swan pairings are of males. They steal nests, or form temporary threesomes with females to obtain eggs, driving away the female after she lays the eggs. The males spent time in each other's society, guarded the common territory, performed greeting ceremonies before each other, and (in the reproductive period) pre-marital rituals, and if one of the birds tried to sit on the other, an intense fight began<sup>232</sup>. More of their cygnets survive to adulthood than those of different-sex pairs, possibly due to their superior ability to defend large

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<sup>230</sup> Silver E (2 August 1999). "Gay vulture couple raise surrogate chicks". *The Independent*. London.

<sup>231</sup> Lis J (21 September 2009). "'Gay' vulture couple split up at Jerusalem zoo, then become fathers"

<sup>232</sup> Braithwaite LW (1970). "The Black Swan". *Australian Natural History*. 16: 375–379.

portions of land. The same reasoning has been applied to male flamingo pairs raising chicks<sup>233</sup>.

## **THE SPREAD OF HOMOSEXUALITY AND ITS GAIN OF MORAL SUPPORT.**

According to Bonnie J Morris<sup>234</sup>, On June 12, 2016, the popular gay dance club Pulse in Orlando was the site of a mass shooting by one assailant. With at least 49 dead and another 50 injured, this hate crime is being called the worst mass shooting in U.S. history. It occurred during what was LGBT Pride weekend for towns and cities in and beyond the United States. This created an immediate caring response from mayors, police and FBI authorities, local and national politicians, and the President of the United States, who reached out to express outrage and concern which in effect demonstrates the enormous shift toward acceptance and public support for the LGBT community. Despite the fact that the LGBTQIA+ community and individuals remain targets for hate violence, the hard work of activists and allies made it possible to reach this era, where the perpetrators of violence, not the victims, are condemned as sick.

Social movements, organizing around the acceptance and rights of persons who might today identify as LGBT or queer, began as responses to centuries of persecution by church, state and medical authorities. Where homosexual activity or deviance from established gender roles/dress was banned by law or traditional custom, such condemnation might be communicated through sensational public trials, exile, medical warnings and language from the pulpit. These paths of persecution entrenched homophobia for centuries—but also alerted entire populations to the existence of difference. Whether an individual recognized they, too, shared this identity and were at risk, or dared to speak out for tolerance and change, there were few organizations or resources before the scientific and political revolutions of the 18th and 19th centuries. Gradually, the growth of a public media and ideals of human rights drew together activists from all walks of life, who drew courage from sympathetic medical studies, banned literature, emerging sex research and a climate of greater democracy. By the 20th century, a movement in recognition

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<sup>233</sup> Young LC, Zaun BJ, Vanderwerf EA (August 2008). "Successful same-sex pairing in Laysan albatross". *Biology Letters*. 4 (4): 323–5. doi:10.1098/rsbl.2008.0191. PMC 2610150. PMID 18505710.

<sup>234</sup> History of Lesbian, Gay, Bisexual and Transgender Social Movements. Bonnie J Morris, PHD.

of gays and lesbians was underway, abetted by the social climate of feminism and new anthropologies of difference. However, throughout 150 years of homosexual social movements (roughly from the 1870s to today), leaders and organizers struggled to address the very different concerns and identity issues of gay men, women identifying as lesbians, and others identifying as gender variant or nonbinary. White, male and Western activists whose groups and theories gained leverage against homophobia did not necessarily represent the range of racial, class and national identities complicating a broader LGBT agenda. Women were often left out altogether.

Most historians agree that there is evidence of homosexual activity and same-sex love, whether such relationships were accepted or persecuted, in every documented culture. We know that homosexuality existed in ancient Israel simply because it is prohibited in the Bible, whereas it flourished between both men and women in Ancient Greece. Substantial evidence also exists for individuals who lived at least part of their lives as a different gender than assigned at birth. From the lyrics of same-sex desire inscribed by Sappho in the seventh century BCE to youths raised as the opposite sex in cultures ranging from Albania to Afghanistan; from the “female husbands” of Kenya to the Native American “Two-Spirit,” alternatives to the Western male-female and heterosexual binaries thrived across millennia and culture. These realities gradually became known to the West via travelers’ diaries, the church records of missionaries, diplomats’ journals, and in reports by medical anthropologists. Such eyewitness accounts in the era before other media were of course riddled with the biases of the (often) Western or white observer, and added to beliefs that homosexual practices were other, foreign, savage, a medical issue, or evidence of a lower racial hierarchy. The peaceful flowering of early trans or bisexual acceptance in different indigenous civilizations met with opposition from European and Christian colonizers.

In the age of European exploration and empire-building, Native American, North African and Pacific Islander cultures accepting of “Two-Spirit” people or same-sex love shocked European invaders who objected to any deviation from a limited understanding of “masculine” and “feminine” roles. The European powers enforced their own criminal codes against what was called sodomy in the New World: the first known case of homosexual activity receiving a death sentence in North America occurred in 1566, when the Spanish executed a Frenchman in Florida. Against the

emerging backdrop of national power and Christian faith, what might have been learned about same-sex love or gender identity was buried in scandal. Ironically, both wartime conflict between emerging nations and the departure or deaths of male soldiers left women behind to live together and fostered strong alliances between men as well. Same-sex companionship thrived where it was frowned upon for unmarried, unrelated males and females to mingle or socialize freely. Women's relationships in particular escaped scrutiny since there was no threat of pregnancy. Nonetheless, in much of the world, female sexual activity and sensation were curtailed wherever genital circumcision practices made clitoridectomy an ongoing custom.

Where European dress—a clear marker of gender—was enforced by missionaries, we find another complicated history of both gender identity and resistance. Biblical interpretation made it illegal for a woman to wear pants or a man to adopt female dress, and sensationalized public trials warned against “deviants” but also made such martyrs and heroes popular: Joan of Arc is one example, and the chilling origins of the word “faggot” include a stick of wood used in public burnings of gay men. Despite the risks of defying severe legal codes, cross-dressing flourished in early modern Europe and America. Women and girls, economically oppressed by the sexism which kept them from jobs and economic/education opportunities designated for men only, might pass as male in order to gain access to coveted experiences or income. This was a choice made by many women who were not necessarily transgender in identity. Women “disguised” themselves as men, sometimes for extended periods of years, in order to fight in the military (Deborah Sampson), to work as pirates (Mary Read and Anne Bonney), attend medical school, etc. Both men and women who lived as a different gender were often only discovered after their deaths, as the extreme differences in male vs. female clothing and grooming in much of Western culture made “passing” surprisingly easy in certain environments. Moreover, roles in the arts where women were banned from working required that men be recruited to play female roles, often creating a high-status, competitive market for those we might today identify as transwomen, in venues from Shakespeare's theatre to Japanese Kabuki to the Chinese opera. This acceptance of performance artists, and the popularity of “drag” humor cross-culturally, did not necessarily mark the start of transgender advocacy, but made the arts an often-

accepting sanctuary for LGBT individuals who built theatrical careers based around disguise and illusion.

The era of sexology studies is where we first see a small, privileged cluster of medical authorities begin promoting a limited tolerance of those born “invert.” In Western history, we find little formal study of what was later called homosexuality before the 19th century, beyond medical texts identifying women with large clitorises as “tribades” and severe punishment codes for male homosexual acts. Early efforts to understand the range of human sexual behavior came from European doctors and scientists including Carl von Westphal (1869), Richard von Krafft-Ebing (1882) and Havelock Ellis (1897)<sup>235</sup>. Their writings were sympathetic to the concept of a homosexual or bisexual orientation occurring naturally in an identifiable segment of humankind, but the writings of Krafft-Ebing and Ellis also labeled a “third sex” degenerate and abnormal. Sigmund Freud, writing in the same era, did not consider homosexuality an illness or a crime and believed bisexuality to be an innate aspect beginning with undetermined gender development in the womb. Yet Freud also felt that lesbian desires were an immaturity woman could overcome through heterosexual marriage and male dominance. These writings gradually trickled down to a curious public through magazines and presentations, reaching men and women desperate to learn more about those like themselves, including some like English writer Radclyffe Hall who willingly accepted the idea of being a “congenital invert.” German researcher Magnus Hirschfeld went on to gather a broader range of information by founding Berlin’s Institute for Sexual Science, Europe’s best library archive of materials on gay cultural history. His efforts, and Germany’s more liberal laws and thriving gay bar scene between the two World Wars, contrasted with the backlash, in England, against gay and lesbian writers such as Oscar Wilde and Radclyffe Hall. With the rise of Hitler’s Third Reich, however, the former tolerance demonstrated by Germany’s Scientific Humanitarian Committee vanished. Hirschfeld’s great library was destroyed and the books burnt by Nazis on May 10, 1933.

In the United States, there were few attempts to create advocacy groups supporting gay and lesbian relationships until after World War II. However, prewar gay life flourished in urban centers such as New York’s Greenwich Village and Harlem

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<sup>235</sup> Carl von Westphal (1869), Richard von Krafft-Ebing (1882) and Havelock Ellis (1897)

during the Harlem Renaissance of the 1920s. The blues music of African-American women showcased varieties of lesbian desire, struggle and humor; these performances, along with male and female drag stars, introduced a gay underworld to straight patrons during Prohibition's defiance of race and sex codes in speakeasy clubs. The disruptions of World War II allowed formerly isolated gay men and women to meet as soldiers and war workers; and other volunteers were uprooted from small towns and posted worldwide. Many minds were opened by wartime, during which LGBT people were both tolerated in military service and officially sentenced to death camps in the Holocaust. This increasing awareness of an existing and vulnerable population, coupled with Sen. Joseph McCarthy's investigation of homosexuals holding government jobs during the early 1950s outraged writers and federal employees whose own lives were shown to be second-class under the law, including Frank Kameny, Barbara Gittings, Allen Ginsberg and Harry Hay. Awareness of a burgeoning civil rights movement (Martin Luther King's key organizer Bayard Rustin was a gay man) led to the first American-based political demands for fair treatment of gays and lesbians in mental health, public policy and employment. Studies such as Alfred Kinsey's 1947 Kinsey Report suggested a far greater range of homosexual identities and behaviors than previously understood, with Kinsey creating a "scale" or spectrum ranging from complete heterosexual to complete homosexual.

The primary organization for gay men as an oppressed cultural minority was the Mattachine Society, founded in 1950 by Harry Hay and Chuck Rowland. Other important homophile organizations on the West Coast included One, Inc., founded in 1952, and the first lesbian support network Daughters of Bilitis, founded in 1955 by Phyllis Lyon and Del Martin. Through meetings and publications, these groups offered information and outreach to thousands. These first organizations soon found support from prominent sociologists and psychologists. In 1951, Donald Webster Cory published "The Homosexual in America", asserting that gay men and lesbians were a legitimate minority group, and in 1953 Evelyn Hooker, PhD, won a grant from the National Institute of Mental Health to study gay men. Her groundbreaking paper, presented in 1956, demonstrated that gay men were as well-adjusted as heterosexual men, often more so. But it would not be until 1973 that the American Psychiatric Association removed homosexuality as an "illness" classification in its diagnostic manual. Throughout the 1950s and 60s, gay men and lesbians continued

to be at risk for psychiatric lockup as well as jail, losing jobs, and/or child custody when courts and clinics defined gay love as sick, criminal or immoral.

In 1965, as the civil rights movement won new legislation outlawing racial discrimination, the first gay rights demonstrations took place in Philadelphia and Washington, D.C., led by longtime activists Frank Kameny and Barbara Gittings. The turning point for gay liberation came on June 28, 1969, when patrons of the popular Stonewall Inn in New York's Greenwich Village fought back against ongoing police raids of their neighborhood bar. Stonewall is still considered a watershed moment of gay pride and has been commemorated since the 1970s with "pride marches" held every June across the United States. Recent scholarship has called for better acknowledgement of the roles that drag performers, people of color, bisexuals and transgender patrons played in the Stonewall Riots.

The gay liberation movement of the 1970s saw myriad political organizations spring up, often at odds with one another. Frustrated with the male leadership of most gay liberation groups, lesbians influenced by the feminist movement of the 1970s formed their own collectives, record labels, music festivals, newspapers, bookstores, and publishing houses, and called for lesbian rights in mainstream feminist groups like the National Organization for Women (NOW). Gatherings such as women's music concerts, bookstore readings and lesbian festivals well beyond the United States were extraordinarily successful in organizing women to become activists; the feminist movement against domestic violence also assisted women to leave abusive marriages, while retaining custody of children became a paramount issue for lesbian mothers.

Expanding religious acceptance for gay men and women of faith, the first out gay minister was ordained by the United Church of Christ in 1972. Other gay and lesbian church and synagogue congregations soon followed. Parents and Friends of Lesbians and Gays (PFLAG), formed in 1972, offered family members greater support roles in the gay rights movement. And political action exploded through the National Gay and Lesbian Task Force, the Human Rights Campaign, the election of openly gay and lesbian representatives like Elaine Noble and Barney Frank, and, in 1979, the first march on Washington for gay rights. The increasing expansion of a global LGBT rights movement suffered a setback during the 1980s, as the gay male community was decimated by the AIDS epidemic, demands for compassion and

medical funding led to renewed coalitions between men and women as well as angry street theatre by groups like AIDS Coalition to Unleash Power (ACT UP) and Queer Nation. Enormous marches on Washington drew as many as one million gay rights supporters in 1987 and again in 1993. Right wing religious movements, spurred on by beliefs that AIDS was God's punishment, expanded via direct mail. A New Right coalition of political lobby groups competed with national LGBT organizations in Washington, seeking to create religious exemptions from any new LGBT rights protections. In the same era, one wing of the political gay movement called for an end to military expulsion of gay, lesbian and bisexual soldiers, with the high-profile case of Col. Margarethe Cammermeyer publicized through a made-for-television movie, "Serving in Silence." In spite of the patriotism and service of gay men and lesbians in uniform, the uncomfortable and unjust compromise "Don't Ask, Don't Tell" emerged as an alternative to decades of military witch hunts and dishonorable discharges. Yet more service members ended up being discharged under DADT.



## CHAPTER TEN

### A CENTURY OF ACTIVISM

The 20th century saw a wave of organized activism to secure LGBTQ civil rights and freedoms. LGBTQ people had long been subject to public hostility and legal prosecution, and were widely denied protection against discrimination in employment, housing, military service, and private and public services. In the years after World War II, activists across the nation formed organizations, including the Mattachine Society and the Daughters of Bilitis, to campaign for civil rights for gay men and lesbians. Early movement leaders included Frank Kameny, who spent decades fighting against the federal government's anti-LGBTQ employment policies, and Lilli Vincenz, who published newsletters and columns, picketed the White House, and made films that documented key moments in the movement<sup>236</sup>.

In June 1969, police raided the Stonewall Inn, a popular gay bar in New York City's Greenwich Village. The bar's patrons, including transgender and gender non-conforming people, lesbians, and gay men, fought back, sparking several days of protests. A year later, to mark the anniversary of the uprising, thousands of people took to the streets for the Christopher Street Liberation Day Parade, which is widely regarded as the first Pride celebration<sup>237</sup>.

In the ensuing decades, lesbians, gay men, bisexuals, and transgender people organized and fought on many fronts for equality and civil rights, including rights to employment, military service, and marriage. The HIV/AIDS epidemic that began in the 1980s hit LGBTQ communities hard, and LGBTQ people played central roles in shaping public-health advocacy campaigns that accelerated research and access to new treatments. The tools that activists have used in these struggles have changed over the decades as new technologies have emerged. Also, organizations have

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<sup>236</sup> [tps://www.loc.gov/classroom-materials/lgbtq-activism-and-contributions/](https://www.loc.gov/classroom-materials/lgbtq-activism-and-contributions/)

<sup>237</sup> Ibid.

changed as they have been challenged to recognize their past blind spots and acknowledge individuals and communities who they themselves have excluded.

During in the last decade of the 20th century, millions of Americans watched as actress Ellen DeGeneres came out on national television in April 1997, heralding a new era of gay celebrity power and media visibility—although not without risks. Celebrity performers, both gay and heterosexual, continued to be among the most vocal activists calling for tolerance and equal rights. With greater media attention to gay and lesbian civil rights in the 1990s, trans and intersex voices began to gain space through works such as Kate Boernstein's "Gender Outlaw"<sup>238</sup> and "My Gender Workbook" (1998), Ann Fausto-Sterling's "Myths of Gender" (1992) and Leslie Feinberg's *Transgender Warriors* (1998), enhancing shifts in women's and gender studies to become more inclusive of transgender and nonbinary identities. As a result of hard work by countless organizations and individuals, helped by internet and direct-mail campaign networking, the 21st century heralded new legal gains for gay and lesbian couples. Same-sex civil unions were recognized under Vermont law in 2000 and Massachusetts became the first state to perform same-sex marriages in 2004; with the end of state sodomy laws (*Lawrence v. Texas*, 2003), gay and lesbian Americans were finally free from criminal classification. Gay marriage was first legal in the Netherlands, Belgium, Spain and Canada; but the recognition of gay marriage by church and state continued to divide opinion worldwide. After the impressive gains for LGBT rights in post-apartheid South Africa, conservative evangelicals in the U.S. began providing support and funding for homophobic campaigns overseas. Uganda's dramatic death penalty for gays and lesbians was perhaps the most severe in Africa.

The first part of the 21st century saw new emphasis on transgender activism and the increasing usage of terminology that questioned binary gender identification. Images of trans women became more prevalent in film and television, as did programming with same-sex couples raising children. Transphobia, cissexism and other language (such as "hir" and "them") became standardized, and film and television programming featured more openly trans youth and adult characters. Tensions between lesbian and trans activists, however, remained, with the long-running Michigan Womyn's Music Festival boycotted by national LGBT groups over the

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<sup>238</sup> *Gender Outlaw* 1994.

issue of trans inclusion; like many woman-only events with a primarily lesbian base, Michfest had supported an ideal of ingathering women and girls born female. The festival ended after its fortieth anniversary in August 2015.

Internet activism burgeoned, while many of the public, physical gathering spaces that once defined LGBT activism (bars, bookstores, women's music festivals) began to vanish, and the usage of "queer" replaced lesbian identification for many younger women activists. Attention shifted to global activism as U.S. gains were not matched by similar equal rights laws in the 75 other countries where homosexuality remained illegal. As of 2016, LGBT identification and activism were still punishable by death in ten countries: Iran, Iraq, Mauritania, Nigeria, Qatar, Saudi Arabia, Somalia, Sudan, Uganda and Yemen; the plight of the LGBT community in Russia received intense focus during the 2014 Winter Olympic Games, to which President Obama sent a contingent of out LGBT athletes. Supportive remarks from the new Pope Francis ("Who am I to judge?") gave hope to LGBT Catholics worldwide.

## **Media representation**

As more transgender people are represented and included within the realm of mass culture, the stigma that is associated with being transgender can influence the decisions, ideas, and thoughts based upon it. Media representation, culture industry, and social marginalization all hint at popular culture standards and the applicability and significance to mass culture as well. These terms play an important role in the formation of notions for those who have little recognition or knowledge of transgender people. Media depictions represent only a minuscule spectrum of the transgender group<sup>239</sup>, which essentially conveys that those that are shown are the only interpretations and ideas society has of them.

However, in 2014, the United States reached a "transgender tipping point", according to Time<sup>240</sup>. At this time, the media visibility of transgender people reached a level higher than seen before. Since then, the number of transgender portrayals across TV platforms has stayed elevated. Research has found that viewing multiple

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<sup>239</sup> "MTV to launch new channel for gay viewers in 2005 – May. 25, 2004". CNN.

<sup>240</sup> Steinmetz, K. (May 28, 2014). "The transgender tipping point". Time.

transgender TV characters and stories improves viewers' attitudes toward transgender people and related policies<sup>241</sup>.

## **EVENTS THAT HAVE FAVOURED ITS SPREAD.**

### **International Transgender Day of Visibility**

International Transgender Day of Visibility is an annual holiday occurring on March 31<sup>[245][246]</sup> dedicated to celebrating transgender people and raising awareness of discrimination faced by transgender people worldwide. The holiday was founded by Michigan-based transgender activist Rachel Crandall in 2009<sup>242</sup>.

### **Transgender Awareness Week**

Transgender Awareness Week is a one-week celebration leading up to Transgender Day of Remembrance. The purpose of Transgender Awareness Week is to educate about transgender and gender non-conforming people and the issues associated with their transition or identity<sup>243</sup>.

### **Transgender Day of Remembrance**

Transgender Day of Remembrance (TDOR) is held every year on November 20 in honor of Rita Hester, who was killed on November 28, 1998, in an anti-transgender hate crime. TDOR serves a number of purposes:

- it memorializes all of those who have been victims of hate crimes and prejudice,
- it raises awareness about hate crimes towards the transgender community,
- and it honors the dead and their relatives<sup>[250]</sup>

### **Trans March**

Annual marches, protests or gatherings take place around the world for transgender issues, often taking place during the time of local Pride parades for LGBT people.

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<sup>241</sup> Gillig, Traci K; Rosenthal, Erica L; Murphy, Sheila T; Folb, Kate Langrall (2017). "More than a Media Moment: The Influence of Televised Storylines on Viewers' Attitudes toward Transgender People and Policies". *Sex Roles*. 78 (7–8): 1–13. doi:10.1007/s11199-017-0816-1. S2CID 149238194.

<sup>242</sup> Carreras, Jessica. "Transgender Day of Visibility plans erupt locally, nationwide". *PrideSource*.

<sup>243</sup> "Transgender Awareness Week". *GLAAD*. Archived from the original on 3 April 2019. Retrieved 3 April 2019.

These events are frequently organised by trans communities to build community, address human rights struggles, and create visibility<sup>244</sup>.

## **Pride symbols**

The greatest changes in the U.S. occurred between spring 2015 and spring 2016: in late spring 2015 Alison Bechdel's lesbian-themed Broadway production *Fun Home* won several Tony awards, former Olympic champion Bruce Jenner transitioned to Caitlyn Jenner, and then in June of 2015, the Supreme Court decision recognized same-sex marriage **Obergefell v. Hodges**<sup>245</sup>.

By spring 2016 the Academy Awards recognized films with both lesbian and transgender themes: *Carol* and *The Danish Girl*. And the Supreme Court had avowed that a lesbian family adoption in one state had to be recognized in all states. However, the United States also saw intense racial profiling confrontations and tragedies in this same period, turning LGBT activism to “intersectionality,” or recognition of intersections issues of race, class, gender identity and sexism. With the June 12 attacks on the Pulse Club in Orlando, that intersectionality was made plain as straight allies held vigils grieving the loss of young Latino drag queens and lesbians of color; with unanswered questions about the killer's possible identification with ISIS terrorism, other voices now call for alliances between the LGBT and Muslim communities, and the greater recognition of perspectives from those who are both Muslim and LGBT in the U.S. and beyond. The possible repression of identity which may have played a role in the killer's choice of target has generated new attention to the price of homophobia –internalized, or culturally expressed— in and beyond the United States.

## **Gain of moral support**

The positive change in attitude towards lesbian and gay due to rapid change over time has led to the gain of moral support towards homosexuality in a survey conducted by The U.S. General Social Survey, Americans were asked about their attitudes toward lesbian and gay people in the early 1970s. Throughout the 1970s and 1980s, U.S. attitudes toward homosexuality were consistently negative. A large majority of Americans judged sexual relations between two adults of the same sex

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<sup>244</sup> "Trans March on Friday". Jun 21, 2006. Archived from the original on 10 July 2020. Retrieved 10 July 2020.

<sup>245</sup> 576 U.s. 644 (2015)

very harshly, with about 85% of survey respondents indicating that this was morally wrong, at least sometimes. As recently as 1990, the General Social Survey tells us that fewer than one in ten people said that same-sex sexual relations were “not wrong at all.”

According to Sage Journals<sup>246</sup>, U.S. attitudes have shifted dramatically and By 2014, about half of all respondents in their survey said that same-sex relations were not wrong at all. Based on these measures, there has been a large shift in the last twenty-five years toward moral approval of lesbian and gay sexual relations, greater support for lesbian and gay rights, and friendlier feelings toward lesbian and gay people. This large-scale increase in support is an unprecedented change in social attitudes, more sudden and more dramatic compared to other issues such as race.

Other surveys such as **The American National Election Study** have delved into how Americans feel about lesbian and gay people on a “feelings thermometer” scale of 1-100, with low scores reflecting colder feelings and high scores being warmer, more friendly feelings. You can see in the chart below that Americans’ feelings toward lesbian and gay people have been steadily warming over the years. 2012 was the first year that the mean response was above 50.

When asked about their opinions toward lesbian and gay rights, the responses were more positive. That an approval of rights to groups can be granted even if its considered that their actions are immoral, and this is the pattern that the surveys have shown. Americans are more positive about lesbian and gay people than about the moral question of homosexuality, more positive still about equal rights for lesbian and gay people.

Powerful organizations of the religious right used the issue of same-sex marriage to fight against lesbian and gay rights. Until very recently, they had been very successful at securing policy changes that would exclude same-sex couples from marriage at the federal level, as well as in many states. Following passage by a Republican congress, President Clinton, who has since disavowed his actions, signed the **Defense of Marriage Act** into law in 1996, limiting federally recognized marriages to those between one man and one woman—excluding lesbian and gay couples. At this time, only 27% of Americans thought that same-sex marriage should

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<sup>246</sup> Sage publishers ISSN-6052.

be legal. It seemed like a slam-dunk win for those interested in restricting lesbian and gay rights. Thirty-five states passed laws restricting marriage to straight couples.

A few years later, the dice began to turn. The lesbian and gay movement mobilized in full force to fight for marriage equality. They brought lawsuits to courts all across the country. They pressured elected officials to support their cause and introduced marriage equality legislation in several states.

In states where same-sex marriage was not legally recognized, protests included county clerks issuing marriage licenses and officials holding same-sex weddings. In 2004 in San Francisco, Phyllis and Del were at the front of the long line of same-sex couples who participated in wedding ceremonies that were later deemed invalid. Local and national television and print news media gave broad coverage to the spectacle of these protest weddings, drawing the attention of the nation to this issue. Supporters from all across the country sent flowers to the happy couples waiting to be married.

For decades, the LGBT movement in the United States worked tirelessly to secure equal rights and to increase social acceptance. From the early days of the **Daughters of Bilitis**, when activists fought against police raids on gay bars, to the recent fights for same-sex marriage, LGBT activism has produced slow, uneven gains as well as some losses. It is too soon to tell whether the recent policy victories of the LGBT movement will carry over into new areas where inequalities for LGBT people still exist, such as housing discrimination and violence against transgender people. However, the LGBT movement has seen much change since those early days of the Daughters of Bilitis, both in policy and in culture. Americans' attitudes toward lesbian and gay people are better than ever, and it looks like this will continue to improve into the future<sup>247</sup>.

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<sup>247</sup> Faderman, p. 190-191.



## **CHAPTER ELEVEN**

### **THE POSITIVE AND NEGATIVE PERCEPTIONS TOWARDS HOMOSEXUALITY**

Its important to note that there are no positive aspects or advantages of homosexuality, what rather exists is the wrong positive perception by those engaging in homosexuality where they hold personal conceptions of being gay.

This chapter explores the positive personal perceptions towards sexual orientation identity of LGBTQIA+. Based on qualitative interviews conducted with an ethnically diverse sample of 63 gay/bisexual male adolescents in Chicago (N=42) and Miami (N=21) by Gary W. Harper, Asya Brodsky and Douglas Bruce<sup>248</sup>

The study highlighted two conceptual categories: positive personal conceptualizations of being gay/bisexual, and resiliency in the face of gay-related oppression. Additional primary themes and sub-themes were identified within each category that further illustrate how gay/bisexual youth were able to develop positive conceptualizations of their sexual orientation despite experiencing negative societal messages about being gay/bisexual.

### **POSITIVE PERSONAL CONCEPTUALIZATIONS OF BEING GAY/BISEXUAL**

This envisaged the two themes of being gay/bisexual as Flexibility and Connectedness. Within the theme of flexibility, three sub-themes emerged—sexual flexibility, environmental flexibility and gender flexibility as discussed below.

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<sup>248</sup> What's Good about Being Gay?: Perspectives from Youth, Gary W. harper Department of Psychology, DePaul University, 2219 N. Kenmore Avenue, Room 420. Chicago, IL 60614.

## **FLEXIBILITY**

The Black's Law Dictionary defines flexibility to mean a way in which a system can change in a range and time frame. However, in the context of sexual orientation, it refers to the aspect of a person with a different sex identity turning to a different sex orientation, for instance, A gay male having sex with a lesbian and vice versa.

According to Kelly Kinnish<sup>249</sup>, The flexibility of sexual orientation in men and women was examined by assessing self reported change overtime for three dimensions of sexual orientation: heterosexual, bisexual, and gay. The findings indicate that there were significant sex differences in reported change in orientation overtime for gays and heterosexuals, with women reporting greater change in orientation over time than did men. Bisexual men and women did not differ with respect to self reported change in orientation.

### **1.1 SEXUAL FLEXIBILITY,**

Bisexual young men described the ability to have sexual relations with both males and females. One youth commented that being bisexual allowed him to not feel constrained to one sexual orientation category.

Um, positive things? Hum. I don't know. I get to like girls and boys, I guess. Um, I have to classify, I really have a problem with classifying myself. Like that's really an issue with me. I don't like to be classified as one thing, because then it doesn't really make you who you are. It's kind of this blending with the rest of the people. (Justin, 18-year-old, multi-racial bisexual male)

In this aspect, the participant gained strength from resisting stereotypes associated with sexual orientation classification. He felt that by not identifying as gay or straight, he was able to be himself around others.

## **ENVIRONMENTAL FLEXIBILITY.**

Youth commented on how being gay/bisexual allowed them to explore more physical places and spaces, specifically ones that are gay-friendly. In this sub-theme

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<sup>249</sup> Sex differences in the flexibility of sexual orientation: A multidimensional retrospective assessment, Kelly Kinnish et al. Arch Sex Behav. 2005 Apr.

the young men did not discuss the need to escape from unsafe spaces, but rather emphasized the benefits of visiting places specifically tailored to LGBT youth.

Well, I really think I'm really lucky when it comes to that. Like there's just so much available now that like I really like to utilize. Like there's so many organizations, like I go over to [name of agency] and there's gays everywhere. And um, there's just all, there's dances to go to. I love to go dancing. And I mean, it's just like if you like really sit down, like count your blessings, there's so much out there that I'm really like grateful for and like that I really am lucky to have available to me, like when it comes to in terms of like things that are oriented for my sexuality and for people that are like, and for places that I can go and be safe, doing whatever, and stuff like that. That's very important to me<sup>250</sup>.

## **GENDER FLEXIBILITY.**

Participants who discussed gender flexibility reported the ability to experiment with gender roles. Specifically, the youth spoke about their ability to display both masculine and feminine traits.

I think you're free from some of the things that we talked about, some of the ideas of what it means to be a man. You don't really have to, it's not something you really have to think about when you're gay. You can kind of be who you are and not have to worry about um, being masculine or being ah, a stereotypical man<sup>251</sup>.

Its argued that if one can identify with two genders, they can resiliently beat any form of gender discrimination One of the participants in the above study utilized a strategy of resisting stereotypes specifically associated with gender. Many of the adolescents who spoke about gender flexibility offered their views on the concept of masculinity, and how being a man has been constructed by society. Individuals whose responses reflected this sub-theme of gender flexibility expressed a sense of freedom, as well as a sense of strength gained from rejecting stereotypes associated with being a man.

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<sup>250</sup> (Paul, 16-year-old, Italian gay male)

<sup>251</sup> (Michael, 22-year-old, White gay male)

## CONNECTEDNESS.

Participants focused these internal messages either on being connected with females or connected to the gay community. The youth who described a connection with females emphasized that females generally find gay men trusting and valuable in providing emotional support, as compared to heterosexual men.

Well, I mean, there's a lot of things. I mean, like um, I feel like um, women are more trusting of me because I'm gay. Um, um, which is a plus, because I'm kind of gonna be that rock in a way, like they can come to me and talk to me about stuff. However, I mean, I guess I was coming up like that figure anyways before, but it's definitely more so now. (Sean, 21-year-old, Eastern European gay male)

Another participant who commented on connectedness with females argued that the reason for this closeness is the fact that straight men typically befriend women for sexual purposes, while gay men do not. Additionally, he argued that both gay men and straight women are able to share their experiences with male sexual/dating partners and receive advice from one another.

Some youth expressed a sense of *connection to the gay community*. They discussed feeling connected to other individuals who had gone through similar experiences and their ability to bond through hardships. Participants also expressed the ability to form social support groups with other gay people.

Positive things about being gay? Um, it's, it's very easy to, to, when you do find somebody that is, that is very similar to yourself, it's very easy to find a connection with them because they've endured a lot of the same hardships that you have and, and you, and it's easy to talk, I feel like it's very easy to talk to somebody else who is gay, because they've experienced a lot of the same things that I have in coming and developing their identity<sup>252</sup>.

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<sup>252</sup> (Patrick, 20-year-old, White gay male)

Recent research by the sociocultural psychologist, Chana Etengoff, has highlighted the therapeutic benefits of LGBTQ petitions to religious leaders, including meaning-making, social action, agency and empowerment<sup>253</sup>.

**Equal Protection Under the Law:** Legalizing same-sex marriage can be seen as an extension of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, which guarantees equal treatment under the law to all citizens regardless of their gender or sexual orientation. In the landmark case of **Obergefell v. Hodges**<sup>254</sup>, the Supreme Court of the United States held that same-sex couples have a constitutional right to marry and that bans on same-sex marriage are unconstitutional.

**Recognition of Parental Rights:** Legalizing same-sex marriage can help to recognize and protect the parental rights of same-sex couples and their children. In the case of **V.L. v. E.L.** (2016), the Supreme Court of the United States held that *a* same-sex partner who is not a biological or adoptive parent can still have parental rights in some circumstances.

**Access to Legal Protections:** Legalizing same-sex marriage can grant same-sex couples' access to a range of legal protections and benefits, such as spousal health insurance, inheritance rights, and survivor benefits. In the United States, the Defense of Marriage Act (DOMA) was struck down in 2013 in the case of *United States v. Windsor*, allowing same-sex couples access to these legal protections.

**Right to Privacy:** Ugandan law recognizes the right to privacy, which can be seen as a legal merit for same-sex relationships. In 2014, the Constitutional Court of Uganda declared the Anti-Homosexuality Act unconstitutional on the grounds that it violated the right to privacy and dignity of LGBTQ+ individuals. Its however still the position of the law under The Penal Code Act that homosexuality is illegal.

## **Resiliency in the Face of Gay-Related Oppression**

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<sup>253</sup> Etengoff, Chana (2016-04-04). "Petitioning for Social Change: Letters to Religious Leaders From Gay Men and Their Family Allies". *Journal of Homosexuality*. **64** (2): 166–194. doi:10.1080/00918369.2016.1174022. ISSN 0091-8369. PMID 27046269. S2CID 40419307.

<sup>254</sup> (2015)

Although many of the youth focused on positive conceptualizations of being gay/bisexual, some identified ways in which they had demonstrated resiliency in the face of oppression. Participants expressed their resiliency in four ways, including acceptance, self-care, rejection of stereotypes, and activism. Inherent in many of the themes and sub-themes in this section is the acknowledgement and confirmation that these youth have experienced various forms of oppression and marginalization related to their sexual orientation, but they demonstrated resiliency and strength in the face of these negative forces.

Youth who discussed messages of acceptance either centered their responses on self-acceptance or acceptance by others. The youth who described self-acceptance argued that exploring their sexuality allowed for the opportunity to be who they are, which resulted in greater feelings of happiness.

Well, um, it's, it's fun (chuckles) at times. Um, positive about being gay? Ah, well, just because it is what I am, um, the more I come to accept it, the more fun I have, I guess, with it. Ah, it's hard to say a lot of positive things of being gay, because society doesn't see it the same way. I don't know. So that's all I have to say<sup>255</sup>. Here the participant acknowledges pervasive negative societal views of gay/bisexual people, but he has been able to find self-acceptance and enjoyment in being gay. Another participant who discussed self-acceptance focused on the importance of "not hiding behind something." He empowered himself and gained strength by not concealing his sexual orientation identity around others.

Several of the youth reported acceptance by others as another form of resiliency. They discussed feeling connected to friends who accepted them as gay/bisexual young men, and expressed how such acceptance served as a form of social support. The following youth talks about the fun he has with his friends who are not gay/bisexual and emphasizes that a critical aspect of his relationship with them is that they do not "judge" him or hold negative views of gay/bisexual people

Now the positives, like my friends and stuff, they're the ones I kick it with, them, I'm acting like, okay, we gonna go out with him and we just gonna have fun. We

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<sup>255</sup> (Ben, 20-year-old, White gay male)

gonna enjoy ourselves, to go the movies, go to whatever, go out to eat and stuff like that. They don't judge me...<sup>256</sup>

Participants also acknowledged self-care as a resiliency strategy. Those that stressed the importance of self-care discussed the need to take care of oneself on both an emotional and physical level. Emotional self-care was discussed in the context of acknowledging and being aware of the negative emotional impact of heterosexist societal messages on them as gay/bisexual young men, and then building resistance strategies to such pervasive negativity. This often resulted in increased vigilance around homophobic individuals. One young man discussed the potential negative consequences of being openly gay around “homophobic people” and the need to be responsible when making decisions about sexual orientation disclosure.

And be careful. Be responsible with it. Not just be, I mean, if you're out you have to be careful of like you don't run into like those certain people that's gonna hurt you. Like you have to be responsible enough to take care of yourself, if you're gonna be out.... Well, think about like certain things, like think that, try not to get shot or something. Be careful who you tell or who

## **NEGATIVE PERCEPTIONS**

The negative conditions created by societal and psychological challenges placed on LGBTQIA+ populations often lead to unique stressors and have been associated with various health disparities<sup>257</sup>. Adolescent-focused research has indicated that stressors affecting LGB populations may include stigmatization due to disclosure of their sexual orientation identity and fear of disclosure and ridicule, all of which may be classified as “sexual orientation victimization”<sup>258</sup>.

Ryan, Huebner & Diaz focused on the association between family rejection and substance use, risky sexual behavior, and suicide attempts/suicide ideation among LGBTQIA+ adolescents and found a positive relationship between family rejection and the physical and mental health risk variables they explored<sup>259</sup>.

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<sup>256</sup> (Chris, 23-year-old, African American gay male)

<sup>257</sup> Meyer, 2007; Stall, Freidman & Catania, 2008.

<sup>258</sup> Bontempo & D'Augelli, 2002.

<sup>259</sup> Diaz, & Ayala2001; Harper & Schneider, 2003.

Savin-Williams in 2006 discussed the existing link revealed in prior studies between victimization of LGB adolescents/adults and clinical diagnoses of depression, anxiety and other negative mental health outcomes. Such studies suggest that outlets are not being provided for these youth to explore their identities and allow for a healthy and positive development. In addition to the basic challenges of adolescent development, LGB youth must face self-identity and disclosure issues.

Forms of discriminations against LGBTQIA+ persons are multiple and are predominant in areas of employment, housing, access to health care and education as reported by Diaz, & Ayala<sup>260</sup>. Unfortunately, federal U.S. laws and legislation fail to protect individuals from these inequalities.

The existence of laws prohibiting same-sex couples from marrying or disallowing them from adopting/having custody over children reinforces the lack of human rights protections of LGBTQIA+ populations and legitimizes their continuing victimization<sup>261</sup>. Additionally, the “normalization” of heterosexuality provides limited opportunities for LGB adolescents to explore their sexual orientation identity and has been linked to adverse mental health outcomes<sup>262</sup>.

## **EMPLOYMENT DISCRIMINATION**

Transgender individuals experience significant rates of employment discrimination. A study conducted by shows that approximately 90% of trans people have encountered some form of harassment or mistreatment in their workplace. Moreover, 47% have experienced some form of adverse employment outcome due to being transgender; of this figure, 44% were passed over for a job, 23% were denied a promotion, and 26% were terminated on the grounds that they were transgender<sup>263</sup>.

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<sup>260</sup> Diaz, & Ayala2001; Harper & Schneider, 2003.

<sup>261</sup> Harper & Schneider, 2003

<sup>262</sup> Rivers & D’Augelli, 2001.

<sup>263</sup> "Gay and Transgender People Face High Rates of Workplace Discrimination and Harassment". Generation Progress. 2011-06-03. Archived from the original on 2021-04-21. Retrieved 2021-03-23.



## CHAPTER TWELVE

### RELIGIOUS EXEMPTIONS:

Legalizing same-sex marriage can infringe on religious liberties and freedom of conscience. Some legal cases have considered the scope and limits of religious exemptions in the context of same-sex marriage, such as Masterpiece **Cakeshop v. Colorado Civil Rights Commission** (2018), in which the Supreme Court of the United States held that a baker who refused to make a cake for a same-sex wedding based on his religious beliefs did not violate anti-discrimination laws.

**Parental Rights Challenges:** Despite legal recognition of same-sex marriage, same-sex couples may still face challenges to their parental rights and responsibilities. For example, in some jurisdictions, same-sex couples may still face obstacles in adopting children or securing parental rights in cases of surrogacy or donor insemination.

**Challenges to Gender Equality:** Legalizing same-sex marriage may perpetuate gendered expectations and roles, especially for same-sex couples who conform to traditional gender norms. For example, some studies have suggested that same-sex couples may still face pressure to conform to traditional gender roles and that legal recognition of same-sex marriage may not fully address gender-based discrimination.

**Legal and Social Backlash:** Legalizing same-sex marriage can also face opposition and backlash from individuals or groups who hold discriminatory attitudes towards the LGBTQ+ community. For example, some jurisdictions may pass laws or policies that limit or restrict the rights of same-sex couples or LGBTQ+ individuals more broadly, as has been the case in some states in the United States.

Data from multiple studies have demonstrated higher rates of verbal and physical victimization experienced by LGB adolescents as compared to their heterosexual

counterparts, and the negative effects this victimization has on their physical and mental health<sup>264</sup>

For instance, **Rivers and D’Augelli** explored the high prevalence of verbal and physical abuse present in the lives of LGBTQIA adolescents, and identified that such abuse is perpetuated by peers, parents, and teachers within educational settings, homes, and other social institutions. Furthermore, **D’Augelli** writes that LGBTQIA+ youth oftentimes report such incidents occurring on more than one occasion. When threats become a daily concern for some of these adolescents, it is not surprising that they may struggle to find sources of support and turn to health-damaging behaviors such as substance use, sexual risk behaviors, suicide attempts, and running away from home<sup>265</sup>.

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<sup>264</sup> ., Bontempo & D’Augelli, 2002; Chesir-Teran & Hughes, 2009; D’Augelli, 2002; 2006; D’Augelli & Hershberger, 1993; Rivers & D’Augelli, 2001; Savin-Williams & Cohen, 1996; Telljohan & Price, 1993.

<sup>265</sup> Harper, 2007; Rivers & D’Augelli, 2001; Savin-Williams, 1994; Scourfield, Roen & McDermott, 2008.



## CHAPTER THIRTEEN

# QUEER THEORY AND THE SOCIAL CONSTRUCTION OF SEXUALITY

With the rise of the gay liberation movement in the post-Stonewall era, overtly gay and lesbian perspectives began to be put forward in politics, philosophy and literary theory. Initially these often were overtly linked to feminist analyses of patriarchy (e.g., Rich, 1980) or other, earlier approaches to theory. Yet in the late 1980s and early 1990s queer theory was developed, although there are obviously important antecedents which make it difficult to date it precisely. There are a number of ways in which queer theory differed from earlier gay liberation theory, but an important initial difference becomes apparent once we examine the reasons for opting for employing the term ‘queer’ as opposed to ‘gay and lesbian.’ Some versions of, for example, lesbian theory portrayed the essence of lesbian identity and sexuality in very specific terms: non-hierarchical, consensual, and, specifically in terms of sexuality, as not necessarily focused upon genitalia<sup>266</sup>. Lesbians arguing from this framework, for example, could very well criticize natural law theorists as inscribing into the very “law of nature” an essentially masculine sexuality, focused upon the genitals, penetration, and the status of the male orgasm (natural law theorists rarely mention female orgasms).

This approach, based upon characterizations of ‘lesbian’ and ‘gay’ identity and sexuality, however, suffered from three difficulties. First, it appeared even though the goal was to critique a heterosexist regime for its exclusion and marginalization of those whose sexuality is different, any specific or “essentialist” account of gay or lesbian sexuality had the same effect. Sticking with the example used above, of a specific conceptualization of lesbian identity, it denigrates women who are sexually and emotionally attracted to other women, yet who do not fit the description. Sado-masochists and butch/fem lesbians arguably do not fit this ideal of ‘equality’ offered. A second problem was that by placing such an emphasis upon the gender of one’s

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<sup>266</sup> (e.g., Faderman, 1985)

sexual partner(s), other possible important sources of identity are marginalized, such as race and ethnicity. What may be of utmost importance, for example, for a black lesbian is her lesbianism, rather than her race. Many gays and lesbians of color attacked this approach, accusing it of re-inscribing an essentially white identity into the heart of gay or lesbian identity (Jagose, 1996).

The third and final problem for the gay liberationist approach was that it often took this category of ‘identity’ itself as unproblematic and unhistorical. Such a view, however, largely because of arguments developed within poststructuralism, seemed increasingly untenable. The key figure in the attack upon identity as ahistorical is Michel Foucault. In a series of works he set out to analyze the history of sexuality from ancient Greece to the modern era (1980, 1985, 1986). Although the project was tragically cut short by his death in 1984, from complications arising from AIDS, Foucault articulated how profoundly understandings of sexuality can vary across time and space, and his arguments have proven very influential in gay and lesbian theorizing in general, and queer theory in particular<sup>267</sup>

One of the reasons for the historical review above is that it helps to give some background for understanding the claim that sexuality is socially constructed, rather than given by nature. Moreover, in order to not prejudge the issue of social constructionism versus essentialism, I avoided applying the term ‘homosexual’ to the ancient or medieval eras. In ancient Greece the gender of one’s partner(s) was not important, but instead whether one took the active or passive role. In the medieval view, a ‘sodomite’ was a person who succumbed to temptation and engaged in certain non-procreative sex acts. Although the gender of the partner was more important in the medieval than in the ancient view, the broader theological framework placed the emphasis upon a sin versus refraining-from-sin dichotomy. With the rise of the notion of ‘homosexuality’ in the modern era, a person is placed into a specific category even if one does not act upon those inclinations. It is difficult to perceive a common, natural sexuality expressed across these three very different cultures. The social constructionist contention is that there is no ‘natural’ sexuality; all sexual understandings are constructed within and mediated by cultural understandings. The examples can be pushed much further by incorporating anthropological data outside of the Western tradition (Halperin, 1990; Greenberg,

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<sup>267</sup> (Spargo, 1999; Stychin, 2005).

1988). Yet even within the narrower context offered here, the differences between them are striking. The assumption in ancient Greece was that men (less is known about Greek attitudes towards women) can respond erotically to either sex, and the vast majority of men who engaged in same-sex relationships were also married (or would later become married). Yet the contemporary understanding of homosexuality divides the sexual domain in two, heterosexual and homosexual, and most heterosexuals cannot respond erotically to their own sex.

In saying that sexuality is a social construct, these theorists are not saying that these understandings are not real. Since persons are also constructs of their culture (in this view), we are made into those categories. Hence today persons of course understand themselves as straight or gay (or perhaps bisexual), and it is very difficult to step outside of these categories, even once one comes to see them as the historical constructs they are.

Gay and lesbian theory was thus faced with three significant problems, all of which involved difficulties with the notion of 'identity.' Queer theory arose in large part as an attempt to overcome them. How queer theory does so can be seen by looking at the term 'queer' itself. In contrast to gay or lesbian, 'queer,' it is argued, does not refer to an essence, whether of a sexual nature or not. Instead it is purely relational, standing as an undefined term that gets its meaning precisely by being that which is outside of the norm, however that norm itself may be defined. As one of the most articulate queer theorists puts it: "Queer is ... whatever is at odds with the normal, the legitimate, the dominant. There is nothing in particular to which it necessarily refers. It is an identity without an essence" (Halperin, 1995, 62, original emphasis). By lacking any essence, queer does not marginalize those whose sexuality is outside of any gay or lesbian norm, such as sado-masochists. Since specific conceptualizations of sexuality are avoided, and hence not put at the center of any definition of queer, it allows more freedom for self-identification for, say, black lesbians to identify as much or more with their race (or any other trait, such as involvement in an S & M subculture) than with lesbianism. Finally, it incorporates the insights of poststructuralism about the difficulties in ascribing any essence or non-historical aspect to identity.

This central move by queer theorists, the claim that the categories through which identity is understood are all social constructs rather than given to us by nature, opens

up a number of analytical possibilities. For example, queer theorists examine how fundamental notions of gender and sex which seem so natural and self-evident to persons in the modern West are in fact constructed and reinforced through everyday actions, and that this occurs in ways that privilege heterosexuality

Butler also examined are medical categories, such as ‘inverts’ and intersexuality, which are themselves socially constructed (Fausto-Sterling, 2000, is an erudite example of this, although she is not ultimately a queer theorist). Others examine how language and especially divisions between what is said and what is not said, corresponding to the dichotomy between ‘closeted’ and ‘out,’ especially in regards to the modern division of heterosexual/homosexual, structure much of modern thought<sup>268</sup>. That is, it is argued that when we look at dichotomies such as natural/artificial, or masculine/feminine, we find in the background an implicit reliance upon a very recent, and arbitrary, understanding of the sexual world as split into two species (Sedgwick, 1990). The fluidity of categories created through queer theory even opens the possibility of new sorts of histories that examine previously silent types of affections and relationships<sup>269</sup>.

Another critical perspective opened up by a queer approach, although certainly implicit in those just referred to, is especially important. Since most anti-gay and lesbian arguments rely upon the alleged naturalness of heterosexuality, queer theorists attempt to show how these categories are themselves deeply social constructs. An example helps to illustrate the approach. In an essay against gay marriage, chosen because it is very representative, James Q. Wilson (1996) contends that gay men have a “great tendency” to be promiscuous. In contrast, he puts forward loving, monogamous marriage as the natural condition of heterosexuality. Heterosexuality, in his argument, is an odd combination of something completely natural yet simultaneously endangered. One is born straight, yet this natural condition can be subverted by such things as the presence of gay couples, gay teachers, or even excessive talk about homosexuality. Wilson’s argument requires a radical disjunction between heterosexuality and homosexuality. If gayness is radically different, it is legitimate to suppress it. Wilson has the courage to be

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<sup>268</sup> (Butler, 1990, 1993).

<sup>269</sup> (Carter, 2005)

forthright about this element of his argument; he comes out against “the political imposition of tolerance” towards gays and lesbians<sup>270</sup>.

It is a common move in queer theory to bracket, at least temporarily, issues of truth and falsity (Halperin, 1995). Instead, the analysis focuses on the social function of discourse. Questions of who counts as an expert and why, and concerns about the effects of the expert’s discourse are given equal status to questions of the verity of what is said. This approach reveals that hidden underneath Wilson’s (and other anti-gay) work is an important epistemological move. Since heterosexuality is the natural condition, it is a place that is spoken from but not inquired into. In contrast, homosexuality is the aberration and hence it needs to be studied but it is not an authoritative place from which one can speak. By virtue of this heterosexual privilege, Wilson is allowed the voice of the impartial, fair-minded expert. Yet, as the history section above shows, there are striking discontinuities in understandings of sexuality, and this is true to the point that, according to queer theorists, we should not think of sexuality as having any particular nature at all. Through undoing our infatuation with any specific conception of sexuality, the queer theorist opens space for marginalized forms of sexuality, and thus of ways of being more generally.

The insistence that we must investigate the ways in which categories such as sexuality and orientation are created and given power through science and other cultural mechanisms has made queer theory appealing to scholars in a variety of disciplines. Historians and sociologists have drawn on it, which is perhaps unsurprising given the role of historical claims about the social construction of sexuality. Queer theory has been especially influential in literary studies and feminist theory, even though the dividing lines between the latter and queer thinking is contested<sup>271</sup>. One of the most prominent scholars working in the area of gay and lesbian issues in constitutional law has also drawn on queer theory to advance his interrogation of the ways that US law privileges heterosexuality<sup>272</sup>. Scholars in postcolonial and racial analyses, ethnography, American studies, and other fields have drawn on the conceptual tools provided by queer theory.

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<sup>270</sup> (Wilson, 1996, 35)

<sup>271</sup> (see Jagose, 2009; Marinucci, 2010).

<sup>272</sup> (Eskridge, 1999).

Despite its roots in postmodernism and Foucault's work in particular, queer theory's reception in France was initially hostile<sup>273</sup>. The core texts from the first 'wave' of queer theory, such as Judith Butler's and Eve Sedgwick's central works, were slow to appear in French translation, not coming out until a decade and a half after their original publication. Doubtless the French republican self-understanding, which is universalist and often hostile to movements that are multicultural in their bent, was a factor in the slow and often strenuously resisted importation of queer theoretical insights. Similarly, queer theory has also been on the margins in German philosophy and political philosophy. In sum, it is fair to say that queer theory has had a greater impact in the Anglo-American world.

## **QUEER CRITICISM**

Queer theory, however, has been criticized in a myriad of ways<sup>274</sup>. One set of criticisms comes from theorists who are sympathetic to gay liberation conceived as a project of radical social change. An initial criticism is that precisely because 'queer' does not refer to any specific sexual status or gender object choice, for example Halperin allows that straight persons may be 'queer,' it robs gays and lesbians of the distinctiveness of what makes them marginal<sup>275</sup>. It desexualizes identity, when the issue is precisely about a sexual identity. A related criticism is that queer theory, since it refuses any essence or reference to standard ideas of normality, cannot make crucial distinctions. For example, queer theorists usually argue that one of the advantages of the term 'queer' is that it thereby includes transsexuals, sado-masochists, and other marginalized sexualities. How far does this extend? Is transgenerational sex (e.g., pedophilia) permissible? Are there any limits upon the forms of acceptable sado-masochism or fetishism? While some queer theorists specifically disallow pedophilia, it is an open question whether the theory has the resources to support such a distinction. Furthermore, some queer theorists overtly refuse to rule out pedophiles as 'queer'<sup>276</sup>. Another criticism is that queer theory, in part because it typically has recourse to a very technical jargon, is written

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<sup>273</sup> Eribon, 2004)

<sup>274</sup> (Jagose, 1996).

<sup>275</sup> Halperin 1995.

<sup>276</sup> Halperin, 1995, pg 62.

by a narrow elite for that narrow elite. It is therefore class biased and also, in practice, only really referred to at universities and colleges<sup>277</sup>.

Queer theory is also criticized by those who reject the desirability of radical social change. For example, centrist and conservative gays and lesbians have criticized a queer approach by arguing that it will be “disastrously counter-productive”<sup>278</sup>. If ‘queer’ keeps its connotation of something perverse and at odds with mainstream society, which is precisely what most queer theorists want, it would seem to only validate the attacks upon gays and lesbians made by conservatives. Sullivan (1996) also criticizes queer theorists for relying upon Foucault’s account of power, which he argues does not allow for meaningful resistance. It seems likely, however, that Sullivan’s understanding of Foucault’s notions of power and resistance is misguided.

## CONCLUSION

The debates about homosexuality are in part because they often involve public policy and legal issues, tend to be sharply polarized. Those most concerned with homosexuality, positively or negatively, are also those most engaged, with natural law theorists arguing for gays and lesbians having a reduced legal status, and queer theorists engaged in critique and deconstruction of what they see as a heterosexist regime. Yet the two do not talk much to one another, but rather ignore or talk past one another. There are some theorists in the middle. For example, Michael Sandel takes an Aristotelian approach from which he argues that gay and lesbian relationships can realize the same goods that heterosexual relationships do (Sandel, 1995). He largely shares the account of important human goods that natural law theorists have, yet in his evaluation of the worth of same-sex relationships, he is clearly sympathetic to gay and lesbian concerns. Similarly, Bruce Bawer (1993) and Andrew Sullivan (1995) have written eloquent defenses of full legal equality for gays and lesbians, including marriage rights. Yet neither argue for any systematic reform of broader American culture or politics. In this they are essentially conservative. Therefore, rather unsurprisingly, these centrists are attacked from both

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<sup>277</sup> Malinowitz, 1993).

<sup>278</sup> (Bawer, 1996, xii)

sides. Sullivan, for example, has been criticized at length both by queer theorists (e.g., Phelan, 2001) and natural law theorists (e.g., George, 1999a).

Yet as the foregoing also clearly shows, the policy and legal debates surrounding homosexuality involve fundamental issues of morality and justice. Perhaps most centrally of all, they cut to issues of personal identity and self-definition. Hence there is another, and even deeper, set of reasons for the polarization that marks these debates.



## **CHAPTER FOURTEEN**

### **HOMOSEXUALITY AS A HUMAN RIGHT VERUS MORALS.**

Homosexuality is a complex issue that intersects with both human rights and moral values. On one hand, it's considered an aspect of human diversity and a fundamental part of human sexuality, identity, and relationships. Many scientific studies have shown that sexual orientation is largely determined by biological factors, such as genetics and hormones, and is not a choice or a lifestyle and their rights and dignity are protected by international human rights laws.

On the other hand, homosexuality is often a source of moral controversy, with different beliefs, norms, and attitudes among cultures and individuals. Some religious traditions view homosexuality as a sin, a deviation from the divine plan, or a threat to family values and social stability. Some moral codes consider homosexuality as immoral, unnatural, or harmful, and advocate for conversion therapy, discrimination, or even violence against homosexuals.

The majority focus on sex between men, although recently both Botswana and Malawi have enacted laws criminalizing lesbian sex. Occasionally the laws are drafted with great precision, but more commonly they use language such as "carnal knowledge against the order of nature" or "gross indecency". These are usually known as moral offences and are justified by reference to tradition, popular opinion, and public morality.

The relationship between homosexuality and morals is a complex and contentious issue. Different societies and cultures hold different moral beliefs about homosexuality, and opinions on the moral status of homosexuality can vary widely.

## **HOMOSEXUALITY AS AGAINST MORALITY**

The morality of homosexuality has been challenged based on the moral aspect and values. For instance, Religious and moral objections Opponents of homosexuality may argue that it is immoral or sinful, based on religious or moral beliefs. For example, the Bible and the Quran, contain passages that are interpreted as condemning homosexuality. For example, **Leviticus 18:22** states, “Do not have sexual relations with a man as one does with a woman; that is detestable.” The Quran as well gives a narrative of Lut’s story which is against homosexuality.

Additionally, religious leaders such as the head of the Anglican Church of Uganda **Archbishop Stephen Kaziimba** while condemning the General Synod of the Church of England position to support gay marriages by Pope Francis revealed that they would stand against the the position for, in his words, embracing sin by recognizing homosexuality against God’s word and organizations hold the view that homosexuality is immoral or goes against their religious teachings.

**Harm to children:** Some opponents of homosexuality argue that children need both a mother and a father figure in order to develop properly, and that same-sex parenting can be harmful to their psychological and emotional well-being. For example, the American College of Pediatricians has stated that “the ideal is for every child to have a mother and a father,” and that “the family structure that produces the best outcomes for children is one that has a man and a woman as married parents.”

**Public health concerns:** Some opponents of homosexuality argue that it poses public health risks, such as increased rates of sexually transmitted infections or mental health issues. For example, the Family Research Council, a conservative Christian group, has argued that “homosexual conduct is associated with numerous health hazards,” and that promoting LGBT+ lifestyles can lead to negative health outcomes.

**Threat to social stability:** Some opponents of homosexuality argue that it poses a threat to social stability and order, because it challenges traditional values and beliefs. For example, the World Congress of Families, a conservative group that opposes LGBT+ rights and equality, has stated that “the so-called ‘**sexual revolution**’ of the past half-century has had a profoundly negative impact on family,

marriage, and child-rearing,” and that “societies that depart from traditional family values risk harming the social fabric.”

According to **Kohlberg’s theory**, its proposed that how one interprets the morality of homosexuality depends upon one’s level of moral development, its argued that homosexuality is immoral because it violates traditional gender roles and family structures, and that it goes against the natural order of things. They may also view homosexuality as a sin or as contrary to religious teachings, and believe that it is a threat to social stability and morality.

One way to think about the morality of homosexuality is to consider the principles that underlie moral thinking. For example, some may argue that homosexuality is moral if it does not harm others, if it respects the autonomy and dignity of individuals, and if it promotes equality and justice, this is known as private morality. Others may argue that it is immoral if it goes against natural or religious norms, if it harms the family or society, or if it undermines traditional values and beliefs and this is known as public morality.

Ultimately, the moral status of homosexuality is a matter of personal and cultural beliefs, and it is up to individuals and societies to determine their own moral frameworks and values.

## **HOMOSEXUALITY AS A HUMAN RIGHT**

Proponents of homosexuality argue that it is not inherently immoral, and that consensual sexual activity between adults should be a private matter that does not concern others. They argue that it is a basic human right to be able to express one’s sexual orientation and to form intimate relationships with whomever one chooses as considered below.

### **Equality and Fairness:**

Proponents of homosexuality often argue that LGBT+ individuals should have the same rights and opportunities as everyone else, and that denying them those rights based on their sexual orientation or gender identity is unjust and discriminatory. They may point out that discrimination against LGBT+ individuals can lead to

social, economic, and psychological harm, and that it is morally wrong to treat people differently based on factors they cannot control.

### **Autonomy and Personal Freedom:**

Proponents of homosexuality argue that individuals have the right to make their own choices about their bodies and their relationships, and that the state should not interfere with those choices unless there is harm to others. They may argue that LGBT+ individuals should be free to express their identities and to form intimate relationships with whomever they choose, without fear of stigma or persecution.

**Respect for diversity and difference:** Proponents of homosexuality may argue that diversity is a fundamental part of human experience, and that LGBT+ individuals should be celebrated for their unique contributions to society. They may argue that tolerance and acceptance of difference is a moral imperative, and that efforts to stigmatize or marginalize LGBT+ individuals are contrary to the principles of respect and human dignity. For example, The Universal Declaration of Human Rights Article 1 of the Universal Declaration of Human Rights states that “All human beings are born free and equal in dignity and rights.” Proponents of homosexuality may argue that this principle extends to LGBT+ individuals, who should be treated with the same dignity and respect as everyone else.

Furthermore, other arguments that support the morality of Homosexuality include research from the **American Psychological Association** that has stated that “homosexuality is a normal expression of human sexuality” and that “homosexuality per se does not constitute a mental disorder.” This supports the argument that LGBT+ individuals should be free to express their sexual orientation and gender identity without stigma or discrimination<sup>279</sup>.

The **World Health Organization** has also stated that “homosexuality is not a mental disorder and should not be treated as one.” This supports the argument that LGBT+ individuals should not be subjected to conversion therapy or other harmful practices aimed at changing their sexual orientation or gender identity.

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<sup>279</sup> Sexual Orientation & Homosexuality.

The United Nations Development Programme stated that “homophobia and discrimination against LGBTI people have a negative impact on social cohesion and can undermine economic development.”

Its noteworthy that the issue of morality and homosexuality was elaborately considered in **The Wolfenden Report** which reflected a theory of the relationship between criminal law and morality that was first popularized by the political philosopher **J.S. Mill** and later by **H.L.A. Hart**<sup>280</sup>.

In the words of the Wolfenden Report: “Unless a deliberate attempt be made by society through the agency of the law to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law’s business”. To put it differently, the function of the criminal law should be to prevent harm, not to legislate moral values.

The Wolfenden Report marked a turning point as The United Kingdom followed its recommendations by amending the **Sexual Offences Act in 1967**. The Report influenced the American Law Institute’s development of the **Model Penal Code (MPC)**, which removed homosexuality from its list of offences. The MPC in turn led many US States to repeal laws that prohibited consensual sodomy.

Excerpts from the Wolfenden Report appeared in the case of **Dudgeon v. United Kingdom**<sup>281</sup>, in which the European Court of Human Rights struck down laws in Northern Ireland that prohibited all sexual activity between men, on the grounds that they violated the right to privacy guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. The argument was that Northern Ireland Criminal law constituted unjustified interference with his right to respect of private life which breached **Article 8 of The European Convention on Human Rights**, The Court found there was breach and an appeal was brought to The European Court of Human Rights.

The UK Government argued that the Northern Ireland criminal law was justified based on strong religious affiliations in that part of the UK which it ought to take into account when legislating. It advanced further argument that under paragraph 2 of

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<sup>280</sup>Report of the Committee on Homosexual Offences and Prostitution, 29 Oct 1957.

<sup>281</sup> 22 Oct (1981)

Article 8, there was no breach as such laws were necessary in a democratic society for the protection of health and morals.

However, Court didn't yield to the UK Government's arguments and concluded that the resulting interference with Dudgeon's private life was a disproportionate way of addressing the pressing social need claimed by the authorities. It noted that "Mr Dudgeon suffered unjustified interference with his right to respect to private life breached". This holding effectively made legislative repeal mandatory in all Council of Europe countries.

## **SIGNIFICANCE OF DUDGEON V UNITED KINGDOM**

In response to the judgment, Patricia Hewitt, then general secretary of the National Council for Civil Liberties (now known as Liberty) and later a Labour MP, urged the UK Government to initiate a change to the law in Northern Ireland<sup>282</sup>.

In a written answer on 24 February 1982, the Secretary of State for Northern Ireland said the UK Government would abide by the Court's decision. A new draft Order was laid on 14 July and debated on 25 October 1982. As in 1978, all Northern Irish MPs were opposed.

The **Homosexual Offences (Northern Ireland) Order 1982** brought the law in Northern Ireland into line with that in England, Wales and Scotland. It fixed the homosexual age of consent at 21, which was the same as that in Great Britain at that time, but higher than that for heterosexuals. In the Republic of Ireland, **section 11 of the Criminal Law Amendment Act 1885** remained in force. With **Dudgeon v UK** serving as a precedent, in the case of *Norris v Ireland*, the ECtHR ruled that Irish law also breached **Article 8**. This led to the decriminalisation of homosexuality in 1993<sup>283</sup>.

Internationally, in 1994 the UN Human Rights Committee decided in **Toonen v. Australia** held that Tasmania's sodomy laws violated **Articles 17** on privacy and **Article 26** non-discrimination of the **International Covenant on Civil and Political Rights** (ICCPR). In so doing, it rejected Tasmania's public morality justification. Since *Toonen*, the Human Rights Committee and other UN treaty

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<sup>282</sup> <https://commonslibrary.parliament.uk/40-years-since-court-case-reformed-same-sex-laws-in-northern-ireland/>

<sup>283</sup> David Torrance, <https://commonslibrary.parliament.uk/>

bodies have repeatedly urged States to decriminalise consensual same-sex sexual conduct.

Its important to note that change occurs judicially as well as legislatively. Recent years have witnessed a rise in constitutional challenges to sodomy laws. The cases presented here show how arguments have been developed in national courts. What is striking is that almost all of these cases draw heavily on both international human rights and comparative constitutional law. National courts are engaged in an ongoing conversation, specifically about same-sex sexual conduct and more generally about the criminal law's role in regulating private, consensual and non-harmful conduct. The following themes are evident in a review of the cases.

### **LOCUS STANDI (STANDING).**

In many of the cases, the unconstitutionality of the law is raised as a defence by the defendant in a criminal case where by itsvargued that the plaintiff hasn't suffered any infringement yet, however this was challenge in different cases for instance in Hong Kong, India and South Africa, applicants brought challenges based on the prospective application of the law. Both South Africa and India have liberal standing doctrines.

In the Hong Kong case of **Leung v. Secretary for Justice**<sup>284</sup>, the government argued that, since the applicant had never been prosecuted under the law in question, he did not have sufficient interest to challenge it. The court disagreed. If the government's view were followed, the applicant would have access to justice only if he broke the law. In fact, the applicant's life had already been "seriously affected by the existence of the legislation in question".

The Hong Kong court's reasoning followed the analysis of the European Court of Human Rights in cases such as **Norris v. Ireland and Sutherland v. United Kingdom**<sup>285</sup>, which both concluded that even unenforced criminal laws interfered with the applicant's private life. The Leung Court quoted Sutherland.

"Even though the applicant has not in the event been prosecuted or threatened with prosecution, the very existence of the legislation directly affected his private life:

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<sup>284</sup> Constitutional And Administrative Law List No. 160 Of 2004.

<sup>285</sup> Norris v. Ireland Application No. 10581/83.

either he respected the law and refrained from engaging in any prohibited sexual acts prior to the age of 18 or he committed such acts and thereby became liable to criminal prosecution.” Similar reasoning was used in **Toonen v. Australia**<sup>286</sup> by the UN Human Rights Committee, which likewise found a direct and continuous interference with the applicant’s right to privacy.

In addition to the threat of future prosecution, the European Court in Norris emphasised present harms experienced by the applicant. The applicant was a victim within the meaning of **Article 25** of the Convention, because the law could be enforced against him in the future and because, even unenforced, it caused prejudice and social exclusion. Both the High Court of Delhi in the Naz Foundation and the Constitutional Court of South Africa in National Coalition for Gay and Lesbian Equality emphasised the stigmatising effects of the criminal law on gay men. The law’s “symbolic effect is to state that in the eyes of our legal system all gay men are criminals”, wrote **Justice Ackermann in the majority opinion**. In Leung, the Court of Appeal excerpted Justice Sachs’ description of the case, that it was “about the status, moral citizenship, and sense of self-worth of a significant section of the community”. The Hong Kong Court then concluded that, because the case affected “the dignity of a section of society in a significant way”, the applicant had sufficient interest to bring his claim.

Note, however, that this perspective on standing is not universal. In **Tan Eng Hong v. Attorney General**<sup>287</sup>, the High Court of the Republic of Singapore held that, although the applicant satisfied the “substantial interest” test, meaning he had an actual interest in the outcome, he failed to meet the “real controversy” requirement. There could be no “real contest of the legal rights,” as required by case law in Singapore, because the original charges against the applicant had been dismissed and he had in fact pleaded guilty to another offence.

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<sup>286</sup> Communication No. 488/1992.

<sup>287</sup> [2012] SGCA 45.



## CHAPTER FIFTEEN

### POSITION OF GOVERNMENTAL INSTITUTIONS.

In the South Africa and Fiji cases, national human rights institutions intervened on the side of the claimants. In the Naz Foundation case, the government of India adopted two different positions: The Ministry of Home Affairs supported the constitutionality of the law and the Ministry of Health & Family Welfare argued that **Section 377** hindered HIV/AIDS prevention efforts. These apparently contradictory responses on the part of government (or government-affiliated institutions) recall the government positions in both **Dudgeon and Toonen. (supra)** In *Dudgeon*, the sodomy laws had already been repealed in England, Wales, and Scotland. Northern Ireland's laws were thus in contrast to those applying elsewhere on the United Kingdom. In *Toonen*, the federal government of Australia did not oppose the challenge to the criminal laws of Tasmania.

In the US case of **Lawrence v. Texas**<sup>288</sup>, although there was no federal government position, the number of States with sodomy laws had dropped by half since *Bowers*, signalling some degree of State acceptance. The Supreme Court ruled that most sanctions of criminal punishment for consensual, adult non-protective sexual activity commonly referred to as sodomy laws are unconstitutional. The right to privacy was reaffirmed based on the need of non-interference with private life sexual decisions. The right to privacy is briefly considered below.

### PRIVACY.

The right to privacy is protected by **Article 17** of the **ICCPR** as well as by many domestic constitutions. In some countries that lack an express privacy provision, such as India and the United States, the right has been inferred from other constitutional guarantees concerning life and liberty.

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<sup>288</sup> 539 U.S. 558 (2003)

Both legislative reforms, inspired by the Wolfenden Report, and decisions of the UN Human Rights Committee and the European Court of Human Rights, were premised on the right to privacy and the related concept of autonomous decision-making. Thus, in *Toonen* the Human Rights Committee observed that it was “undisputed that adult consensual sexual activity in private” is covered by the concept of privacy, while in *Dudgeon* and its progeny, **Norris v. Ireland** (*supra*) the European Court reached the same conclusion in respect of **Article 8** of the European Convention.

The US Supreme Court case of **Bowers v. Hardwick**<sup>289</sup>, also dealt exclusively with the case as a question of privacy. Later cases, however, have examined equality and non-discrimination aspects in addition to privacy. In **National Coalition, Naz Foundation**<sup>290</sup>, **Nadan & McCoskar v. State**<sup>291</sup>, and **Lawrence** (Justice O’Connor’s concurrence), both are considered. Because the Hong Kong cases included here challenge differential age of consent (Leung) and difference in treatment for public sexual activity (Yau), the judicial analyses focused on equality and discrimination arguments.

In cases striking down sodomy laws, privacy is about more than protection for physical spaces, such as the home. In the words of Justice Kennedy’s opinion for the court in *Lawrence*:

Freedom extends beyond spatial bounds. Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct. The instant case involves the liberty of the person both in its spatial and in its more transcendent dimensions.

In *National Coalition*, both the majority and concurring opinions emphasised that privacy involved space for private decisions about personal relationships. Justice Ackermann wrote: “Privacy recognises that we all have a right to a sphere of private intimacy and autonomy which allows us to establish and nurture human relationships without interference from the outside community. The way in which we give expression to our sexuality is at the core of this area of private intimacy.” Justice Sachs wrote that the right to privacy is based on “the notion of what is necessary to

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<sup>289</sup> (1986) (overruled by *Lawrence* in 2003)

<sup>290</sup> *Naz Foundation v. Govt. of NCT of Delhi*, 160 Delhi Law Times 277 (Delhi High Court 2009).

<sup>291</sup>

have one's autonomous identity . . . What is crucial is the nature of the activity, not its site".

In **Banana v State of Zimbabwe**<sup>292</sup>, the Supreme Court of Zimbabwe rejected any such right to privacy under the Constitution. According to the court, the Constitution guaranteed only protection from arbitrary search or entry and had "nothing whatever to do with whether or not consensual sodomy is a crime". Privacy was not addressed in the Botswana case of **Kanane v. State**<sup>293</sup>.

**Right to Equality.** Equality arguments arise under both non-discrimination and equal protection of the law guarantees. These rights are closely related. The principle of equality requires that persons who are equally situated are treated equally. Failure in this regard will amount to discrimination unless an objective and reasonable justification exists.

The right to non-discrimination was not considered by the European Court in *Dudgeon*, but in the 1999 case of **Salgueiro da Silva Mouta v. Portugal**<sup>294</sup> the Court held that sexual orientation is a concept "undoubtedly" covered by the open-ended grounds of prohibited discrimination listed in **Article 14 of the European Convention**. Human Rights Committee jurisprudence includes sexual orientation under **Article 26 of the ICCPR**. A case in point is South Africa where both the **interim Constitution and the 1996 Constitution** include sexual orientation as a prohibited ground of discrimination, making South Africa the first country in the world to include such a textual provision.

In **Kanane and Banana**, the courts rejected challenges to the law based on non-discrimination. **Section 23 of the Constitution of Zimbabwe** and **Section 15 of the Constitution of Botswana** both enshrine the right to be free from discrimination on the basis of certain enumerated grounds. Sexual orientation is not among them. Both courts held that their constitutions did not include "sexual orientation" as a prohibited ground, although in Botswana the court had earlier found the list of discriminatory grounds to be illustrative and not exhaustive.

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<sup>292</sup> [2000] 4 LRC 621

<sup>293</sup> 2003 (2) BLR 67 (CA)

<sup>294</sup> (Application no. 33290/96)

In **Kanane**, the Botswana Court of Appeal noted that the “public interest must . . . always be a factor in the court’s consideration of legislation particularly where such legislation reflects a public concern”. It concluded that: “The time has not yet arrived to decriminalise homosexual practices even between consenting adult males in private. Gay men and women do not represent a group or class which at this stage has been shown to require protection under the Constitution.” Conversely, the Delhi High Court held that “sexual orientation” was an analogous ground to sex under **Article 15 of the Indian Constitution**, which protects against discrimination on several enumerated grounds. In reaching this conclusion it relied on the reasoning of the Human Rights Committee in *Toonen* as well as the Canadian Supreme Court in **Egan v. Canada**<sup>295</sup>.

The American and Indian constitutions do not list specified grounds under their equal protection clauses. As the Delhi High Court explained: “Article 15 is an instance and particular application of the right of equality which is generally stated in Article 14”. Equal protection jurisprudence in both countries requires that a classification drawn by law be rationally related to a legitimate State interest. In her concurrence on equal protection grounds in **Lawrence, Justice O’Connor** rejected public morality as a justification for the law.

Accordingly, In **Naz Foundation v Government of NCT of New Delhi**<sup>296</sup>, the court also found that public morality is not a legitimate State interest and held that, although protection of public health was a legitimate State interest, the law at issue was not rationally connected to this legislative end. Similar reasoning regarding the protection of public health was used by the Human Rights Committee in *Toonen*.

In *Yau*, in order to meet the justifications test, the government argued that there was a genuine need for differential treatment and that this was established by the fact that the legislature had enacted the law. The court disagreed, saying that a genuine need for differential treatment could not be established from the mere act of legislative enactment. Therefore, the law failed at the first stage of the test.

Its important to note that laws can be discriminatory even if they are written in neutral terms. In **Leung TC William Roy v Secretary for Justice**<sup>297</sup>, the law in

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<sup>295</sup> (25 May 1995)

<sup>296</sup> 160 Delhi Law Times 277.

<sup>297</sup> [2005] 3 HKLRD 657 (CFI), [2006] 4 HKLRD.

question imposed a higher age of consent for all acts of anal sex, regardless of whether the partners were of the same or opposite sex. The Court of Appeal, adopting the reasoning of the lower court, found that anal and vaginal sex were equivalent and therefore it was discriminatory to impose a higher age of consent on the former than the latter.

Court stated that “Denying persons of a minority class the right to sexual expression in the only way available to them, even if that way is denied to all, remains discriminatory when persons of a majority class are permitted the right to sexual expression in a way natural to them.” This brings out the concern of public morality as considered below.

## **PUBLIC MORALITY.**

When a constitutional right is infringed, courts engage in a similar proportionality analysis. (See, for examples, **Section 36(1)** of the **Constitution of South Africa** and **Section 37 of the Constitution of Fiji**.) In the Hong Kong Court of Appeal stated in Leung: “Any restriction on a constitutional right can only be justified if (a) it is rationally connected to a legitimate purpose and (b) the means used to restrict that right must be no more than is necessary to accomplish the legitimate purpose in question”.

In American equal protection jurisprudence, this is known as rational basis review. A law will be sustained if the classification drawn by the statute is rationally related to a legitimate State interest. Laws that infringe fundamental rights such as privacy are subjected to a higher standard of review in both India and the USA.

The chief justification advanced for laws criminalising same-sex sexual conduct is that they protect and preserve public morality. The legitimacy of public morality, sometimes characterised by courts as popular opinion on matters of sexual morality, was dispositive in the *Kanane* and *Banana* cases.

In ***Kanane v State of Botswana***<sup>298</sup>, the Court found “no evidence that the approach and attitude of society in Botswana to the question of homosexuality and to homosexual practices by gay men and women requires a decriminalisation of those

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<sup>298</sup> (30 July 2003)

practices, even to the extent of consensual acts by adult males in private”. In *Banana*, the majority opinion of the Supreme Court of Zimbabwe stated: “I do not believe that this court, lacking the democratic credentials of a properly elected parliament, should strain to place a sexually liberal interpretation on the Constitution of a country whose social norms and values in such matters tend to be conservative”. Chief Justice Gubbay disagreed. In his dissent he wrote: “In my view, the criminalisation of anal sexual intercourse between consenting adult males in private, if indeed it has any discernable objective other than the enforcement of private moral opinions of a section of the community (which I do not regard as valid), is far outweighed by the harmful and prejudicial impact it has on gay men”.

In *Nadan & McCoskar*, the Court appeared to accept that public morality was a legitimate State interest but found that it failed the proportionality test, given the importance of the rights involved. In the *Dudgeon* line of cases, the European Court likewise accepted that public morality was a permissible reason for limiting the right to privacy. However, since the laws were rarely enforced and interfered with a “most intimate aspect of private life”, they were neither necessary for achieving this goal nor proportional.

In *Naz Foundation, National Coalition for Gay and Lesbian Equality and Lawrence*, the courts rejected the public morality rationale. According to Justice O’Connor: “Moral disapproval of a group cannot be a legitimate State interest under the Equal Protection Clause because legal classifications must not be drawn for the purpose of disadvantaging the group burdened by the law. Texas’ invocation of moral disapproval as a legitimate State interest proves nothing more than Texas’ desire to criminalise homosexual sodomy. But the Equal Protection Clause prevents a State from creating a classification of persons undertaken for its own sake.” In *Naz Foundation*, after discussing *Lawrence*, *Dudgeon*, *Norris*, and the *National Coalition* cases, the Delhi Court held: “Moral indignation, howsoever strong, is not a valid basis for overriding individual’s fundamental rights of dignity and privacy”.

All three courts viewed public morality as a pretext for animus. Thus, in **National Coalition**, Justice Ackermann said that “private moral views” were based “to a large extent on nothing more than prejudice”. In **Lawrence v Texa (supra)**, **Justice O’Connor** wrote: Because Texas so rarely enforces its sodomy law as applied to private, consensual acts, the law serves more as a statement of dislike and

disapproval against homosexuals than as a tool to stop criminal behavior. Based on such comments, Texas sodomy law raises the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected.”

The Delhi High Court, rejecting the public morality rationale, stated: “**Section 377 IPC** targets the homosexual community as a class and is motivated by an animus towards this vulnerable class of people”. **Chief Justice** Gubbay raised a similar concern in his dissent in **Banana v State of Zimbabwe**, (supra) suggesting that the belief that homosexuality was immoral might in fact be the result of prejudice.

In South Africa and in India, the courts clarified that the rejection of “public morality” was not a rejection of normative values. The South African court recalled the “political morality” of the constitution, and the Indian court made reference to “constitutional morality”. In both countries, the constitutions explicitly value diversity. As the Naz Court explained: “If there is one constitutional tenet that can be said to be the underlying theme of the Indian Constitution, it is that of inclusiveness”.

This collection of decriminalisation decisions from almost all regions of the world demonstrates the increasing use of both international and comparative law to interpret constitutional principles of privacy and non-discrimination.

Where courts sustain sodomy laws, as in the *Kanane* and *Banana* cases as well as the overruled US case of **Bowers v. Hardwick**, it appears to be because the courts rely on a certain theory of criminal law and, as well, have a narrow view of their institutional role. Accordingly, a court that accepts that public morality alone is sufficient justification for a criminal law is more likely to uphold a sodomy law against constitutional attack and a Court that views its role as deferential to parliament is less likely to act and to safeguard individual rights from majority opinion.

In conclusion, the debate surrounding homosexuality as a human right versus the morality of homosexuality is a complex and contentious issue that has been the subject of much debate and discussion. While some individuals may argue that homosexuality is immoral, others argue that all individuals have the right to live their life free from discrimination and persecution, and that human rights must be upheld for all. It is important to recognize and respect the diversity of opinions and

perspectives on this issue, while also acknowledging the importance of protecting human rights and promoting equality for all individuals, the cultural values shouldn't be eroded.



## CHAPTER SIXTEEN

### INTERNATIONAL CONVENTIONS ON HOMOSEXUALITY.

International human rights laws and treaties provide a framework for protecting the rights of homosexuals and promoting their equal dignity and freedoms. Some of the key provisions that support homosexuality rights include:

**The European Convention on Human Rights** The European Convention on Human Rights (**ECHR**) (formally the Convention for the Protection of Human Rights and Fundamental Freedoms) is an international treaty to protect human rights and fundamental freedoms in Europe.

**Article 8** of the European Convention on Human Rights provides a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society. This was considered in the case of **Dudgeon v United Kingdom**<sup>299</sup> where The European Commission on Human Rights concluded that the resulting interference with Dudgeon's private life was a disproportionate way of addressing the "pressing social need" claimed for the criminal law in Northern Ireland. By a majority of 15 to 4, the Court concluded that: Mr. Dudgeon suffered unjustified interference with his right to respect for his private life.

In the case of **Sidiropoulos and Others v. Greece**<sup>300</sup>, the European Court of Human Rights held that: "The Court points out that the right to form an association is an inherent part of the right set forth in **Article 11**, even if that Article only makes express reference to the right to form trade unions. That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of

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<sup>299</sup> (1981)

<sup>300</sup> (1997)

the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning.

The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly, States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in Legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions''.

Furthermore, the Supreme Court of Canada in the case of **R. v Oakes**<sup>301</sup> developed principles for consideration when determining whether a limitation of a right is justifiable, namely; there has to be a pressing and substantial objective for the law or government's action and the means chosen to achieve the objective must be proportional to the burden on the rights of the claimant; c) the objective must be rationally connected to the limit on the Charter right; d) the limitation must minimally impair the Charter right; and d) there should be an overall balance or proportionality between the benefits of the limit and its deleterious effects.

### **Universal Declaration of Human Rights (UDHR):**

According to **Article 2** of **The Universal Declaration of Human Rights (UDHR)**, All human beings are born free and equal in dignity and rights, this prohibits discrimination on the basis of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." These provisions have been interpreted by the United Nations and other international bodies to include sexual orientation and gender identity as protected grounds of discrimination.

According to **Article 19** Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without and to seek, receive and impart information and ideas through any media and regardless of frontiers. This extends to forming associations whether sexual oriented or not, as such LGBTQIA+ organs under this Article have a right to associate with effect that any limitation is legally struck at, A case in point is **Zhdanov and Others vs. Russia**<sup>302</sup> where The European Court of Human Rights found that the Russian courts' decisions refusing

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<sup>301</sup> [1986] 1 S.C.R 103.

<sup>302</sup> Application No. 12200/08, 35949/11 and 58282/12

registration had interfered with the freedom of association of the applicant organizations and their founders or presidents, the individual applicants. The Court was not convinced that refusing to register the organizations had pursued the legitimate aims of protecting morals, national security and public safety, and the rights and freedoms of others. The only legitimate aim put forward by the authorities for the interference, which the Court assumed to be relevant in the circumstances, was the prevention of hatred and enmity, which could lead to disorder. In particular, the authorities believed that the majority of Russians disapproved of homosexuality and that therefore the applicants could become the victims of aggression.

## INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

It guarantees the right to equality and non-discrimination, while **Article 17** protects the right to privacy, which includes the right to form consensual relationships with other adults without interference from the state or society. The United Nations Human Rights Committee has also stated that laws criminalizing homosexuality violate the ICCPR.

A case in point is **NAZ foundation v Govt. of NCT of Delhi** <sup>303</sup> where the gays right to privacy in consideration of Article 17 of the ICCPR held that everyone was entitled to a right of privacy in respect of his private life. Court noted that the sphere of privacy allows persons to develop human relations without interference from the outside community or from the State.

**Article 2, paragraph 1, of The International Covenant on Civil and Political Rights (ICCPR)** obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. **Article 26 of the ICCPR** not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political

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<sup>303</sup> Naz Foundation v. Govt. of NCT of Delhi, 160 Delhi Law Times 277 (Delhi High Court 2009)

or other opinion, national or social origin and property. This was applied by The Kenyan Supreme Court in the case of **NGO Co-ordination Board v Eric Giatari**<sup>304</sup> by finding that the respondent was discriminated which was a breach of the cited legal instrument.

According to the **Siracusa Principles on the Limitation and Derogation Provision in the International Covenant on Civil and Political Rights, clause 3 and 4** in the General Interpretative principles relating to the justification of limitations section, provides that “all limitations shall be interpreted strictly and in favour of the right issue and in the light and context concerned.” The burden of justifying a limitation upon a right guaranteed under ICCPR lies with the State as per the Supreme Court in **NGOs CO-ORDINATION BOARD vs ERIC GITARI & 5 OTHERS**<sup>305</sup>

**In S v Makwanyane and another**<sup>306</sup>, **Chaskalson, P.** observed in his lead opinion at paras 103 & 104 that “The criteria prescribed by section 33(1) for any limitation of the rights contained in section 11(2) are that the limitation must be justifiable in an open and democratic society based on the freedom of equality, it must be both reasonable and necessary and it must not negate the essential content of the right.....The limitation of constitutional rights for a purpose that is reasonable and necessary in a democratic society involves the weighing up of competing values, and ultimately an assessment based on proportionality. .... The fact that different rights have different implications for democracy, and in the case of our Constitution, for 'an open and democratic society based on freedom and equality', means that there is no absolute standard which can be laid down for determining reasonableness and necessity. Principles can be established, but the application of those principles to particular circumstances can only be done on a case-by-case basis.

This is inherent in the requirement of proportionality, which calls for the balancing of different interests. In the balancing process, the relevant considerations will include the nature of the right that is limited, and its importance to an open and democratic society based on freedom and equality; the purpose for which the right is limited and the importance of that purpose to such a society; the extent of the

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<sup>304</sup> SC Petition No.16 Of 2019.

<sup>305</sup> SC PetitionNo.16 Of 2019.

<sup>306</sup> (CCT3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1

limitation, its efficacy, and particularly where the limitation has to be necessary, whether the desired ends could reasonably be achieved through other means less damaging to the right question”.

### **The African Charter on Human and People’s Rights**

The Supreme Court in **NGO Co-ordination Board v Eric Gitari (supra)** cited **Article 2** which provides that every person shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, or other status. It was accordingly held by majority that LGBTQIA+ just like any other person is entitled to these rights and protection.

### **THE ONTARIO HUMAN RIGHTS COMMISSION,**

the Glossary of Human Rights Terms, Sexual orientation is defined as the direction of one's sexual interest or attraction. It is a personal characteristic that forms part of who one is. It covers the range of human sexuality from lesbian and gay, to bisexual and heterosexual. The UK Equality Act 2010, at Section 12 defines sexual orientation to mean a person’s orientation towards persons of the same sex, persons of the opposite sex, or persons of either sex. In relation to the protected characteristic of sexual orientation, a reference to a person who has a particular protected characteristic is a reference to a person who is of a particular sexual orientation; or a reference to persons who share a protected characteristic is a reference to persons who are of the same sexual orientation.

### **THE UNITED KINGDOM EQUALITY ACT.**

Other than the **UK Equality Act**, most international legal instruments do not expressly provide for the right not to be discriminated on the basis of one’s sexual orientation. However, in that regard, **The European Court of Human Rights** in the case of **Salgueiro da Silva Mouta v. Portugal**, ruled that a person’s sexual orientation is a concept which is undoubtedly covered under **Article 14 of the European Charter on Human Rights** which provides for enjoyment of the rights set forth in the Convention without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

In **Toonen v Australia**<sup>307</sup>, the Human Rights Committee observed that; “in its view the reference to "sex" in **articles 2, paragraph 1, and 26** is to be taken as including sexual orientation”.

## **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT):**

The CAT prohibits torture and other forms of cruel, inhuman, or degrading treatment or punishment, which includes conversion therapy, forced sterilization, and other forms of violence or discrimination based on sexual orientation or gender identity.

**UNITED NATIONS GENERAL ASSEMBLY:** Resolution on Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. 8<sup>th</sup> March 1999.

**Article 1** establishes that Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

**Article 2** places a responsibility and duty on Each State to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice. 2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

**Article 3** requires Domestic law to be consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all

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<sup>307</sup> Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994),

activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

**Article 4** establishes that the Declaration shall be interpreted to work hand in hand with other principles of the Charter of the United Nations and not restrict or derogate from the provisions of the International Conventions.

**Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** This prohibits discrimination against women, including discrimination based on sexual orientation and gender identity. The Committee on the Elimination of Discrimination against Women has also recognized the intersectional discrimination faced by LGBT+ women and girls.

### **Yogyakarta Principles:**

The Yogyakarta Principles is a set of principles on the application of international human rights law in relation to sexual orientation and gender identity. They outline the obligations of states to protect, respect, and fulfill the rights of LGBT+ people, including the right to non-discrimination, privacy, family, health, education, work, and participation in public life.

These provisions and principles provide a legal and moral basis for protecting the rights of LGBTQIA+ people and advancing their inclusion and equality in society. However, their implementation and enforcement remain a challenge in many countries, where LGBT+ people face discrimination, violence, and persecution.

Furthermore, there have been cases that support the claim of homosexuality as a human right. In many countries, courts have interpreted national constitutions and laws to protect the rights of LGBT+ people. For example, in India, the Supreme Court struck down Section 377 of the Indian Penal Code, a colonial-era law that criminalized homosexual activity, as unconstitutional in 2018, recognizing the right to equality, privacy, and dignity of LGBT+ people.

Similarly, in the United States, the Supreme Court has recognized the right to same-sex marriage and struck down discriminatory laws against LGBT+ people in various cases. In the case of **Obergefell v. Hodges**<sup>308</sup>, the U.S. Supreme Court recognized

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<sup>308</sup> 576 U.S 644 (2015)

the constitutional right to same-sex marriage, holding that the Constitution guarantees the right to marry as a fundamental right.

The United Nations in 2011, the United Nations High Commissioner for Human Rights released a report titled “Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity,” which outlines the legal and moral arguments supporting the protection of LGBT+ rights and provides recommendations for states and other actors to promote and protect these rights.

In the European Union the European Parliament adopted a resolution in 2019 on the situation of LGBTI rights in the EU, which calls on EU member states to adopt laws that prohibit discrimination based on sexual orientation and gender identity, to provide legal recognition and protection for same-sex relationships, and to combat hate speech and violence against LGBT+ people.

In addition to international human rights treaties, many regions have their own human rights systems that protect the rights of LGBT+ people. For example, in Europe the European Convention on Human Rights has been used to challenge discrimination against LGBT+ people in various cases, such as the case of (2017 **Bayev and Others v. Russia**), in which the European Court of Human Rights held that Russia’s “anti-propaganda law” violated the freedom of expression and non-discrimination rights of LGBT+ individuals and activists.

In America the Inter-American Commission on Human Rights has issued reports and recommendations on the rights of LGBT+ people, such as its 2015 report on “Violence against Lesbian, Gay, Bisexual, Trans, and Intersex Persons in the Americas,” which calls on states to protect the rights of LGBT+ people and to investigate and prosecute acts of violence and discrimination against them.

In Africa the African Commission on Human and Peoples’ Rights has recognized the rights of LGBT+ people in various decisions, such as the case of **Toonen v. Australia**, in which the commission held that criminalizing homosexual activity violates the right to privacy and non-discrimination under the **African Charter on Human and Peoples’ Rights**. However, many African countries still have laws that criminalize homosexual activity and discriminate against LGBT+ people.

These law sources demonstrate the growing recognition of homosexuality as a human right and the importance of protecting the rights and dignity of LGBT+ people. However, there is still a long way to go in ensuring that these rights are fully realized and respected in practice, especially in countries where discrimination and violence against LGBT+ people are prevalent.

However, there are still many circumstances where the law does not support homosexuality as a human right. Criminalization of homosexuality: In many countries, homosexual activity is still criminalized, often under colonial-era laws that have not been repealed. For example, In Nigeria, same-sex sexual activity is illegal under the **Same-Sex Marriage (Prohibition) Act of 2013**, which imposes penalties of up to 14 years in prison for anyone who enters into a same-sex marriage or civil union, or who “witnesses, abets or aids” a same-sex relationship. In Uganda, same-sex sexual activity is illegal under the **Penal Code Act Cap 120**.

## **DISCRIMINATION:**

Even in countries where homosexual activity is not criminalized, LGBT+ individuals may still face discrimination in various areas of life, such as employment, housing, and education. For example, in Russia, a 2013 law bans “propaganda of nontraditional sexual relations” among minors, effectively criminalizing any public expression of LGBT+ identities or relationships. This law has been used to justify censorship and harassment of LGBT+ individuals and organizations.

In the United States while same-sex marriage is legal, LGBT+ individuals still face discrimination in various areas, such as employment and housing. In many states, there are no explicit laws protecting LGBT+ individuals from discrimination, and the Supreme Court has recently heard cases that could limit the scope of anti-discrimination protections under federal law.

These examples demonstrate that while there has been progress in recognizing homosexuality as a human right, there is still much work to be done to ensure that all individuals are treated equally and with dignity, regardless of their sexual orientation or gender identity.



## CHAPTER SEVENTEEN

### RELIGIOUS INTERPRETATION

The relationship between **religion and homosexuality** has varied greatly across time and place, within and between different religions and denominations, with regard to different forms of homosexuality and bisexuality. The present-day doctrines of the world's major religions and their denominations differ in their attitudes toward these sexual orientations. Adherence to anti-gay religious beliefs and communities is correlated with the prevalence of emotional distress and suicidality in sexual minority individuals.

According to Rodrigueuz, the last 10 years have been witnessed with conflict between lesbian, gay, bisexual, transgender, (LGBTQ) activists and religious groups which has escalated alarmingly in the United States and elsewhere in the world<sup>309</sup>. In one study, 72% of Christian organizations condemned homosexuals and labeled homosexuality an abomination<sup>310</sup>. At the same time, same-sex attraction and religiosity has also become a more common source of conflict within individuals. Weiss, Iverson, & Kipke, 2009.

Traditional religious beliefs are often considered directly in conflict with homosexual behavior and, in some cases, even with mere attraction to the same sex, the roots of the conflict are plain<sup>311</sup>. In many religions, scripture and doctrine are interpreted to strictly prohibit any form of homosexuality<sup>312</sup>. The tension between an individual's religious and homosexual thoughts, feelings, or actions can result in stress, depression, continual fear of damnation, low self-esteem, and feelings of worthlessness<sup>313</sup>

Among the religious denominations which generally reject these orientations, there are many different types of opposition, ranging from quietly discouraging

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<sup>309</sup> Homosexuality and Religion: The Conflict," Intuition: The BYU Undergraduate Journal of Psychology: Vol. 11 : Iss.2 , Article 8.

<sup>310</sup> (Herek, Kimmel, Amaro & Melton, 1991

<sup>311</sup>Yarhouse & Tan, 2005.

<sup>312</sup> Kubicek et al., 2009; Yarhouse & Tan, 2005.

<sup>313</sup> (Barton, 2010; Kubicek et al., 2009)

homosexual activity, explicitly forbidding same-sex sexual practices among their adherents and actively opposing social acceptance of homosexuality, supporting criminal sanctions up to capital punishment to the extent of condoning extrajudicial killings as ways of punishment.

Religious fundamentalism often correlates with anti-homosexual bias. Psychological research has connected religiosity with homophobic attitudes-and physical antigay hostility, and has traced religious opposition to gay adoption to collectivistic values (loyalty, authority, purity) and low flexibility in existential issues, rather than to high prosocial inclinations for the weak. Attitudes toward homosexuality have been found to be determined not only by personal religious beliefs, but by the interaction of those beliefs with the predominant national religious context—even for people who are less religious or who do not share their local dominant religious context. Many argue that it is homosexual actions which are sinful, rather than same-sex attraction itself. To this end, some discourage labeling individuals according to sexual orientation.

Religious opposition to homosexuality stems from many sources, Religious texts such as the Bible and Quran directly forbid homosexual activity hence creating the basis for tension between traditional religion and homosexuality. Most religious teachings focus on how people should act.

Another facet of inner conflict often expressed by religious LGBTQ individuals is best categorized as pressure from other people of faith, whether of their own faith or another faith. Its noteworthy that many Christians who speak out about their faith are not hesitant to decalare their belief that those who identify as homosexuals are sinners. According to Burton, Many LGTBTQIA individuals report having been criticized or yelled at during church services. One of the participants stated “You wish that you could go to church sometimes and not be afraid of just being told being told what a horrible person you are’.

## **CHRISTIANITY.**

Christian denominations hold a variety of views on homosexual activity, ranging from outright condemnation to partial acceptance in a few sects. Throughout the majority of Christian history, most Christian theologians and denominations have considered homosexual behavior as immoral or sinful Most Christian denominations welcome people attracted to the same sex, but teach that homosexual acts are sinful. These denominations include the Roman Catholic Church, the Eastern Orthodox

church, the Oriental Orthodox churches, Confessional Lutheran denominations such as the Lutheran Church–Missouri Synod and the Wisconsin Evangelical Lutheran Synod the United Methodist Church and some other mainline denominations, such as the Reformed Church in America and the American Baptist Church as well as Conservative Evangelical organizations and churches, such as the Evangelical Alliance and fundamentalist groups and churches, such as the Southern Baptist Convention. Pentecostal churches such as the Assemblies of God as well as Restorations churches, like Iglesia ni Cristo, the Jehovah's Witnesses and the Church of Jesus Christ of Latter-day Saints, also take the position that homosexual sexual activity is sinful.

To most Christians, the mere suggestion that homosexuality and Christianity can be compatible is absurd. **Adamczyk and Pitt** found that many Christians considered the growing acceptance of homosexuality a threat to their faith and felt the need to defend it aggressively. Such passion about doctrinal truth can turn religious LGBTQIA+ into targets.

Conservative denominations generally oppose same-sex sexual relations based on Old Testament and New Testament texts that describe human sexual relations as strictly heterosexual by God's design. As such, it is argued that sexual desires and actions that contradict God's design are deemed sinful and are condemned by God (e.g. **Leviticus 18:22**; cf. **Leviticus 20:13**. Since love does not rejoice in unrighteousness or iniquity (cf. **1 Corinthians 13:6**), and since homosexual desires and actions are believed to remain contrary to God's design and condemned by God as sinful/iniquity (e.g. *in general*, **Romans 12:6-27** *passively*, **1 Corinthians 6:9:6-9** *actively*, including but **not** limited to *pederasty*, **1 Corinthians 6:9**; **1 Timothy 1:9-11** **considered** sexually *immoral*, Galatians 5:19-21 Colossian 3:5-7; Ephesians 5:3, adherents of conservative denominations believe that genuine love for God and humanity is best expressed by following God rather than the world (Acts 5:29;<sup>[75]</sup> cf. Jeremiah 23:1-40;<sup>[76]</sup> Romans 12:9<sup>[77]</sup>).

Other Passages from the Mosaic Covenant and its broader Old Testament context have been interpreted to mean that anyone who is engaging in homosexual practices should be punished with death **Leviticus 20:13**;<sup>[49]</sup> cf. **Genesis 19:4–25**;<sup>[50]</sup> **Judges 19:22–20:48**;<sup>[51]</sup> **2 Peter 2:6–10**;<sup>[52]</sup> **Jude 7**.<sup>[53]</sup> HIV/AIDS has also been portrayed by some Christian fundamentalists such as **Fred Phelps and Jerry Falwell** as a punishment by God against homosexuals.<sup>[54]</sup>

In the 20th century, theologians like Karl Barth, Jürgen Moltmann, Hans Küng, John Robinson, Bishop David Jenkins, Don Cupitt, and Bishop Jack Spong challenged traditional theological positions and understandings of the Bible; following these developments some have suggested that passages have been mistranslated, are taken out of context, or that they do not refer to what is generally understood as "homosexuality."

However Liberal Christians are generally supportive of homosexuals. Some Christian denominations do not view monogamous same sex relationships as bad or evil These include the United Church of Canada, the United Church of Christ<sup>314</sup>, the Episcopal Church, the Presbyterian Church (U.S.A, the churches of the Old Catholic Union of Utrecht, the Evangelical Lutheran Church in America the Evangelical Lutheran Church in Canada, the Church of Sweden, the Lutheran, reformed and united churches in Evangelical Church of Germany, the Church of Denmark, the Icelandic Church, the Church of Norway and the Protestant Church of the Netherlands. In particular, the Metropolitan Community Church a denomination of 40,000 members, was founded specifically to serve the Christian LGBT community, and is devoted to being open and affirming to LGBTQIA+ people.

The United Church of Christ and the Alliance of Baptists also condone gay marriage, and some parts of the Anglican and Lutheran churches allow for the blessing of gay unions. Within the Anglican communion there are openly gay clergy; for example, Gene Robinson and Mary Glasspool are openly homosexual bishops in the US Episcopal Church and Eva Brunn in Lutheran Church of Sweden. The Episcopal Church's recent actions vis-a-vis homosexuality have brought about increased ethical debate and tension within the Church of England and worldwide Anglican churches. In the United States and many other nations, the religious people are becoming more affirming of same-sex relationships.

Even those in denominations with official positions against homosexuality are liberalizing it though not as quickly as those in more affirming religious groups. Today, many religious people are becoming more affirming of same-sex relationships, even in denominations with official stances against homosexuality. In the United States, people in denominations who are against same-sex relationships are liberalizing quickly, though not as quickly as those in more affirming

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<sup>314</sup> "Interview With Elder Dallin H. Oaks and Elder Lance B. Wickman: "Same-Gender At". [www.mormonnewsroom.org](http://www.mormonnewsroom.org). Retrieved 22 August 2015.

groups<sup>315</sup>. This social change is creating tension within many denominations, and even schisms and mass walk-outs among Mormons and other conservative groups.

Pope Francis voiced support for same-sex civil unions during an interview in a documentary film, *Francesco*, which was premiered at the Rome Film Festival on 21 October 2020<sup>316</sup>.

A case in point is the recent pronouncement by Pope Francis criticizing laws that criminalize homosexuality as “unjust,” saying God loves all his children just as they are and called on Catholic bishops who support the laws to welcome LGBTQ people into the church. In an interview with The Associated Press, He states that “Being homosexual isn’t a crime<sup>317</sup>,”

However, The Church of England’s decision to allow clergy to bless same-sex marriages has angered the Anglican churches of Uganda and Kenya to the point that they are considering a total disassociation with it as The Kenya and Uganda churches are now looking upon a conservative Anglican breakaway group — the Global Anglican Future Conference (Gafcon) — to which they also belong to give them direction on their association with their mother Church of England in April. Anglican Church of Uganda Archbishop Stephen Kaziimba revealed this while condemning the General Synod of the Church of England, its top governing body, for, in his words, embracing sin by recognizing homosexuality against God’s word.

## **BIBLICAL SCRIPTURES AGAINST HOMOSEXUALITY.**

There various passages in the bible used by Christians to condemn homosexuality

Other Passages from the Mosaic Covenant and its broader Old Testament context have been interpreted to mean that anyone who is engaging in homosexual practices should be punished with death (Leviticus 20:13; cf. Genesis 19:4–25; Judges 19:22–20:48; 2 Peter 2:6–10; Jude 7). HIV/AIDS has also been portrayed by some Christian fundamentalists such as Fred Phelps and Jerry Falwell as a punishment by God against homosexuals.

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<sup>315</sup> Schnabel, Landon (1 January 2016). "Gender and homosexuality attitudes across religious groups from the 1970s to 2014: Similarity, distinction, and adaptation". *Social Science Research*. **55**: 31–47. doi:10.1016/j.ssresearch.2015.09.012. PMID 26680286.

<sup>316</sup> "Pope Francis backs same-sex civil unions". *The Guardian*. 21 October 2020. Retrieved 21 October 2020

<sup>317</sup> Forbes News 31 Jan 2023, Canary Murray.

**Genesis 9:20-27** Noah and Ham

**Genesis 19:1-11** Sodom and Gomorrah

**Leviticus 18:22, 20:13** Levitical laws condemning same sex relationships

**Romans 1**

“For as in those days before the flood they were eating and drinking, marrying and giving in marriage, until the day when Noah entered the ark, and they were unaware until the flood came and swept them all away, so will be the coming of the Son of Man.” (Matthew 24:38,39)

“Just as it was in the days of Noah, so will it be in the days of the Son of Man. They were eating and drinking and marrying and being given in marriage, **until the day when Noah entered the ark, and the flood came and destroyed them all.**” (Luke 17:26,27)

“Likewise, just as it was in the days of Lot—they were eating and drinking, buying and selling, planting and building, but on the day when Lot went out from Sodom, fire and sulfur rained from heaven and destroyed them all— so will it be on the day when the Son of Man is revealed.” (Luke 17:28-30)

## **BIBLICAL SCRIPTURES PERCEIVED BY LGBTQIA+ TO BE IN SUPPORT OF HOMOSEXUALITY**

In the 20th century, theologians like Karl Barth, Jürgen Moltmann, Hans Küng, John Robinson, Bishop David Jenkins, Don Cupitt, and Bishop Jack Spong challenged traditional theological positions and understandings of the Bible; following these developments some have suggested that passages have been mistranslated, and taken out of context, or that they do not refer to what is generally understood as "homosexuality"<sup>318</sup>.

As such, there are no biblical scripture in support of homosexuality but what's present is a misinterpretation by the LGBTQIA+ that refers to the close ties and affections between biblical characters and their same sex close ties to mean that they

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<sup>318</sup> "Judeo-Christianity and homosexuality". Religious Tolerance. Archived from the original on 5 February 2016. Retrieved 4 October 2021.

were homosexual, however this doesn't amount to sexual orientation or deviation despite their efforts to make it pass as the same as discussed below.

The LGBTQIA+ community argues that several characters in the bible were non-gender confirming in that they didn't conform to traditional gender roles, that they were not physically typical of men or women, they refer to Jacob who preferred to be at home, enjoyed cooking and was smooth skinned in contrast to his brother who was hairy and preferred to hunt and be out doors. This however doesn't establish that Jacob was no gender conforming.

Jacob preferred to be with his mother at home, enjoyed cooking and was smooth-skinned, in contrast to his brother, who was hairy and preferred to hunt and be outdoors. (Genesis 25) Joseph, Jacob's son, was given an "ornate robe" by his father (Genesis 37:3); the Hebrew word used here for the robe (*ketonet passim*) is used elsewhere to mean "the kind of garment the virgin daughters of the king wore" (2 Samuel 13:18).

Deborah (Judges 4-5) was a judge of Israel, acting as a prophet and military leader at a time when women were treated like property and valued by the number of children they could bear

Hegai, the eunuch in charge of the palace women in the story of Esther, helped Esther to become queen. Ebed-Melech also was a eunuch, who saved the life of the prophet Jeremiah (Jeremiah 38)

The man carrying a water jar, whom Jesus indicated would take the disciples to the room for his last supper, was doing work that was normally done by women, and yet was given this part to play in Jesus' ministry (Luke 22:10).

According to the Evangelical and Ecumenical Women's Caucus (EEWC), then known as the Evangelical Women's Caucus International, passed a resolution in 1986 stating that Whereas homosexual people are children of God, and because of the biblical mandate of Jesus Christ that we are all created equal in God's sight, and in recognition of the presence of the lesbian minority in EWCI, EWCI takes a firm stand in favor of civil rights protection for homosexual persons<sup>319</sup>."

Its however important to note that Biblical passages have been mistranslated and these passages do not refer to LGBTQIA+ orientation as currently

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<sup>319</sup> Rogers, Jack Bartlett (1 January 2006). *Jesus, the Bible, and homosexuality*; by Jack Rogers. ISBN 9780664229399. Retrieved 12 November 2011.

understood<sup>320</sup>. Liberal Christian scholars, like conservative Christian scholars, accept earlier versions of the texts that make up the Bible in Hebrew or Greek. However, within these early texts there are many terms that modern scholars have interpreted differently from previous generations of scholars<sup>321</sup>.

Accordingly, there are concerns with copying errors, forgery, and biases among the translators of later Bibles<sup>322</sup>. They consider some verses such as those they say support slavery<sup>323</sup>, or the inferior treatment of women<sup>324</sup> as not being valid today, and against the will of God present in the context of the Bible. They cite these issues when arguing for a change in theological views on sexual relationships to what they say is an earlier view. They differentiate among various sexual practices, treating rape, prostitution, or temple sex rituals as immoral and those within committed relationships as positive regardless of sexual orientation. They view certain verses, which they believe refer only to homosexual rape, as not relevant to consensual homosexual relationships<sup>325</sup>.

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<sup>320</sup> "The Bible and Homosexuality". SisterFriends Together. Grace Unfolding Ministries. Archived from the original on 28 February 2008. Retrieved 4 July 2008.

<sup>321</sup> Rogers, Jack Bartlett (1 January 2006). *Jesus, the Bible, and homosexuality*; by Jack Rogers. ISBN 9780664229399. Retrieved 12 November 2011.

<sup>322</sup> Rogers, Jack Bartlett (1 January 2006). *Jesus, the Bible, and homosexuality*; by Jack Rogers. ISBN 9780664229399. Retrieved 12 November 2011.

<sup>323</sup> "What the Bible says about slavery". *Religioustolerance.org*. Retrieved 12 November 2011.

<sup>324</sup> [http://www.religioustolerance.org/ofe\\_bibl.htm](http://www.religioustolerance.org/ofe_bibl.htm).

<sup>325</sup> Rogers, Jack Bartlett (1 January 2006). *Jesus, the Bible, and homosexuality*; by Jack Rogers. ISBN 9780664229399. Retrieved 12 November 2011.



## **CHAPTER EIGHTEEN**

### **POPULAR ARGUMENTS FOR HOMOSEXUALITY AND AGAINST HOMOSEXUALITY BASED ON THE RELIGIOUS PERSPECTIVE OF CHRISTIANITY.**

According to Samuel Koranteng, advocates of pro gay theology often put forward several arguments to in order to silence or challenge the Bible's negative valuation of homosexuality<sup>326</sup>. Although the arguments often invoked in defense of the qualified- and full-acceptance views on homosexuality tend to be scientific, philosophical, or logical, they also have theological or ethical implications.

Their basic thrust is to show that: people are born homosexual--i.e., conclusive evidence exists to prove that homosexuality is genetic or inborn; and since homosexuals are born gay, their sexual orientation is a natural or normal trait of their identity (like the color of the skin or hair), and the orientation is allowed or given by God; a person's homosexual orientation is morally neutral and unchangeable.

In this article, I will state and respond to the myths often advanced in support of homosexuality. The next chapter will address specific arguments that are often presented to cast doubt on the Bible's teaching.

#### **"TO LEARN THE TRUTH ABOUT HOMOSEXUALITY, TALK TO REAL HOMOSEXUALS."**

For many advocates of gay theology, it is not sufficient to trust the Bible writers as the dependable source of truth on this matter. They argue that in order to learn the truth about homosexuality, we must update our knowledge by actually listening to homosexuals themselves. This seems to be the point in some recent Adventist publications.

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<sup>326</sup> Must We Be Silent; Samuel Koranteng-Pipim, Ph.D Director, Public Campus Ministries, Michigan Conference.

For example, one Adventist mother wrote that after she had spent “years of reading, observing, and eventually talking to people,” her homosexual son finally confirmed to her that indeed, “homosexuality is a condition, not a behavior. Whatever may cause a homosexual orientation, it is not something a person chooses.” Her son “told us that from his earliest memories he knew he was ‘different.’” She also reported learning that God may change a person's sexual orientation only “on rare occasions,” and that one can be a homosexual and be “deeply spiritual.”

A non-Adventist scholar has explained why we supposedly need to go to homosexuals themselves to learn the truth about homosexuality. In his article entitled, "A Newly Revealed Christian Experience," a self-avowed gay Christian on the Presbyterian task force studying homosexuality, explains that gay Christians are "the best source" for the Church to understand homosexuality.

Similarly, a United Church of Christ minister states this new approach to knowing (epistemology): Rather than looking to the psychologists and the psychiatrists and the sociologists, and even to the theologians, to find out about gay people, there is a need to listen to gay people within our churches and within the society, to begin to understand what we perceive to be the problems, and then together to work on those problems.

A Princeton Theological Seminary professor of Old Testament Language and Literature, an ordained elder in the Presbyterian Church (USA), best articulated why we supposedly need to go to homosexuals themselves to learn the truth about homosexuality. He wrote:

I used to believe that homosexual acts are always wrong. Listening to gay and lesbian students and friends, however, I have had to rethink my position and reread the scriptures. . . . I have no choice but to take the testimonies of gays and lesbians seriously. I do so with some comfort, however, for the scriptures themselves give me the warrant to trust that human beings can know truths apart from divine revelation.

## **RESPONSE TO ARGUMENT ONE**

We must offer a sympathetic ear to the pains and genuine struggles of homosexuals. But Bible-believing Adventists need to ask whether the testimonies and claims of homosexuals are an adequate basis to learn the truth about homosexuality. Are homosexuals, by virtue of their experience, more qualified than the Bible writers to speak on homosexuality? The inspired writers of the Bible served as dependable

spokespersons for the Creator of human sexuality. Is the attempt to justify homosexuality on the grounds of personal experience or empirical studies, rather than biblical revelation, a legitimate starting point for any investigation regarding sexual morality? Are the testimonies and claims of homosexuals necessarily true?

We are dealing with the fundamental question of how to know truth, a study philosopher call epistemology. I will restate my response: Does one really have to be a homosexual in order to fully understand the truth about homosexuality? Must we experience a particular kind of sinful tendency in order to understand that sinful reality? Assuming even that homosexual orientation is part of a person's constitutional make up (just as a person's color or gender is), can true knowledge about that condition be accurately obtained by only persons with that kind of sexual identity? If so, does this mean, for example, that one has to be black, African, and a woman in order to fully understand and accurately address the pains of people in that category? By analogy, could Jesus, a single Jewish male, have understood the experience of, say, Maria, a single parent Hispanic woman?

Could it be that in a desire to appear more "informed" and perhaps more "compassionate," some Christians are giving the impression that they are ethically and religiously more knowledgeable and "sensitive" than the inspired Bible writers who condemned the practice of homosexuality? How can pro-homosexual advocates be wiser than the One who has given His written Word and His moral laws as the basis of true human joy and self-fulfillment? How can they be more compassionate than the One who has given His life for all humanity? Is it, perhaps, that they do not view the Bible and its God as did the Bible writers--the pioneers of biblical Christianity?

## **ARGUMENT TWO: "PEOPLE ARE BORN HOMOSEXUAL.**

When advocates of pro-gay theology assert that people are born gay, they actually go beyond the generally accepted view that genetics and environmental factors influence a person's behavior. They suggest that homosexuality is largely caused by a person's genes. [5]

This belief, which is itself based on the deterministic philosophy of behaviorism, is designed to suggest that what is inborn is (a) natural or normal, (b) unchangeable, (c) allowed or created by God—as with a congenital defect or one’s eye color, and that it is (d) morally legitimate.

The logic and implications of this view are as follows: If a person is homosexual because of inbred homosexual condition, there is no hope or possibility for change. And because the homosexual cannot change, all aspects of society must change, including education, religion, and law. Not only must homosexuality be accepted as socially legal for homosexuals, it must also be promoted as a normal lifestyle option and, if necessary, the church must be pressured to abandon its alleged immoral discrimination against homosexuals seeking church membership.

## **Response to Argument TWO.**

Even if one could prove that homosexuality is of genetic or hormonal origin, would this make homosexuality morally legitimate? I am aware that scientists, such as the authors of *My Genes Made Me Do It!* have compellingly challenged the claim that homosexuality is biologically fated. [6] But even if true, does being born alcoholic, pedophile, or gay make alcoholism, pedophilia, or homosexuality normal? Moreover, does the fact that something is normal make it morally right?

Is behaviorism or biological determinism compatible with biblical anthropology, which teaches that human beings are created in the image of God and endowed with freedom of choice? Can we correlate this naturalistic philosophy with the biblical doctrine that we are accountable to God for our conduct (doctrine of judgment)? Does not this “I did not choose, I cannot change” philosophy raise serious questions about Christ’s power to help us “overcome all hereditary and cultivated tendencies to sin”? [7]

Does not this behavioristic philosophy lead to a “once a sinner, always a sinner” doctrine? In other words, would it be biblically correct to maintain that even after conversion, an alcoholic/drug addict or a habitual/compulsive liar or sexual pervert will always remain an alcoholic/drug addict or habitual/compulsive liar or a sexual pervert? Is not this born a gay philosophy in conflict with the born again promise of the living Christ?

To clarify the issue further, we will look at other aspects of this born a gay theory. For example: (1) Do studies show that homosexuality is inborn? (2) Is homosexual orientation natural or normal? (3) Is homosexual orientation God given? (4) Is

homosexual orientation morally neutral? (5) Is homosexual orientation unchangeable? (6) Does God want homosexuals to give up who they are? (7) Is it true that “once a homosexual, (almost) always a homosexual”?

### **ARGUMENT THREE: “STUDIES SHOW THAT HOMOSEXUALITY IS INBORN”**

Like every other sinful practice, one’s genes, environment, and many other factors may greatly influence a person’s predisposition to a particular sin. But pro-gay advocates go further, claiming that scientific studies offer conclusive proof that people are born gay.

#### **Response to Argument THREE.**

Although some future studies may one day bear this out, the research findings often cited as evidence of the born a gay condition are, at best, inconclusive; they are questionable at worst. [8] Two of these deserve mention because of the prominence often given them in Adventist publications.

### **NEUROBIOLOGIST SIMON LEVAY’S 1991 STUDY ON THE BRAINS OF 41 CADAVERS.**

The cadavers consisted of nineteen allegedly homosexual men, sixteen allegedly heterosexual men, and six allegedly heterosexual women. He reported that a cluster of neurons in a distinct section of the brain (called the interstitial nuclei of the anterior hypothalamus, or the INAH3) were generally smaller in the homosexual men as compared to the heterosexual men. As a result, he hypothesized that the size of these neurons may cause a person to be either heterosexual or homosexual. [9] This study is often cited as proof that people are born gay.

As others have shown, LeVay’s study is exaggerated, misleading, and fraught with major weaknesses. (1) In order for his theory to be valid, studies would have to show that the difference in size of that section of the brain occurred 100% of the time. But LeVay’s own study showed 17% of his total study group contradicted his theory. Three of the nineteen allegedly homosexual men actually had larger neurons than their heterosexual counterparts, and three of the heterosexual men had smaller neurons than did the homosexual men. (2) There is no proof that the section of the brain he measured actually has anything to do with sexual preference. (3) The study did not show whether the size of the neurons caused the sexual preference or whether

the sexual preference caused the size. (4) The scientific community has not by any means unanimously accepted LeVay's finding. (5) LeVay's own objectivity in the research is in question, since he admitted in a September 9, 1991, Newsweek magazine that after the death of his homosexual lover, he was determined to find a genetic cause for homosexuality, or he would abandon science altogether.

## **J. MICHAEL BAILEY AND RICHARD PILLARD'S 1991 STUDY OF TWINS.**

Bailey and Pillard investigated how widespread homosexuality are among identical twins (whose genetic makeup are the same) and fraternal twins (whose genetic ties are less close). Among other things, they discovered that 52% of the identical twins studied were both homosexual. Bailey and Pillard hypothesized that the higher incidence of homosexuality among the identical twins implies that homosexuality is genetic in origin.

Bailey and Pillard's theory are also misleading and exaggerated. For their theory to be a fact, the following should hold: There should never be a case when one identical twin is heterosexual and the other homosexual, since both identical twins share 100% of the same genes. If sexual orientation is genetic, then both identical twins will in 100% of cases always be either homosexual or heterosexual. Bailey and Pillard's findings of only 52% challenges their own hypothesis. On the contrary, their research confirms that non-genetic factors play a significant role in shaping sexual preference. The twins should be raised in different homes to eliminate the possible effect of environmental factors in their sexual preferences. But all twins studied by Bailey and Pillard were raised in the same homes. A later study on twins by other scholars yielded different results. Bailey and Pillard, like LeVay, may not have approached their study objectively, given their personal feelings about homosexuality. Because Bailey is a gay rights advocate and Pillard is openly homosexual, their objectivity in the research may be questioned. There are also questions about whether the sample was representative, since Bailey and Pillard requested subjects by solicitation through homosexual organizations and publications.

Other studies have been done. However, to date, we know of no study that supports the claim by pro-gay advocates that conclusive evidence exists showing people are born gay or that homosexuality is inborn or of genetic origin. We are not suggesting

that genetics does not influence one's homosexual predisposition. Our contention is simply that the studies usually cited for the claim that people are born gay are not as conclusive as proponents would have us believe. It seems that the studies are put forth to intimate that homosexuality is not a sin to be repented of but a mark of one's identity to be celebrated.

### **ARGUMENT THREE: "HOMOSEXUALITY IS NOT A SIN, BUT A CONDITION OF SINFULNESS."**

This variation of the born gay argument is perhaps the most popular in Christian circles. Unlike the previous argument which sees homosexuality as normal or natural, proponents of the current argument suggest that homosexuality is an abnormal or unnatural condition, or even an illness brought about by a number of factors beyond the control of the individual. The causes include biological/genetic defect, gender confusion (a female mind in a male body and vice versa), or prenatal hormonal irregularities (e.g., endocrine-mimicking chemicals or chemical toxicity in the brains of homosexuals during the formative period of their embryos or fetuses). Based on these alleged causes, some pro-gay advocates maintain that homosexuals have no choice in the matter of their sexual predisposition towards persons of the same gender.

The homosexual condition or orientation, it is argued, is an evidence of the brokenness and fallenness of our present world. The condition may be classified with disease (such as alcoholism, or allergies), with handicap (such as congenital blindness), and eccentricity (such as left-handedness). It may even be evil (like sickness or death), but not necessarily sinful (like pride, blasphemy, or murder). Because homosexuals did not choose to be born gay, "we shouldn't hold a person responsible for her or his sexual orientation any more than we hold a person responsible for skin color (nature)." Being a homosexual is not sin, but lustful and inappropriate homosexual activity is sin and therefore, must be avoided. Since it is believed that homosexuals did not chose to be gay, but were born that way, God deserves the credit (or blame) for who or what they are. And since homosexuality is presumably not a sin, but a sinful condition, homosexuals need compassion and acceptance from the church.

## **ONE EX-HOMOSEXUAL EXPLAINS WHY HE “ACCEPTED” HIS HOMOSEXUALITY:**

I was not responsible for who and what I was. I was God’s creation, and if He had not wanted me to be gay (homosexual), then He wouldn’t have made me this way. If being gay was a choice, I would never have made that choice, for with it came the consequences of hurting those I loved, the break up of my home, the loss of my children, alienation from my family and friends and church, the scorn and ridicule of the general public. It was all God’s fault. As far as choices were concerned, I had made all the right choices. I had chosen a Christian education for myself. I had chosen to be a student missionary for two years in the Far East. I had chosen to study theology and pre-med preparatory to becoming a medical missionary some day. I had chosen to marry a Christian girl, and to have little Christian children. But eventually, no longer able to deny to myself who and what I really was inside, I had ‘accepted’ being homosexual, and, in extreme frustration, turned my back on family, friends, God, and everything I had worked for, and entered into the gay life ‘rightfully’ giving God all the credit (or blame).

### **RESPONSE TO ARGUMENT FOUR:**

While not denying the possibility that homosexuality may be caused by many combinations of variables, including biological/genetic or hormonal irregularities, there are serious problems with the argument that homosexuals are somewhat sick or abnormal, or that homosexuality is not a sin, but a condition of sinfulness.

First, perceptive critics, including advocates of the Gay Right Movement, are moving away from the theories of genetic-defect and hormonal irregularities for fear that other research findings showing some unacceptable conditions (like alcoholism, schizophrenia, cerebral palsy, etc.) as genetically or biologically related will soon make homosexuals look like they are abnormal, sick, or less than human. Such a perception, in their opinion, will be a reversal of the gains they made when the Gay Right Movement successfully lobbied to have the American Psychological Association and the American Psychiatric Association remove homosexuality from the categories of abnormal behavior and mental illness

For example, one scholar exposes the intellectual and psychological inconsistency in this “outmoded version of natural law” which seeks to make a fine distinction between homosexual orientation and behavior. Responding to the view that “while homosexuality as an orientation is contrary to God’s created intention, the

homosexual person ought not to be adversely judged or rejected by the church,” this researcher counters that while some may deem such a position a more tolerant and compassionate view than outright condemnation, “it places gay men and lesbians in at least two impossible binds.” He continues:

One, of course, is the individual's recognition that her or his own sexual orientation is as natural and as fundamental to identity as is the color of the skin. It is both naive and cruel to tell a lesbian or gay man, ‘Your sexual orientation is still unnatural and a perversion, but this is no judgment upon you as a person.’ The individual knows otherwise. The other bind concerns churchly pressure toward celibacy. When the church presumes to be non-judgmental toward orientation but then draws the line against genital expression, it is difficult to understand how the sense of guilt--even in the celibate--will be significantly alleviated.

The point is that many homosexuals don't want to be perceived as abnormal or sick. They see themselves as normal people with full control over their choices. They don't consider themselves driven by some defective genes to do things contrary to their choice. When they describe themselves as born gays, they don't understand their condition to be the result of genetic defect or gender-confusion, or hormonal/chemical accident. Instead, they argue that their homosexuality is an alternative expression of human sexuality, created by God Himself, and therefore not a sin. This is why they prefer to see their homosexual orientation as normal, natural, morally neutral, and a gift from God.

Second, assuming even that homosexuality is of biological/genetic origin, does it make it right. For example, is stealing right just because a person was born a kleptomaniac? Is alcoholism right, just because a person was born alcoholic (i.e. born with a strong genetic predisposition towards alcoholism)? Undoubtedly, the kleptomaniac/alcoholic is sick and needs help. But stealing/drunkenness, regardless of its cause, is never right. Thus, a person who is born gay (either because of genetic defect, hormonal problem, gender confusion, etc.) is at best abnormal or sick. That person may be suffering from a compulsive immoral tendency. But would the cause of that compulsive or uncontrollable homosexual lust or behavior make the tendency or behavior, morally right?

Adulterers, or pedophiles, or pornographers, will gain little sympathy from the claim that their genes made them do it. Why should the homosexual be considered in a different genetic light? No, however fascinating or apparently comforting it may be to explore how the patterns of genetic structure and social surroundings combine to

create for each of us a moral context, we must nevertheless also recognize our responsibility to act obediently within that context. As moral agents we say yes or no to each potential sexual encounter.

Third, even if a biological/genetic link is found, would that prove that God created homosexuality? Jesus dismissed the suggestion that God is responsible for genetic deficiencies with which people are born. When asked why a man was born blind, Christ did not say, “Because God made him this way.” “Rather, He said that God was to be glorified through healing the man of the effects of his faulty genes (John 9:1-7). So, it is with homosexuals who might have a genetic predisposition. (Notice I said ‘might.’ The verdict is still out.) God didn’t make them this way. It [homosexuality] is the result of the degeneration of humankind by thousands of years of sin. God doesn’t create any of the aberrations sin causes. However, he can be glorified in genetically challenged people. Jesus will provide victory over what genetics might influence.”

## **ARGUMENT FIVE “HOMOSEXUAL ORIENTATION IS NATURAL OR NORMAL”**

Based on the assumption that homosexuality is inborn, i.e. of genetic origin, advocates argue that homosexuality should be accepted as a natural or normal human condition.

### **RESPONSE TO ARGUMENT FIVE.**

This argument is also flawed. Leaving aside the important issues of the manner in which the scientific research is conducted and the kind of interpretation given to the research findings, even proving that homosexual orientation is inborn (i.e., of genetic origin) will not make homosexuality normal or desirable. Many defects or handicaps today are inborn, but hardly anyone would call them normal for that reason alone. Why should homosexuality be considered natural or normal, just because it may be inborn?

When we say that something is natural, we refer to what happens repeatedly in the world of nature—in which case we do not assign moral judgment to it. For example, spiders kill and eat other spiders, including their mates. “But as a moral category natural refers to something that is in accord with God’s intention. Actions are good or bad: for example, people sometimes kill and eat other people. But the fact that cannibalism happens in the world—perhaps in satisfaction of deeply held religious

beliefs or peculiar culinary tastes—does not make it natural in the sense that it conforms to God’s will. In summary: that which is natural to human experience or human desire is not necessarily natural in God’s moral design.”

## **ARGUMENT SIX: “HOMOSEXUAL ORIENTATION IS GOD-GIVEN.”**

The argument here is that because many homosexuals claim that since their childhood they have always had homosexual feelings, their “natural” homosexual tendencies are from God.

### **RESPONSE TO ARGUMENT SIX.**

Scripture nowhere suggests that if a thing seems natural it is inevitably God given. On the contrary, the Bible teaches that many “natural” states and desires are not of God and are contrary to His will.

For example, “The natural man does not receive the things of God” (1 Cor 2:14). Before conversion, we “were by nature the children of wrath” (Eph 2:3). “The carnal mind is enmity against God, for it is not subject to the law of God, nor indeed can be” (Rom 8:7). Scripture teaches that we are a fallen race, born in sin: “Behold, I was brought forth in iniquity” (Ps 51:5; cf. Jer 17:9; Rom 5:12). Sin has marred our physical and spiritual nature (1 Cor 15:1-54; John 3:5-6). We cannot therefore assume that because something is natural or inborn, it must be God ordained.

## **ARGUMENT SEVEN: “HOMOSEXUAL ORIENTATION IS MORALLY NEUTRAL”**

From the assumption that people are born gay, proponents argue that homosexuality should be viewed as a neutral expression of human sexuality. Like heterosexuality, homosexuality can be rightly used or abused. The abuse is wrong. But its use within a loving, consensual, and monogamous relationship is morally right.

### **RESPONSE TO ARGUMENT SEVEN.**

As to the assumption that because homosexuality may be natural or inborn (an unproven assertion) it is morally neutral or legitimate, we may ask: If we would demonstrate conclusively that adultery, incest, pedophilia, violence, lying are inherited, would we be justified in considering them legitimate or neutral? Should the standard for morality be determined by what is inborn?

Contrary to this view, homosexuality is still immoral, whether inborn or acquired. “And immoral behavior cannot be legitimized by a quick baptism in the gene pool.”

Morality is not determined by what is inborn. Those wishing to discover God’s moral standards must look to the Bible. The Ten Commandments and God’s pre-fall order, rather than the latest discoveries of science regarding the post-fall sinful condition, provide the moral guidelines on whether homosexuality is moral and immoral. The leap from what is (alleged facts of the homosexual condition) to what ought to be (the morality of homosexuality) is too large to make.

If some men and women are born with homosexual or lesbian genes, then the rest of us are born with adulterous and lying genes. Will God excuse adultery and lying because we were supposedly born with those genes? We are counseled: “Never should we lower the standard of righteousness in order to accommodate inherited or cultivated tendencies to wrong-doing<sup>327</sup>”

## **ARGUMENT EIGHT: “CHANGING THE HOMOSEXUAL ORIENTATION IS DIFFICULT AND RARE”**

It is claimed that because homosexuality is an inbred condition, the homosexual has no (or very little) hope of ever changing.

### **RESPONSE TO ARGUMENT EIGHT.**

The oft-repeated claim that "changing one's homosexual orientation is difficult and rare" is not supported by Scripture or Ellen G. White. In fact, the Bible itself says that sinners such as fornicators, adulterers, thieves and homosexuals were actually able to overcome their sinful practice through the transforming power of Christ (1 Cor. 6:9-11). Similarly, Ellen G. White states unequivocally that "a genuine conversion changes hereditary and cultivated tendency to wrong."

But even when we suppose, for the sake of argument, that the homosexual condition is unchangeable- -i.e., that no amount of prayer, counseling, and effort of any kind can make a homosexual change his orientation--do these facts make homosexuality less sinful? Definitely not. One former homosexual's statement is worth quoting:

There is no contingency factor in any scriptural reference to any kind of sin, in either the Old or the New Testament. We never read anything like: "Thou shalt not do thus and so!" ("Unless, of course, you tried hard to change, went for prayer and

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<sup>327</sup> (Christ’s Object Lessons, 330).

counseling, and found you just couldn't stop wanting to do thus and so. If that's the case, then thus and so is no longer sin. It's an inborn, immutable gift and you can darn well [feel free to] indulge in it!"

The truth, however, is that “whether the homosexual is in denial, latent, ‘in the closet,’ openly gay, ‘married,’ militant, or even a ‘flaming queen’; whether he believes to have been born ‘gay’ or conditioned to be gay, . . . it does not really matter. If someone is drowning, it matters not whether he fell into the water, fell asleep in the water, jumped into the water, or was thrown into the water. The bottom line is that he needs a life guard, a savior.” Jesus is that Lifeguard. He is mighty to save every sinner, both heterosexual and homosexual, provided they admit that they are sinners, repent, and turn from their sinful ways.

### **ARGUMENT NINE: “ONCE A HOMOSEXUAL, (ALMOST) ALWAYS A HOMOSEXUAL”**

This is where the logic of biological predestination eventually leads: People are born gay; they cannot change their condition; they will always remain gay. If anyone has to change, it must be the institutions of society and the church, not the homosexual. The laws of society and the Bible must change to accommodate the homosexual who, once gay, will always be gay.

### **RESPONSE TO ARGUMENT NINE.**

Perhaps the most important question raised by the issue of homosexuality is whether Christ has power to help people overcome sin in their lives. This is of course an important question if homosexuality is sin. For if homosexuality is just a sickness or addictive/compulsive behavior, then homosexuals need therapy, not repentance; they need medical cure and not moral correction. And if homosexuality is simply a morally neutral part of a person’s identity, then “once a homosexual, (almost) always a homosexual.”

The latter claim has been made by the editor of a leading Adventist church paper:

You attempt to make a point that neither the Bible nor human experience can support—that a person’s sexual orientation is itself sinful and must and can be overcome by the new birth. As Jesus and our common sense tell us, no amount of praying or piety can turn a person five feet tall into one six feet tall; and a person who is an alcoholic is an alcoholic for life. The only question is whether the alcoholic will practice on the basis of her [sic] or her orientation.

The above quotation summarizes the issues raised in this chapter. Not only does it raise questions about the normative source of one's religious authority (Bible? human experience? Jesus? common sense?), but also it raises the question about whether or not (a) we can distinguish between being a homosexual and practicing homosexuality, whether or not the experience of conversion—the new birth—can help a person to overcome his/her sinful sexual orientation (whether homosexual, bisexual, or heterosexual) and whether (c) a person who is an alcoholic or homosexual can overcome all these sinful tendencies and cease to be an alcoholic and homosexual.

If the Bible's diagnosis of homosexuality as sin can be established scripturally, then the Bible's prescription is the same for homosexuals as it is for all other sinners: a call to conversion and an invitation to participate in the process of biblical sanctification. If this is true, then the Bible's approach cannot be disdained as naive, simplistic, or inadequate, nor belittled as pat answers that are incomplete for people struggling with sexual addiction. It forces us to answer the question of whether the transforming power of God is more effective than the impotent power of psychological therapy.

The testimony of Scripture exposes the lie that "once a homosexual, always a homosexual." Homosexuals can be, and have actually been, changed through the transforming power of Christ (1 Cor 6:9-11). Those who deny this fact not only deny the veracity of Scripture on this issue, but they also unwittingly portray God as impotent, rather than omnipotent. Jesus can save to the uttermost any sinner. This includes the homosexual.

### **ARGUMENT TEN: “THERE’S A DIFFERENCE BETWEEN BEING A HOMOSEXUAL AND PRACTICING HOMOSEXUALITY”**

Discussions on homosexuality often define it in two ways: (a) homosexual orientation or inclination or tendency—an inborn sexual attraction, predisposition, or desire toward a member of one's own sex, and (b) homosexual behavior or practice—an erotic activity with a member of one's own sex, an activity that may or may not be morally right.

On the basis of this distinction some Adventist writers argue that homosexual orientation/condition (also referred to as ontological or constitutional homosexuality or inversion) is a permanent and unchangeable part of the individual's constitutional

make up. It is like the color of a person's skin—a non-behavioral trait that is to be viewed as morally neutral and a condition from which no one can change. On the other hand, homosexual practice/activity must be judged according to morally acceptable norms. “Being a homosexual is not sin,” it is argued, but “homosexual sexual activity is sinful—it is apart from God's will.”

## **RESPONSE TO ARGUMENT TEN:**

This argument is meaningless, if not misleading. Is homosexuality something you are, like being black or elderly or handicapped or female, or is it something you do, like adultery or incest or lying? This question goes to the heart of the pro-homosexual statement that “there is a difference between being a homosexual and practicing homosexuality.” In order for the pro-gay argument to be valid, one must assume that homosexuality is not a sin. On the other hand, if homosexuality is a sin, as the Bible teaches, then the distinction between being a homosexual and practicing homosexuality is artificial and invalid.

Let's think a little more carefully: Can a person really be a homosexual without practicing homosexuality? If this is so, can a person be an adulterer without practicing adultery? Can a person be a kleptomaniac without stealing? Can an individual be a liar without practicing lying? Also, if a person repents of his besetting sin, and through the enabling grace of God gains victory over, say, stealing, lying, immorality, etc., would it be theologically appropriate to continue viewing the person as though he were still in bondage to that particular sin, even though he may still be tempted?

Rather than distinguishing between being a homosexual and practicing homosexuality, perhaps it is more theologically sound to distinguish between the temptation to act upon one's sinful homosexual tendency (which is not wrong) and actually choosing to cherish and act upon that temptation (a wrongful choice).

If allowed to stand unchallenged, the distinction made between being homosexual and practicing homosexuality would raise a number of biblical and theological questions. First, does the Bible make such a distinction between homosexual orientation/condition and homosexual practice/ behavior? —between inversion (constitutional homosexuality) and perversion (the abuse of homosexuality)? Adventist scholars disagree on this issue.

For example, one New Testament scholar admits that, “Such a distinction [between inverts and perverts] does not appear in Scripture, nor does the Bible reflect the

understanding of homosexuality that we have today.” But he seems to negate this categorical statement when, in the very next sentence, he writes: “Nevertheless, Paul must have had reference to the perverted sexual practices common in the degenerate pagan society of his time. Obviously, he is referring to perverts, not inverts who do not participate in homosexual practices.”

If the Bible makes no such distinction, how is it “obvious” for Paul to be referring to a non-existent distinction? In other words, if Scripture does not make the contemporary distinction between homosexual orientation (inversion) and homosexual practice (perversion), how is it possible that “the New Testament statements directed themselves primarily if not exclusively to perverts, not inverts”? In order not to be accused of forcing the Bible into the mold of today’s sociological dichotomy between perversion and inversion, Adventist exegetes would need to establish whether the Bible makes such a distinction or not. The Bible condemns sin in thought and deed. It teaches that we all have sinful natures but offers victory through rebirth.

Second, the distinction between orientation and practice—the former being morally neutral and the latter morally wrong—also raises theological and ethical questions. Does the universal sinfulness of all humanity and the fact that they are born with weakness and tendencies to evil (Ps 51:5; 143:2; cf. 14:3; 1 Kings 8:46; Pro 20:9; Rom 3:23; 7:14-24; 1 John 1:8) allow one to suggest that this sinful tendency or propensity is morally neutral, and therefore, not a sin to be repented of or overcome by the power of Christ (Rom 7:25; 8:1; Eph 2:1-10; John 1:13; 3:5; 2 Cor 5:17)?

Third, if Adventists adopt the social scientists’ distinction between homosexual orientation and homosexual practice, would not such a dichotomy be a biblically questionable rendering of actions and attitudes? In other words, how can the practice of homosexuality be wrong, and yet, the inclination toward or the longing for that action be neutral (cf. Matt. 5:27, 28; 1 John 3:15)?

Is it Scriptural to argue that a homosexual orientation is morally neutral (and hence, not a sin) but the action itself is that which is sinful? If there exists an orientation toward a wrong act, does not a person need as much help to overcome that inclination as the individual who has succumbed to that wrong desire—whether it be lying, stealing, adultery or killing, etc.? The Bible teaches that all sinful acts, including deceit, adultery, murder, etc., proceed from the sinful human heart (Prov 12:20; Matt 5:27, 28; 1 John 3:15; Mark 7:21-27).

Instead of referring to homosexuality as a morally neutral orientation, is it not more biblical to say that a homosexual orientation is nothing more than an almost helpless sinful tendency or propensity (such as kleptomania, nymphomania, inveterate adultery), a condition that makes temptation to sin almost irresistible? And if homosexual orientation, like kleptomania and nymphomania, is a sinful human condition, does not this diagnosis suggest that the cure for this problem has to be Divine?

Could it be that the failure to recognize homosexuality as sin is one reason why it cannot be overcome? If homosexual orientation excuses the sin of homosexual desires, does it not imply that other sinful orientations (such as compulsive lying, compulsive adultery, compulsive racism, compulsive stealing, compulsive disobedience to authority, etc.) should all be excused as irreversible sinful conditions? Wherein then, lies the power of God's transforming grace?

## **ARGUMENT ELEVEN “BEING A HOMOSEXUAL IS NOT A SIN”**

Another variation of the previous pro-gay argument is the belief that being a homosexual is not a sin. In the view of proponents, the condition of homosexuality is not a sin. Therefore, in the words of one Adventist scholar, “homosexuals can be genuine, model Christians.” [30] They do not consider it an oxymoron to speak about a gay Christian or a gay Adventist. For in their view, individuals can be a non-practicing homosexual when they choose to be “celibate homosexuals.” [31]

### **RESPONSE TO ARGUMENT ELEVEN.**

The above statement is based on the questionable argument that a person can be a homosexual without practicing homosexuality. It also wrongly assumes that homosexuality is a morally neutral condition or mark of a person's identity (like being black, white, Italian, woman, etc.). For the statement (“being a homosexual is not a sin”) to be valid, we have to show from the Scriptures that homosexuality itself is not a sin. As we shall later see, this cannot be established from Scripture.

A person is no more a non-practicing homosexual as a non-practicing adulterer or a non-practicing polygamist. Once individuals cease to practice adultery or polygamy, they can no longer be referred to as adulterers or polygamists. They are ex-adulterers and ex-polygamists. Therefore, homosexuals who do not practice (or cherish or lust after) homosexuality are exhomosexuals.

The apostle Paul did not refer to the converted believers in Corinth as non-practicing fornicators, idolaters, adulterers, or homosexuals. That they were ex-fornicators, ex-idolaters, ex-adulterers and ex-homosexuals is indicated by his statement, “such were some of you” [past tense] (1 Cor 6:9-11).

## **ARGUMENT TWELVE “GOD DOES NOT WANT HOMOSEXUALS TO GIVE UP ‘WHO THEY ARE’**

Based on the assumption that people are born gay, and on the basis of texts like Psalm 139:13 (“For you created my inmost parts”) and Psalm 100:3 (“It is he that hath made us and not we ourselves”), pro-gay advocates maintain that peoples’ homosexual orientation/condition is part of their identity, defining who they are as sexual human beings. Consequently, it is argued: “Since God made me the way I am, and since I have had my orientation from my earliest memories, why shouldn’t I express my God-given sexuality? Why would God ask me to change something which He Himself has given me?”

### **RESPONSE TO ARGUMENT TWELVE.**

The fact is that God wants every one of us, including homosexuals, to give up something we have had all our lives—our selves, our sinful selves. The Bible condemns all forms of self-love or self-indulgence as expressions of idolatry and presents self-denial as the hall-mark of Christian discipleship (Luke 14:26-27; cf. Rev 12:11). The only way really to find one’s self is by losing it (Mark 8:34-37). We cannot change ourselves but Christ can change us if we truly want to be changed from our besetting sexual tendencie.

## **THE LOST BOOKS OF THE BIBLE**

The Lost Books of the Bible and the Forgotten Books of Eden (1926) is a collection of 17th-century and 18th-century English translations of some Old Testament Pseudepigrapha and New Testament apocrypha, some of which were assembled in the 1820s, and then republished with the current title in 1926.



## CHAPTER NINETEEN

### HISTORY OF THE TRANSLATIONS

Rutherford Hayes Platt, in the preface to his 1964 reprint of *The Lost Books of the Bible and the Forgotten Books of Eden* states:

"First issued in 1926, this is the most popular collection of apocryphal and pseudepigraphal literature ever published."

The translations were first published, under this title, by an unknown editor in *The Lost Books of the Bible* Cleveland 1926, but the translations had previously been published many times.

The book is, essentially, a combined reprint of earlier works. The first half, *Lost Books of the Bible*, is an unimproved reprint of a book published by William Hone in 1820, titled *The Apocryphal New Testament*, itself a reprint of a translation of the Apostolic Fathers done in 1693 by William Wake, who later became the Archbishop of Canterbury, and a smattering of medieval embellishments on the New Testament, from a book by Jeremiah Jones (1693–1724), posthumously published in 1736. In the three centuries since these were originally published, a great deal more is known about the Apostolic Fathers (including a good deal of the original text that was not available in 1693) and New Testament apocrypha.

The second half of the book, *The Forgotten Books of Eden*, includes a translation originally published in 1882 of the "First and Second Books of Adam and Eve", translated first from ancient Ethiopic to German by Ernest Trumpp and then into English by Solomon Caesar Malan, and a number of items of Old Testament pseudepigrapha, such as reprinted in the second volume of R.H. Charles's *Apocrypha and Pseudepigrapha of the Old Testament*<sup>328</sup>.

More modern translations of these works include J. H. Charlesworth, ed. *Old Testament Pseudepigrapha*; W. Schneemelcher, ed. *New Testament Apocrypha*; and M. R. James, *The Apocryphal New Testament*.

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<sup>328</sup> (Oxford, 1913)

- The the Book of Enoc
- The Protevangelion.
- The Gospel of the Infancy of Jesus Christ.
- The Infancy Gospel of Thomas.
- The Epistles of Jesus Christ and Abgarus King of Edessa.
- The Gospel of Nicodemus (Acts of Pilate)
- The Apostles' Creed (throughout history)

## ISLAM

According to Rehman, Javaid, Polymenopoulou & Eleni attitudes toward lesbian, gay, bisexual, and transgender (LGBT) people and their experiences in the Muslim world have been influenced by its religious, legal, social, political, and cultural history<sup>329</sup>. The Holy Quran narrates the story of the "people of Lot" destroyed by the wrath of God because the men engaged in lustful carnal acts between themselves, at the same time, "both the Quran and the *hadith* strongly condemn homosexual activity" with some *hadith* prescribing the death penalty for those engaged in male homosexual or lesbian intercourse publicly.

The Quran contains several allusions to homosexual activity, which has prompted considerable exegetical and legal commentaries over the centuries<sup>330</sup>. The subject is most clearly addressed in the story of Sodom and Gomorrah<sup>331</sup> after the men of the city demand to have sex with the male messengers sent by God to the Prophet Lot (Lut)<sup>332</sup>. The Quranic narrative largely conforms to that found in Genesis. In one passage the Quran says that the men "solicited his guests of him" Quran 54:37, using an expression that parallels phrasing used to describe the attempted seduction of

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<sup>329</sup> Rehman, Javaid; Polymenopoulou, Eleni (2013). "Is Green a Part of the Rainbow? Sharia, Homosexuality, and LGBT Rights in the Muslim World" (PDF). *Fordham International Law Journal*. Fordham University School of Law. 37 (1): 1–53. ISSN 0747-9395. OCLC 52769025. Archived from the original on 21 July 2018. Retrieved 30 October 2021.

<sup>330</sup> Rowson, Everett K. (2006). "Homosexuality". In McAuliffe, Jane Dammen (ed.). *Encyclopaedia of the Qur'ān*. Vol. 2. Leiden: Brill Publishers. pp. 444–445. Doi: 10.1163/1875-3922\_q3\_EQCOM\_00085. ISBN 90-04-14743-8.

<sup>331</sup> Wafer, Jim (1997). "Muhammad and Male Homosexuality". In Murray, Stephen O.; Roscoe, Will (eds.). *Islamic Homosexualities: Culture, History, and Literature*. New York and London: NYU Press. pp. 88–96. doi:10.18574/nyu/9780814761083.003.0006. ISBN 9780814774687. JSTOR j.ctt9qfmm4. OCLC 35526232. S2CID 141668547.

<sup>332</sup> Kligerman (2007) pp. 53–54.

Joseph, and in multiple passages they are accused of "coming with lust" to men instead of women (or their wives)<sup>333</sup>.

## **SURAH AL- A'RAF 7:80-84**

And 'remember' when Lot scolded 'the men of' his people, 'saying, ' "Do you commit a shameful deed that no man has ever done before? You lust after men instead of women! You are certainly transgressors." But his people's only response was to say, "Expel them from your land! They are a people who wish to remain chaste!" So, we saved him and his family except his wife, who was one of the doomed. We poured upon them a rain 'of brimstone'. See what was the end of the wicked!

## **ZINA VERSE**

Only one passage in the Quran prescribes a strictly legal position. It is not restricted to homosexual behaviour, however, and deals more generally with zina (illicit sexual intercourse)<sup>334</sup>:

'As for' those of your women who commit illegal intercourse—call four witnesses from among yourselves. If they testify, confine the offenders to their homes until they die or Allah ordains a 'different' way for them. And the two among you who commit this sin—discipline them. If they repent and mend their ways, relieve them. Surely Allah is ever Accepting of Repentance, Most Merciful.

## **SURAH AN-NISA 4:15-16**

In the exegetical Islamic literature, this verse has provided the basis for the view that Muhammad took a lenient approach towards male homosexual practices<sup>335</sup>. The Orientalist scholar Pinhas Ben Nahum has argued that "it is obvious that the Prophet viewed the vice with philosophic indifference. Not only is the punishment not indicated—it was probably some public reproach or insult of a slight nature—but mere penitence sufficed to escape the punishment"<sup>336</sup>. Most exegetes hold that these verses refer to illicit heterosexual relationships, although a minority view attributed

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<sup>333</sup> Rowson, Everett K. (2006). "Homosexuality". In McAuliffe, Jane Dammen (ed.). *Encyclopaedia of the Qur'ān*. Vol. 2. Leiden: Brill Publishers. pp. 444–445. doi:10.1163/1875-3922\_q3\_EQCOM\_00085. ISBN 90-04-14743-8.

<sup>334</sup> Wafer, Jim (1997). "Muhammad and Male Homosexuality". In Murray, Stephen O.; Roscoe, Will (eds.). *Islamic Homosexualities: Culture, History, and Literature*. New York and London: NYU Press. pp. 88–96. doi:10.18574/nyu/9780814761083.003.0006. ISBN 9780814774687. JSTOR j.ctt9qfmm4. OCLC 35526232. S2CID 141668547.

<sup>335</sup> Ibid.

<sup>336</sup> Ibid.

to the Mu'tazilite scholar Abu Muslim al-Isfahani interpreted them as referring to homosexual relations. This view was widely rejected by medieval scholars, but has found some acceptance in modern times<sup>337</sup>.

## CUPBEARERS IN PARADISE

Some Quranic verses describing the Islamic paradise refer to perpetually youthful attendants which inhabit it, and they are described as both male and female servants: the females are referred to as *hūr*, whereas the males are referred to as *ghilmān*, *wildān*, and *suqāh*. The slave boys are referred to in the Quran as "immortal boys" (**Quran 56:17, 76:19**) or "young men" who serve wine and meals to the blessed<sup>338</sup>.

Jurists of the Hanafi school took up the question seriously, considering, but ultimately rejecting the suggestion that homosexual pleasures were, like wine, forbidden in this world but enjoyed in the afterlife<sup>339</sup>.

## IN THE HADITH

The hadith (sayings and actions attributed to Muhammad) show that homosexual behaviour was not unknown in seventh-century Arabia<sup>340</sup>. However, given that the Quran did not specify the punishment of homosexual practices, Islamic jurists increasingly turned to several "more explicit" hadiths in an attempt to find guidance on appropriate punishment<sup>341</sup>.

From Abu Musa al-Ash'ari, the Prophet states that: "If a woman comes upon a woman, they are both adulteresses, if a man comes upon a man, then they are both adulterers<sup>342</sup>."

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<sup>337</sup> Rowson, Everett K. (2006). "Homosexuality". In McAuliffe, Jane Dammen (ed.). *Encyclopaedia of the Qur'ān*. Vol. 2. Leiden: Brill Publishers. pp. 444–445. doi:10.1163/1875-3922\_q3\_EQCOM\_00085. ISBN 90-04-14743-8.

<sup>338</sup> Rustomji, Nerina (2017). "Beauty in the Garden: Aesthetics and the Wildān, Ghilmān, and Hūr". In Günther, Sebastian; Lawson, Todd (eds.). *Roads to Paradise: Eschatology and Concepts of the Hereafter in Islam*. *Islamic History and Civilization*. Vol. 136. Leiden and Boston: Brill Publishers. pp. 297–307. doi:10.1163/9789004333154\_014. ISBN 978-90-04-33315-4. ISSN 0929-2403. LCCN 2016047258.

<sup>339</sup> Rowson, Everett K. (30 December 2012) [15 December 2004]. "HOMOSEXUALITY ii. IN ISLAMIC LAW". *Encyclopædia Iranica*. Vol. XII/4. New York: Columbia University. pp. 441–445. doi:10.1163/2330-4804\_EIRO\_COM\_11037. ISSN 2330-4804.

<sup>340</sup> Bosworth, C. E.; van Donzel, E. J.; Heinrichs, W. P.; Lewis, B.; Pellat, Ch., eds. (1986). "Liwāt". *Encyclopaedia of Islam*, Second Edition. Vol. 5. Leiden: Brill Publishers. doi:10.1163/1573-3912\_islam\_SIM\_4677. ISBN 978-90-04-16121-4.

<sup>341</sup> Bosworth, C. E.; van Donzel, E. J.; Heinrichs, W. P.; Lewis, B.; Pellat, Ch., eds. (1986). "Liwāt". *Encyclopaedia of Islam*, Second Edition. Vol. 5. Leiden: Brill Publishers. doi:10.1163/1573-3912\_islam\_SIM\_4677. ISBN 978-90-04-16121-4.

<sup>342</sup> Al-Tabarani in al-Mu'jam al-Awat: 4157, Al-Bayhaqi, Su'ab al-Iman: 5075

While there are no reports relating to homosexuality in the best known and authentic hadith collections of Sahih al-Bukhari and Sahih Muslim, other canonical collections record a number of condemnations of the "act of the people of Lut" (male-to-male anal intercourse)<sup>343</sup>. For example, Abu 'Isa Muhammad ibn 'Isa at-Tirmidhi (compiling the Sunan al-Tirmidhi around 884) wrote that Muhammad had indeed prescribed the death penalty for both the active and passive partners:

Narrated by Abdullah ibn Abbas: "The Prophet said: 'If you find anyone doing as Lot's people did, kill the one who does it, and the one to whom it is done'<sup>344</sup>."

It was narrated by Abdullah ibn Abbas: "If a man who is not married is seized committing sodomy he will be stoned to death"<sup>345</sup>."

Ibn al-Jawzi (1114–1200), writing in the 12th century, claimed that Muhammad had cursed "sodomites" in several hadith, and had recommended the death penalty for both the active and passive partners in homosexual acts<sup>346</sup>.

It was narrated that Ibn Abbas said: "The Prophet said: '... cursed is the one who does the action of the people of Lot'."

Ahmad narrated from Ibn Abbas that the Prophet of Allah said: 'May Allah curse the one who does the action of the people of Lot, may Allah curse the one who does the action of the people of Lot', three times<sup>347</sup>.

Al-Nuwayri (1272–1332), writing in the 13th century, reported in his *Nihaya* that Muhammad is "alleged to have said what he feared most for his community were the practices of the people of Lot (he seems to have expressed the same idea in regard to wine and female seduction).

It was narrated that Jabir: "The Prophet said: 'There is nothing I fear for my followers more than the deed of the people of Lot'<sup>348</sup>."

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<sup>343</sup> Rowson, Everett K. (30 December 2012) [15 December 2004]. "HOMOSEXUALITY ii. IN ISLAMIC LAW". *Encyclopædia Iranica*. Vol. XII/4. New York: Columbia University. pp. 441–445. doi:10.1163/2330-4804\_EIRO\_COM\_11037. ISSN 2330-4804. Archived from the original on 17 May 2013.

<sup>344</sup> Sunan Abu Dawood 4462, Jami' al-Tirmidhi 1456, Sunan ibn Majah 2561

<sup>345</sup> Sunan Abu Dawood 4463

<sup>346</sup> Wafer, Jim (1997). "Muhammad and Male Homosexuality". In Murray, Stephen O.; Roscoe, Will (eds.). *Islamic Homosexualities: Culture, History, and Literature*. New York and London: NYU Press. pp. 88–96. doi:10.18574/nyu/9780814761083.003.0006. ISBN 9780814774687. JSTOR j.ctt9qfmm4. OCLC 35526232. S2CID 141668547.

<sup>347</sup> Musnad Ahmad:1878.

<sup>348</sup> Al-Tirmidhi: 1457, Ibn Maajah: 2563

According to Oliver Leaman, Other hadiths seem to permit homoerotic feelings as long as they are not translated into action<sup>349</sup>. However, In one hadith attributed to Muhammad himself, which exists in multiple variants, the Islamic prophet acknowledged homoerotic temptation towards young boys and warned his Companions against it: "Do not gaze at the beardless youths, for verily they have eyes more tempting than the houris<sup>350</sup>" or "... for verily they resemble the houris".[ These beardless youths are also described as wearing sumptuous robes and having perfumed hair<sup>351</sup>. Consequently, Islamic religious leaders, skeptical of Muslim men's capacity of self-control over their sexual urges, have forbidden looking and yearning both at males and females.

In addition, there is a number of "purported (but mutually inconsistent) reports" (athar) of punishments of sodomy ordered by some of the early caliphs. Abu Bakr apparently recommended toppling a wall on the culprit, or else burning him alive<sup>352</sup>, while Ali ibn Abi Talib is said to have ordered death by stoning for one sodomite and had another thrown head-first from the top of the highest building in the town; according to Ibn Abbas, the latter punishment must be followed by stoning<sup>353</sup>.

There are, however, fewer hadith mentioning homosexual behaviour in women<sup>354</sup>; but punishment (if any) for lesbianism was not clarified.

Accordingly, the destruction of the "people of Lut" is thought to be explicitly associated with their sexual practices<sup>355</sup>. Later exegetical literature built on these

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<sup>349</sup> Leaman, Oliver (2009). "Homosexuality". In John L. Esposito (ed.). *The Oxford Encyclopedia of the Islamic World*. Oxford: Oxford University Press. ISBN 9780195305135. "This ambiguity is reflected in the ḥadīth of the Prophet, some of which make a distinction between the partners in a homosexual act, and many of which seem to permit homoerotic feelings, as long as those feelings are not translated into action."

<sup>350</sup> Elyse Semerdjian (2008). "Off the Straight Path": Illicit Sex, Law, and Community in Ottoman Aleppo. Syracuse University Press. p. 14. ISBN 9780815631736. "one hadith acknowledged the temptation to indulge in sex with young men: "Do not gaze at the beardless youths, for verily they have eyes more tempting than the houris [big-eyed maidens].""

<sup>351</sup> Elyse Semerdjian (2007). "Islam". In Jeffrey S. Siker (ed.). *Homosexuality and Religion: An Encyclopedia*. Greenwood Press. p. 131. "The Prophet also issued warnings such as "do not gaze at the beardless youths, for verily they have eyes more tempting than the houris" (Wright, 7). These beardless boys are also described as wearing sumptuous robes and having perfumed hair."

<sup>352</sup> Wafer, Jim (1997). "Muhammad and Male Homosexuality". In Murray, Stephen O.; Roscoe, Will (eds.). *Islamic Homosexualities: Culture, History, and Literature*. New York and London: NYU Press. pp. 88–96. doi:10.18574/nyu/9780814761083.003.0006. ISBN 9780814774687. JSTOR j.ctt9qfmm4. OCLC 35526232. S2CID 141668547.

<sup>353</sup> *ibid.*

<sup>354</sup> Atighetchi, Dariusch (2007). *Islamic bioethics problems and perspectives*. New York: Springer Science & Business Media. p. 149. ISBN 9781402049620.

<sup>355</sup> Wafer, Jim (1997). "Muhammad and Male Homosexuality". In Murray, Stephen O.; Roscoe, Will (eds.). *Islamic Homosexualities: Culture, History, and Literature*. New York and London: NYU Press. pp. 88–

verses as writers attempted to give their own views as to what went on; and there was general agreement among exegetes that the "lewdness" alluded to by the Quranic passages was attempted sodomy (specifically anal intercourse) between men.

However, some Muslim academics disagree with this interpretation, arguing that the "people of Lut" were destroyed not because of participation in homosexuality, but because of misdeeds which included refusing to worship one God, disregarding and disrespecting the authority of the Prophets and messengers, and attempting to rape the travelers, despite the fact the travelers were under Lut's protection and hospitality<sup>356</sup>.

Despite the Quranic and Haddith prohibitions, Societies in Islam have recognized "both erotic attraction and sexual behavior between members of the same sex". However, their attitudes about them have often been contradictory: "severe religious and legal sanctions" against homosexual behavior and at the same time "celebratory expressions" of erotic attraction<sup>357</sup>. Homoeroticism was idealized in the form of poetry or artistic declarations of love from one man to another<sup>358</sup>. Accordingly, the Arabic language had an appreciable vocabulary of homoerotic terms, with dozens of words just to describe types of male prostitutes<sup>359</sup>. Schmitt (1992) identifies some twenty words in Arabic, Persian, and Turkish to identify those who are penetrated<sup>360</sup>. Other related Arabic words includes mukhannathun, ma'bûn, halaqî, and baghghā<sup>361</sup>.

Some Western and Moslem Islamic scholars argue that in course of the Quranic lot story, homosexuality in the modern sense is not addressed, but the destruction of the people of Lut was a result of breaking the ancient hospitality law and sexual

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96. doi:10.18574/nyu/9780814761083.003.0006. ISBN 9780814774687. JSTOR j.ctt9qfmm4. OCLC 35526232. S2 CID 141668547.

<sup>356</sup> Kuggle, Scott; Hunt, Stephen (2012). "Masculinity, Homosexuality and the Defence of Islam: A Case Study of Yusuf al-Qaradawi's Media Fatwa". *Religion and Gender*. 2 (2): 271–272.

<sup>357</sup> Everett K. Rowson (2004). "Homosexuality". In Richard C. Martin (Ed.). *Encyclopedia of Islam and the Muslim World*. MacMillan Reference USA.

<sup>358</sup> Rowson, Everett K. (30 December 2012) [15 December 2004]. "HOMOSEXUALITY ii. IN ISLAMIC LAW". *Encyclopædia Iranica*. Vol. XII/4. New York: Columbia University. pp. 441–445. doi:10.1163/2330-4804\_EIRO\_COM\_11037. ISSN 2330-4804.

<sup>359</sup> John Boswell (2009). *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century*. University of Chicago Press. pp. 195–. ISBN 9780226067148.

<sup>360</sup> Noegel, Scott B.; Wheeler, Brannon M. (2010). *Lot. The A to Z of Prophets in Islam and Judaism*. Rowman & Littlefield Publishers, Incorporated. pp. 118–126. ISBN 978-0810876033

<sup>361</sup> Rowson, Everett K. (October 1991). "The Effeminates of Early Medina" (PDF). *Journal of the American Oriental Society*. American Oriental Society. 111 (4): 671–693. CiteSeerX 10.1.1.693.1504. doi:10.2307/603399. ISSN 0003-0279. JSTOR 603399. LCCN 12032032. OCLC 47785421. S2CID 163738149. Archived from the original (PDF) on 1 October 2008. Retrieved 7 November 2021.

violence, in this case, they attempted to rape men. This in essence was a sexual deviation from the normal heterosexual sex between man and woman.

According to the Encyclopedia of Islam and the Muslim World:

Whatever the legal strictness on sexual activity, the positive expression of male homoerotic sentiment in Islamic literature was accepted, and assiduously cultivated, from the late eighth century until modern times. First in Arabic, but later also in Persian, Turkish and Urdu, love poetry by men about boys more than competed with that about women, it overwhelmed it. Anecdotal literature reinforces this impression of general societal acceptance of the public celebration of male-male love (which hostile Western caricatures of Islamic societies in medieval and early modern times simply exaggerate)<sup>362</sup>.

## **MODERN LAWS IN MUSLIM-MAJORITY COUNTRIES**

According to the International Lesbian and Gay Association (ILGA) seven countries still retain capital punishment for homosexual behavior: Saudi Arabia, Yemen, Iran, Afghanistan, Mauritania, northern Nigeria<sup>363</sup>, and the United Arab Emirates<sup>364</sup>. Afghanistan also has the death penalty for homosexuality since the 2021 Taliban takeover<sup>365</sup>.

In Qatar, Algeria, Uzbekistan, and the Maldives, homosexuality is punished with time in prison or a fine. This has led to controversy regarding Qatar, which is due to stage the 2022 FIFA World Cup. Human rights groups have questioned the awarding in 2010 of the right to host the competition, due to the possibility that gay football fans may be jailed. In response, Sepp Blatter, head of FIFA, joked that they would have to "refrain from sexual activity" while in Qatar. He later withdrew the remarks after condemnation from rights groups<sup>366</sup>.

Same-sex sexual activity is illegal in Chad since 1 August 2017 under a new penal code. Before that, homosexuality between consenting adults had not been criminalized ever prior to this law<sup>367</sup>.

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<sup>362</sup> Encyclopedia of Islam and the Muslim World. MacMillan Reference USA. 2004. p. 316.

<sup>363</sup> "Homosexuality and Islam". ReligionFacts. 19 July 2005. Archived from the original on 15 April 2015.

<sup>364</sup> "Man Accused of "Gay Handshake" Stands Trial in Dubai". Archived from the original on 30 October 2015. Retrieved 27 October 2015.

<sup>365</sup> Ghoshal, Neela, ed. (26 January 2022). "'Even If You Go to the Skies, We'll Find You': LGBT People in Afghanistan After the Taliban Takeover". www.hrw.org. New York: Human Rights Watch.

<sup>366</sup> "Fifa boss Sepp Blatter sorry for Qatar 'gay' remarks". BBC. 17 December 2010.

<sup>367</sup> "Loi n°001/PR/2017 Portant Code Pénal (Part 2)" (PDF).

In Egypt, openly gay men have been prosecuted under general public morality laws. "Sexual relations between consenting adult persons of the same sex in private are not prohibited as such. However, the Law on the Combating of Prostitution, and the law against debauchery have been used to imprison gay men in recent years." [120] An Egyptian TV host was recently sentenced to a year in prison for interviewing a gay man in January 2019<sup>368</sup>.

The Sunni Islamist militant group and Salafi-jihadist terrorist organization ISIL/ISIS/IS/Daesh, which invaded and claimed parts of Iraq and Syria between 2014 and 2017, enacted the political and religious persecution of LGBT people and decreed capital punishment for them<sup>369</sup>.

ISIL/ISIS/IS/Daesh terrorists have executed more than two dozen men and women for suspected homosexual activity, including several thrown off the top of buildings in highly publicized executions<sup>370</sup>.

In India, which has the third-largest Muslim population in the world, and where Islam is the largest minority religion, the largest Islamic seminary (Darul Uloom Deoband) has vehemently opposed recent government moves to abrogate and liberalize laws from the colonial era that banned homosexuality<sup>371</sup>. As of September 2018, homosexuality is no longer a criminal act in India, and most of the religious groups withdrew their opposing claims against it in the Supreme Court<sup>372</sup>.

In Iraq, homosexuality is allowed by the government, but terrorist groups often carry out illegal executions of gay people. Saddam Hussein was "unbothered by sexual mores." Ali Hili reports that "since the 2003 invasion more than 700 people have been killed because of their sexuality." He calls Iraq the "most dangerous place in the world for sexual minorities"<sup>373</sup>.

In Jordan, where homosexuality is legal, "gay hangouts have been raided or closed on bogus charges, such as serving alcohol illegally"<sup>374</sup>. Despite this legality, social attitudes towards homosexuality are still hostile and hateful<sup>375</sup>.

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<sup>368</sup> "Egypt's LGBT Crackdown Expands to Stifle Journalists". Human Rights Watch. 25 January 2019.

<sup>369</sup> "Amid brazen, deadly attacks, gay Syrians tell of fear of ISIS persecution". CNN. 6 March 2015.

<sup>370</sup> Tharoor, Ishaan. "The Islamic State's shocking war on homosexuals". The Washington Post.

<sup>371</sup> "After Deoband, other Muslim leaders condemn homosexuality". The Times of India. 1 July 2009.

<sup>372</sup> Gettleman, Jeffrey; Schultz, Kai; Raj, Suhasini (6 September 2018). "India Gay Sex Ban Is Struck Down. 'Indefensible,' Court Says". The New York Times.

<sup>373</sup> "Straight but narrow". The Economist. 4 February 2012.

<sup>374</sup> Ibid.

<sup>375</sup> "In Jordan, the LGBTQ+ Community Is Not Criminalized But Still Stigmatized". Fanack.com. 16 February 2019.

In Pakistan, its law is a mixture of both British colonial law as well as Islamic law, both which proscribe criminal penalties for same-sex sexual acts. The Pakistan Penal Code of 1860, originally developed under colonial rule, punishes sodomy with a possible prison sentence and has other provisions that impact the human rights of LGBT Pakistanis, under the guise of protecting public morality and order. Yet, the more likely situation for gay and bisexual men is sporadic police blackmail, harassment, fines, and jail sentences<sup>376</sup>.

In Bangladesh, homosexual acts are illegal and punishable according to section 377. Due to the traditional mentality of the predominantly conservative Bangladeshi society, negative attitudes towards those in the LGBT community are high. In 2009 and 2013, the Bangladeshi Parliament refused to overturn Section 377<sup>377</sup>.

In Saudi Arabia, the maximum punishment for homosexual acts is public execution by beheading<sup>378</sup>.

In Malaysia, homosexual acts are illegal and punishable with jail, fine, deportation, whipping or chemical castration. In October 2018, Prime Minister Mahathir Mohamad stated that Malaysia would not "copy" Western nations' approach towards LGBT rights, indicating that these countries were exhibiting a disregard for the institutions of the traditional family and marriage, as the value system in Malaysia is good<sup>379</sup>. In May 2019, in response to the warning of George Clooney about intending to impose death penalty for homosexuals like Brunei, the Deputy Foreign Minister Marzuki Yahya pointed out that Malaysia does not kill gay people, and will not resort to killing sexual minorities. He also said, although such lifestyles deviate from Islam, the government would not impose such a punishment on the group<sup>380</sup>.

In Indonesia, the country does not have a sodomy law and do not currently criminalize private, non-commercial homosexual acts among consenting adults, except in the Aceh province where homosexuality is illegal for Muslims under Islamic Sharia law, and punishable by flogging. While not criminalising homosexuality, the country does not recognise same-sex marriage. In July 2015, the

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<sup>376</sup> "Pakistan Penal Code (Act XLV of 1860)". [Pakistani.org](http://Pakistani.org). Retrieved 11 February 2014.

<sup>377</sup> Pawar, Yogesh|title=Bangladesh Refuses to Abolish Criminalisation of Same-Sex Ties; in Denial about its 4.5 Million-Strong LGBT Community, Dhaka Shoots Down the United Nations Human Rights Commission Recommendations., 2013. Print

<sup>378</sup> Signorile, Michelangelo (19 December 2014). "Saudi Arabia Beheads Gays, but Marco Rubio Has No Problem With You Traveling There". [HuffingtonPost.com](http://HuffingtonPost.com).

<sup>379</sup> "Mahathir claims LGBT rights are 'Western values' not fit for Malaysia". [South China Morning Post](http://South China Morning Post). 26 October 2018.

<sup>380</sup> Palansamy, Yiswaree (14 May 2019). "LGBT culture against Islamic principles but Malaysia doesn't kill gays, deputy minister tells George Clooney | Malay Mail". [www.malaymail.com](http://www.malaymail.com). Retrieved 15 May 2019.

Minister of Religious Affairs stated that it is difficult in Indonesia to legalize Gay Marriage, because strongly held religious norms speak strongly against it. According to some jurists, there should be death stoning penalty for homosexuals. While another group consider flogging with 100 lashes is the correct punishment<sup>381</sup>.

In Turkey, homosexuality is legal, but "official censure can be fierce". A former interior minister, İdris Naim Şahin, called homosexuality an example of "dishonour, immorality and inhuman situations". Turkey held its 16th Gay Pride Parade in Istanbul on 30 June 2019<sup>382</sup>.

As the latest addition in the list of criminalizing Muslim countries, Brunei's has implemented penalty for homosexuals within Sharia Penal Code in stages since 2014. It prescribes death by stoning as punishment for sex between men, and sex between women is punishable by caning or imprisonment. The sultanate currently has a moratorium in effect on death penalty<sup>383</sup>.

## **DEATH PENALTY**

In 2020, the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) released its most recent State Sponsored Homophobia Report. The report found that eleven countries or regions impose the death penalty for "same-sex sexual acts" with reference to sharia-based laws. In Iran, according to article 129 and 131 there are up to 100 lashes of whip first three times and fourth time death penalty for lesbians. The death penalty is implemented nationwide in Brunei, Iran, Saudi Arabia, Afghanistan, Yemen, northern Nigeria, United Arab Emirates, Mauritania and Somalia. This punishment is also allowed by the law but not implemented in Qatar, and Pakistan; and was back then implemented through non-state courts by ISIS in parts of Iraq and Syria (now no longer existing)<sup>384</sup>.

Due to Brunei's law dictating that gay sex be punishable by stoning, many of its targeted citizens fled to Canada in hopes of finding refuge. The law is also set to impose the same punishment for adultery among heterosexual couples. Despite pushback from citizens in the LGBTQ+ community, Brunei prime minister's office

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<sup>381</sup> Cammack, Mark (17 April 2016). *The Punishment of Islamic Sex Crimes in a Modern Legal System: The Islamic Qanun of Aceh, Indonesia* (Thesis). Southwestern Law School. SSRN 2765884.

<sup>382</sup> AFP. "Police break up Istanbul gay pride parade". [www.timesofisrael.com](http://www.timesofisrael.com).

<sup>383</sup> Robertson, Holly (3 April 2019). "Brunei enacts Islamic laws to punish gay sex with stoning to death — here's what you need to know". ABC.

<sup>384</sup> Carroll, Aengus (May 2016). *State Sponsored Homophobia 2016: A world survey of sexual orientation laws: criminalisation, protection and recognition* (PDF). International Lesbian, Gay, Bisexual, Trans and Intersex Association. p. 37.

produced a statement explaining Brunei's intention for carrying through with the law. It has been suggested that this is part of a plan to separate Brunei from the western world and towards a Muslim one<sup>385</sup>.

In the Chechen Republic, a part of the Russian Federation, Ramzan Kadyrov has actively discriminated against homosexual individuals and presided over a campaign of arbitrary detention and extrajudicial killing. It has been suggested that "to counteract popular support for an Islamist insurgency that erupted after the Soviet breakup, President Vladimir V. Putin of Russia has granted wide latitude to [Kadyrov] to co-opt elements of the Islamist agenda, including an intolerance of gays." Reports of the discrimination in Chechnya have in turn been used to stoke Islamophobia, racist, and anti-Russia rhetoric. Jessica Stern, executive director of OutRight Action International, has criticized this bigotry, noting: "Using a violent attack on men accused of being gay to legitimize islamophobia is dangerous and misleading. It negates the experiences of queer muslims and essentializes all muslims as homophobic. We cannot permit this tragedy to be co-opted by ethno-nationalists to perpetuate anti-Muslim or anti-Russian sentiment. The people and their government are never the same<sup>386</sup>."

## **MINOR PENALTY**

In Algeria, Bangladesh, Chad, Morocco, Aceh, Maldives, Oman, Pakistan,] Qatar, Syria, and Tunisia, it is illegal, and penalties may be imposed<sup>387</sup>. In Kuwait, Turkmenistan and Uzbekistan, homosexual acts between males are illegal, but homosexual relations between females are legal<sup>388</sup>.

## **LEGALIZATION**

The Ottoman Empire (predecessor of Turkey) decriminalized homosexuality in 1858. In Turkey, where 99.8% of the population is officially registered as Muslim, homosexuality has never been criminalized since the day it was founded in 1923<sup>389</sup>.

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<sup>385</sup> Rebecca Wright and Alexandra Field (2 April 2019). "Brunei's LGBT community flees 'inhumane' new stoning laws". CNN.

<sup>386</sup> "Russian LGBT Network evacuating 'at risk' people from Chechnya".

<sup>387</sup> "Indonesia: Situation of sexual minorities, including legislation, treatment by society and authorities, state protection and support services available (2013– June 2015)". Immigration and Refugee Board of Canada. 8 July 2015.

<sup>388</sup> "Law of the Republic of Uzbekistan On Enactment of the Criminal Code of the Republic of Uzbekistan". Legislationline.org.

<sup>389</sup> Tehmina Kazi (7 October 2011). "The Ottoman empire's secular history undermines sharia claims". The Guardian.

Same-sex sexual intercourse is legal in Albania, Azerbaijan, Bahrain, Bosnia and Herzegovina, Burkina Faso, Djibouti (de jure), Guinea-Bissau, Iraq (de jure), Jordan, Kazakhstan, Kosovo, Kyrgyzstan, Mali, Niger, Tajikistan, Turkey, West Bank (State of Palestine), Indonesia, and in Northern Cyprus. In Albania and Turkey, there have been discussions about legalizing same-sex marriage<sup>390</sup>, Albania, Northern Cyprus, Bosnia and Herzegovina and Kosovo also protect LGBT people with anti-discrimination laws.

Same-sex relations between females are legal in Kuwait, Turkmenistan, and Uzbekistan, but homosexual acts between males are illegal.

In Lebanon, courts have ruled that the country's penal code must not be used to target homosexuals, but the law has yet to be changed by parliament.

## **SAME-SEX MARRIAGE**

In 2007, there was a gay party in the Moroccan town of al-Qasr al-Kabir. Rumours spread that this was a gay marriage and more than 600 people took to the streets, condemning the alleged event and protesting against leniency towards homosexuals. Several persons who attended the party were detained and eventually six Moroccan men were sentenced to between four and ten months in prison for "homosexuality"<sup>391</sup>.

In France, there was an Islamic same-sex marriage on 18 February 2012. In Paris in November 2012 a room in a Buddhist prayer hall was used by gay Muslims and called a "gay-friendly mosque"<sup>392</sup>, and a French Islamic website is supporting religious same-sex marriage.

The first American Muslim in the United States Congress, Keith Ellison (D-MN) said in that all discrimination against LGBT people is wrong. He further expressed support for gay marriage stating<sup>393</sup>:

I believe that the right to marry someone who you please are so fundamental it should not be subject to popular approval any more than we should vote on whether blacks should be allowed to sit in the front of the bus.

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<sup>390</sup> Lowen, Mark (30 July 2009). "Albania 'to approve gay marriage'". BBC News.

<sup>391</sup> "Al Arabiya: "Morocco sentences gay 'bride' to jail"". alarabiya.net. 12 December 2007.

<sup>392</sup> Banerji, Robin (30 November 2012). "Gay-friendly 'mosque' opens in Paris".

<sup>393</sup> Taintor, David (9 June 2012). "Keith Ellison: Minnesota Anti-Gay Marriage Amendment Will Fail". Archived from the original on 11 December 2012.

In 2014, eight men were jailed for three years by a Cairo court after the circulation of a video of them allegedly taking part in a private wedding ceremony between two men on a boat on the Nile<sup>394</sup>.

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<sup>394</sup> Tadros, Sherine (6 November 2014). "Crackdown As Men Jailed Over 'Gay Wedding'".



## CHAPTER TWENTY

### TRANSGENDER

In the late 1980s, Mufti Muhammad Sayyid Tantawy of Egypt issued a fatwa supporting the right for those who fit the description of mukhannathun to have sex reassignment surgery; Ayatollah Khomeini of Iran issued similar fatwas around the same time. Khomeini's initial fatwa concerned intersex individuals as well, but he later specified that sex reassignment surgery was also permissible in the case of transgender individuals. Because homosexuality is illegal in Iran but gender transition is legal, some gay individuals have been forced to undergo sex reassignment surgery and transition into the opposite sex, regardless of their actual gender identity<sup>395</sup>.

While Iran has outlawed homosexuality, Iranian thinkers such as Ayatollah Khomeini have allowed for transgender people to change their sex so that they can enter heterosexual relationships<sup>396</sup>. It is regarded as a cure for homosexuality, which is punishable by death under Iranian law. The government even provides up to half the cost for those needing financial assistance and a sex change is recognized on the birth certificate<sup>397</sup>.

On 26 June 2016, clerics affiliated to the Pakistan-based organization Tanzeem Ittehad-i-Ummat issued a fatwa on transgender people where a trans woman (born male) with "visible signs of being a woman" is allowed to marry a man, and a trans man (born female) with "visible signs of being a man" is allowed to marry a woman. Pakistani transgender persons can also change their (legal) sex. Muslim ritual

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<sup>395</sup> Hamedani, Ali (5 November 2014). "The gay people pushed to change their gender". BBC Persian. Archived from the original on 6 November 2014.

<sup>396</sup> Alipour, Mehrdad (2017). "Islamic shari'a law, neotraditionalist Muslim scholars and transgender sex-reassignment surgery: A case study of Ayatollah Khomeini's and Sheikh al-Tantawi's fatwas". *International Journal of Transgenderism*. Taylor & Francis. 18 (1): 91–103. doi:10.1080/15532739.2016.1250239. ISSN 1553-2739. LCCN 2004213389. OCLC 56795128. S2CID 152120329.

<sup>397</sup> Barford, Vanessa (25 February 2008). "Iran's 'diagnosed transsexuals'". BBC News.

funerals also apply. Depriving transgender people of their inheritance, humiliating, insulting or teasing them were also declared haraam<sup>398</sup>.

In Pakistan, transgender people make up 0.005 percent of the total population<sup>399</sup>. Previously, transgender people were isolated from society and had no legal rights or protections. They also suffered discrimination in healthcare services. For example, in 2016 a transgender individual died in a hospital while doctors were trying to decide which ward the patient should be placed in. Transgender people also faced discrimination in finding employment resulting from incorrect identity cards and incongruous legal status. Many were forced into poverty, dancing, singing, and begging on the streets to scrape by<sup>400</sup>. However, in May 2018, the Pakistani parliament passed a bill giving transgender individuals the right to choose their legal sex and correct their official documents, such as ID cards, driver licenses, and passports<sup>401</sup>. Today, transgender people in Pakistan have the right to vote and to search for a job free from discrimination. As of 2018, one transgender woman became a news anchor, and two others were appointed to the Supreme Court<sup>402</sup>.

In Lebanon, transgender women are not given any rights. Discrimination starts from their own family members when transwomen are forced to leave their house. After that, transwomen are not allowed to have any connections with their family members or with their neighbors. Transwomen can't access educational institutions and medical services. Moreover, transwomen face employment discrimination due to their wrong identity cards that are not being corrected by the government agencies. To support themselves financially, the only option often open to transwomen is sex work, which is not safe for them either. Doing sex work, transwomen are at higher risk of sexual abuse and violence. No laws are in existence to protect transwomen. Instead, transwomen are being arrested and put in jail for up to one year for having same-sex intercourse<sup>403</sup>.

Although it prohibits homosexuality, Iran is the only Muslim-majority country in the Persian Gulf region that allows transgender people to express themselves by

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<sup>398</sup> "Clerics issue fatwa allowing transgender marriage in Pakistan". Samaa Web Desk. 27 June 2016.

<sup>399</sup> "Transgenders in Pakistan; challenges and prospects". Daily Times. 18 February 2019. Retrieved 4 November 2019.

<sup>400</sup> Rafay, Abdul (15 November 2016). "Discrimination and Violence Against Transgender In Pakistan". Parhlo. Retrieved 4 November 2019.

<sup>401</sup> Ingber, Sasha (9 May 2018). "Pakistan Passes Historic Transgender Rights Bill".

<sup>402</sup> "Transgenders in Pakistan; challenges and prospects". Daily Times. 18 February 2019.

<sup>403</sup> ""Don't Punish Me for Who I Am" | Systemic Discrimination Against Transgender Women in Lebanon". Human Rights Watch. 3 September 2019.

recognizing their self-identified gender and subsidizing reassignment surgery<sup>404</sup>. Despite this, those who do not commit to reassignment surgery are often seen as freaks, and due to their refusal to conform they are treated as outcasts<sup>405</sup>.

## **PUBLIC OPINION AMONG MUSLIMS**

The Muslim community as a whole, worldwide, has become polarized on the subject of homosexuality. Some Muslims say that "no good Muslim can be gay", and "traditional schools of Islamic law consider homosexuality a grave sin" At the opposite pole, "some Muslims . . . are welcoming what they see as an opening within their communities to address anti-gay attitudes" Especially, it is "young Muslims" who are "increasingly speaking out in support of gay rights"<sup>406</sup>.

According to the Albert Kennedy Trust, one in four young homeless people identify as LGBT due to their religious parents disowning them. The Trust suggests that the majority of individuals who are homeless due to religious out casting are either Christian or Muslim. Many young adults who come out to their parents are often forced out of the house to find refuge in a more accepting place. This leads many individuals to be homeless or even attempt suicide<sup>407</sup>.

## **OPINION POLLS**

In 2013, the Pew Research Center conducted a study on the global acceptance of homosexuality and found a widespread rejection of homosexuality in many nations that are predominantly Muslim. In some countries, views were becoming more conservative among younger people<sup>408</sup>.

## **MUSLIM LEADERS**

### **SUNNI**

In 2017, the Egyptian cleric, Sheikh Yusuf al-Qaradawi (who has served as chairman of the European Council for Fatwa and Research) was asked how gay people should

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<sup>404</sup> Bagri, Neha Thirani (19 April 2017). "In Iran, there's only one way to survive as a transgender person". Quartz. Archived from the original on 21 January 2022.

<sup>405</sup> Bagri, Neha Thirani (19 April 2017). "In Iran, there's only one way to survive as a transgender person". Quartz.

<sup>406</sup> "Muslim attitudes about LBGT are complex". ReligionNews.com. 17 June 2016.

<sup>407</sup> Parry, Nomia Iqbal and Josh (30 July 2019). "LGBT people 'being made homeless due to religion'".

<sup>408</sup> "The Global Divide on Homosexuality". Pew Research Center. 4 June 2013.

be punished. He replied that "there is disagreement," but "the important thing is to treat this act as a crime<sup>409</sup>."

## **SHIA**

Iran's current Supreme Leader, Ayatollah Ali Khamenei has stated that "There is no worst form of moral degeneration than [homosexuality]. ... But it won't stop here. In the future, not sure exactly when, they will legalize incest and even worse."<sup>410</sup> According to the conservative news website Khabaronline, Mohammad Javad Larijani, Khamenei's close adviser, stated "In our society, homosexuality is regarded as an illness and malady," and that "Promoting homosexuality is illegal and we have strong laws against it." He added, "It [homosexuality] is considered as a norm in the West and they are forcing us to accept it. We are strongly against this."<sup>411</sup>

Ayatollah Ali al-Sistani in Iraq has stated "It is not permissible for a man to look at another man with lust; similarly, it is not permissible for a woman to look at another woman with lust. Homosexuality (Ash-shudhûdh al-jinsi) is harãm. Similarly, it is forbidden for a female to engage in a sexual act with another female, i.e. lesbianism<sup>412</sup>."

## **JUDIASIM**

The subject of homosexuality and Judaism dates back to the Torah. The book of Vayikra (Leviticus) is traditionally regarded as classifying sexual intercourse between males as a to'eivah (something abhorred or detested) that can be subject to capital punishment by the currently non-existent Sanhedrin under halakha (Jewish law).

Orthodox Jewish protesters holding Anti-LGBT Protest signs during the Gay Pride parade in Haifa, Israel (2010)

The issue has been a subject of contention within modern Jewish denominations, and has led to debate and division. Traditionally, Judaism has seen that homosexual

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<sup>409</sup> Ali, Ayaan Hirsi (13 June 2016). "Islam's Jihad Against Homosexuals". Wall Street Journal. Retrieved 5 April 2017 – via www.WSJ.com.

<sup>410</sup> "Iran's Supreme Leader says "There is no worst form of moral degeneration than homosexuality"". Outrightinternational.org. 27 May 2016.

<sup>411</sup> "Iranian human rights official describes homosexuality as an illness". The Guardian. 14 March 2013. Retrieved 6 July 2017.

<sup>412</sup> "A Code of Practice For Muslims in the West". sistani.org. Retrieved 6 July 2017.

male intercourse, and not homosexuality in-and-of-itself, as contrary to Judaism, and this opinion is still maintained by Orthodox Judaism.

However, Reconstructionist Judaism and Reform Judaism do not hold this view as both homosexual intercourse and same-sex marriage are recognized. Conservative Judaism's Committee on Jewish Law and Standards, which until December 2006 held the same position as Orthodoxy, has since issued multiple opinions under its philosophy of pluralism; one opinion continues to follow the Orthodox position while another opinion substantially liberalizes the view of homosexual sex and relationships (while continuing to regard certain sexual acts as prohibited).

Allen Bennett became the first openly gay rabbi in the United States in 1978<sup>413</sup> Lionel Blue was the first British rabbi to publicly declare himself as gay, which he did in 1980.

The Torah (first five books of the Hebrew Bible) is the primary source for Jewish views on homosexuality. It states that: "[A man] shall not lie with another man as [he would] with a woman, it is (*toeba*, meaning abomination <sup>414</sup> (Leviticus 18:22) (Like many similar commandments, the stated punishment for willful violation is the death penalty, although in practice rabbinic Judaism no longer believes it has the authority to implement death penalties.)

Orthodox Judaism views homosexual acts as sinful. In recent years, there have been approaches claiming that only the sexual anal act is forbidden and considered an abomination by the Torah, while sexual orientation and even other sexual activities are not considered a sin. Conservative Judaism has engaged in an in-depth study of homosexuality since the 1990s, with various rabbis presenting a wide array of responsa (papers with legal arguments) for communal consideration. The official position of the movement is to welcome homosexual Jews into their synagogues, and also campaign against any discrimination in civil law and public society, but also to uphold a ban on anal sex as a religious requirement.

Reform Judaism and Reconstructionist Judaism in North America and Liberal Judaism in the United Kingdom view homosexuality to be acceptable on the same basis as heterosexuality. Progressive Jewish authorities believe either that traditional

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<sup>413</sup> Dana Evan Kaplan (8 August 2005). *The Cambridge Companion to American Judaism*. Cambridge University Press. pp. 75–. ISBN 978-0-521-52951-8.

<sup>414</sup> Sifre, Acharei Mot, 13:2; Mishneh Torah, Issurei Biah 21:1; Maimonides and Nahmanides debate whether this law is biblical or rabbinic.

laws against homosexuality are no longer binding or that they are subject to changes that reflect a new understanding of human sexuality<sup>415</sup>. Some of these authorities rely on modern biblical scholarship suggesting that the prohibition in the Torah was intended to ban coercive or ritualized homosexual sex, such as those practices ascribed to Egyptian and Canaanite fertility cults and temple prostitution<sup>416</sup>.

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<sup>415</sup> Mishneh Torah, Issurei Biah 1:4

<sup>416</sup> Mishneh Torah surei Biah 1:4



## **CHAPTER TWENTY-ONE**

### **HOMOSEXUALITY IN THE HEBREW BIBLE**

The Bible and homosexuality and Leviticus 18 § Homosexuality

The Book of Leviticus refers to male homosexual sexual practices twice as follows;

"And if a man lies with mankind, as with womankind, both of them have committed a detestable act: They shall surely be put to death; their blood shall be upon them<sup>417</sup>."

Based on the above biblical scripture, its evident that homosexuality is biblically condemned and several commentators believe that the verses specifically condemn the practice of sodomy i.e. anal intercourse between two males<sup>418</sup>.

Deuteronomy 23:18 tells followers: "None of the daughters of Israel shall be a kedeshah, nor shall any of the sons of Israel be a Kadesh." This has been interpreted as prohibiting the "sons of Israel" from serving as a homosexual temple prostitute in a pagan cult<sup>419</sup>.

### **INTERPRETATIONS OF HOMOSEXUAL RELATIONSHIPS**

The story of David and Jonathan is introduced in Samuel 1 (18:1), where it says that "Jonathan became one in spirit with David, and he loved him as himself". The feeling is expressed before the men exchanged a single word in an interaction that has been described as *philia* or love at first sight. The relationship between David and Jonathan has also been compared more explicitly to other ambiguously homoerotic or homosexual relationships in Near Eastern literature,

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<sup>417</sup> Hebrew-English Bible Leviticus 20:13.

<sup>418</sup> Babylonian Talmud Sanhedrin 54a and b; Josephus, *Against Apion* 2.199; and Philo, *Abraham* 135.

<sup>419</sup>Deuteronomy 23:17.

including by the Near Eastern scholar Cyrus H. Gordon, who noted the instance in the Book of Jashar, excerpted in Samuel 2 (1:26), in which David "proclaims that Jonathan's love was sweeter to him than the love of a woman" as being similar to Achilles' comparison of Patroclus to a girl and Gilgamesh's love for Enkidu" as a woman"<sup>420</sup>.

The story of Ruth and Naomi in the Book of Ruth is also occasionally interpreted as the story of a lesbian couple<sup>421</sup>.

Rabbinic Jewish application and interpretation of these verses

## **PROHIBITIONS FOR HOMOSOCIAL INTERACTION**

The laws of negiah prohibit affectionate touch between an unmarried man and woman (except close relatives), because this touch is considered "approaching" a forbidden relationship<sup>422</sup>. As gay male sex is included in the category of arayot along with other sexual prohibitions<sup>423</sup>, the prohibition of negiah would seem to also apply between two gay men. Nevertheless, some sources raise the possibility that the law may be more lenient for two men than for a man and a woman. The consensus seems to be that touch between gay men which involves sexual desire is rabbinically forbidden, while touch which does not involve sexual desire is permitted.

Another issue is the prohibition of yichud (seclusion of two individuals together in a manner that would allow them to have sex). The Talmud records a debate over whether yichud applies to any two men<sup>424</sup>. Maimonides, Tur, and Shulchan Aruch rule leniently, that yichud of two men is permitted, because "Jews are not suspected of homosexual sex"<sup>425</sup>. Nevertheless, the Shulchan Aruch recommended

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<sup>420</sup> Horner 1978, p. 19.

<sup>421</sup> "Finding Our Past: A Lesbian Interpretation of the Book of Ruth", by Rebecca Alpert, in *Reading Ruth: Contemporary Women Reclaim a Sacred Story*, edited by J. A. Kates and G.T. Reimer (1994).

<sup>422</sup> Sifre, Acharei Mot, 13:2; Mishneh Torah, Issurei Biah 21:1; Maimonides and Nahmanides debate whether this law is biblical or rabbinic.

<sup>423</sup> Mishneh Torah, Issurei Biah 1:4

<sup>424</sup> Mishna Kiddushin 4:14; Kiddushin 82a

<sup>425</sup> Mishneh Torah, Issurei Biah 22:2; Tur Even Haezer 24:1; Shulchan Aruch Even Haezer 24:1

to avoid such *yichud*, "in these generations where promiscuous people are common" (possibly a reference to the use of Köçek dancer-prostitutes in the Ottoman Empire at the time). However, this recommendation was not repeated by later authorities<sup>426</sup>.

Based on the above precedents that *yichud* can apply to two men in a circumstance where homosexual behavior is a concern, a modern halakhic authority rules that two men cannot be alone together if both of them are homosexual. Opinions also exist that the prohibition only applies to two men who are in a relationship with each other, or that there is no technical prohibition at all if they are confident they can avoid forbidden touch (but they should still avoid sharing a bedroom)<sup>427</sup>.

## **APPLICABILITY OF BIBLICAL DEATH PENALTY**

Like many similar commandments, the stated punishment for willful violation was the death penalty, though minors under 13 years of age were exempt from this, as from any other penalty<sup>428</sup>. However, even in Biblical times, it was very difficult to get a conviction that would lead to this prescribed punishment. The Jewish Oral Law states that capital punishment would be applicable only if two men were caught in the act of anal sex, if there were two witnesses to the act, if the men involved were warned that they committed a capital offense, and the two men — or the willing party, in case of rape — subsequently acknowledged the warning but continued to engage in the prohibited act anyway. In fact, there is no account of capital punishment, in regards to this law, in Jewish history.

Rabbinic tradition understands the Torah's system of capital punishment to not be in effect for the past approximately 2,000 years, in the absence of a Sanhedrin and Temple<sup>429</sup>.

Classical rabbinic Jewish sources do not specifically mention that homosexual attraction is inherently sinful. However, someone who has had homosexual intercourse is considered to have violated a prohibition<sup>430</sup>. If he

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<sup>426</sup> For example: Yam Shel Shlomo, Kiddushin 4:23; Rema, Yoreh Deah 153:1; Vilna Gaon, Yoreh Deah 153:3; Aruch Hashulchan, Even Haezer 24:6

<sup>427</sup> Yonatan Rosensweig.

<sup>428</sup> "Sanhedrin 54a:29". [www.sefaria.org](http://www.sefaria.org).

<sup>429</sup> Samuel J. Levine (1997–1998). "Capital Punishment in Jewish Law and its Application to the American Legal System: A Conceptual Overview". *St. Mary's Law Journal*. **29**: 1037–1051

<sup>430</sup> "Sanhedrin 54a:29". [www.sefaria.org](http://www.sefaria.org).

does teshuva (repentance), i. e., he ceases his forbidden actions, regrets what he has done, apologizes to God, and makes a binding resolution never to repeat those actions, he is seen to be forgiven by God<sup>431</sup>.

## **LESBIAN SEXUAL ACTIVITY**

Although lesbianism is not explicitly prohibited in the Hebrew Bible, sexual liaisons between women are forbidden by Orthodox rabbinical literature. The Talmud discusses tribadism (women rubbing genitals together, or "nashim mesolelot") without explicitly prohibiting it; the main concern was whether or not this activity removed their status as a virgin, making them ineligible to marry a member of the priesthood. However, the Sifra condemned marriage between two women, considering it within the category of licentious foreign behavior which is forbidden to Jews<sup>432</sup>. Following this lead, later halakhic codes prohibited tribadism on the same grounds<sup>433</sup>. The penalty for lesbian acts was flagellation, rather than the death penalty<sup>434</sup>.

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<sup>431</sup> Maimonides, Mishneh Torah, Laws of Repentance, Chapter 2.

<sup>432</sup> Sifra, Acharei Mot 13:10

<sup>433</sup> Mishneh Torah, Issurei Biah 21:8

<sup>434</sup> Encyclopaedia Judaica | vol 9 | second edition | pg 518 | Homosexuality



## CHAPTER TWENTY-TWO

# SAME-SEX MARRIAGE IN THE MIDRASH AND THE TALMUD

The Babylonian Talmud is one of the few ancient religious texts that refers to same-sex marriage: "Ulla said: Non-Jews [litt. Bnei Noach, the progeny of Noah] accepted upon themselves thirty mitzvot [divinely ordered laws], but they only abide by three of them: The first one is that they do not write marriage documents for male couples, the second one is that they don't sell dead [human] meat by the pound in stores, and the third one is that they respect the Torah."<sup>435</sup>

Sifra states: "Like the deeds of the land of Egypt where you dwelt, you shall not do"<sup>436</sup> - What would they do? A man would marry a man, a woman would marry a woman..."<sup>437</sup>

### REASONS FOR THE PROHIBITION

Reasons suggested by the rabbis for the prohibition on gay male sex include the following:

- It is forbidden by the L-D own words for Jews to engage in homosexual activity because it is an Abomination under Leviticus 18:22, Leviticus 20:13<sup>438</sup>
- It is considered a defiance of sexual anatomy, which is unlike God's intention of procreation and sexual activity<sup>439</sup>
- The sexual arousal involved results in a vain emission of semen<sup>440</sup>

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<sup>435</sup> Chullin 92ab

<sup>436</sup> Hebrew-English Bible Leviticus 18:3

<sup>437</sup> Sifra, on Leviticus 18:3

<sup>438</sup> Hebrew-English Bible Leviticus 18:22, Leviticus 20:13.

<sup>439</sup> Eisenberg, Ronald (2005), *The 613 Mitzvot: A Contemporary Guide to the Commandments of Judaism*, Schreiber Publishing, p. 325, ISBN 0-88400-303-5; a similar list appears in Lamm, Maurice (1991), *The Jewish Way in Love and Marriage*, Jonathan David Publishers, Inc., ISBN 0-8246-0353-2.

<sup>440</sup> Rabbi Joel Roth. Homosexuality rabbinicalassembly.org 1992.

- It may lead a man to abandon his family to pursue a homosexual relationship<sup>441</sup>
- It is non-procreative<sup>442</sup>

## **Orthodox Jewish views**

While a variety of views regarding homosexuality as an inclination or status exist within the Orthodox Jewish community, Orthodox Judaism generally prohibits homosexual conduct. While there is some disagreement about which male homosexual acts come under core prohibitions, the majority of Orthodox Judaism puts male-male anal sex in the category of yehareg ve'al ya'avur, "die rather than transgress", the small category of Biblically-prohibited acts (also including murder, idolatry, adultery, and incest) which an Orthodox Jew is obligated under the laws of Self-sacrifice under Jewish Law to die rather than do.<sup>[40]</sup> According to the Talmud, homosexual acts are forbidden between non-Jews as well, and this is included among the sexual restrictions of the Noachide laws.<sup>[41]</sup> The archetypal model in Judaism is marital heterosexuality with fornication, celibacy, adultery, homosexuality, incest and bestiality seen to be part of a continuous prism of wrong.<sup>[42]</sup>

In a speech given in 1986, the Lubavitcher Rebbe, Rabbi Menachem Mendel Schneerson, discussed "individuals who express an inclination towards a particular form of physical relationship in which the libidinal gratification is sought with members of one's own gender". He wrote that "society and government must be to offer a helping hand to those who are afflicted with this problem".<sup>[43]</sup>

In a 2008 open letter distributed to Orthodox community leaders, the Hod organization appealed to the Orthodox community to recognize them as part of the religious society.<sup>[44]</sup> Up to 2013, 163 Orthodox rabbis from Israel and abroad signed this statement, including Yuval Cherlow, Binyamin Lau, Haim Navon, Daniel Sperber, Eliezer Melamed, Shai Piron, and Yehuda Gilad.<sup>[citation needed]</sup> In 2010, TorahWeb.org published a brief position statement entitled "Torah View on Homosexuality", co-authored by Rav Hershel Schachter, Rav Mordechai Willig, Rav Michael Rosensweig, and Rav Mayer Twersky.<sup>[45]</sup><sup>[non-primary source needed]</sup>

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<sup>441</sup> Tosafot, the Rosh and the Ran.

<sup>442</sup> Rabbi Joel Roth. Homosexuality rabbinicalassembly.org 1992.

On July 22, 2010, a "Statement of Principles on the Place of Jews with a Homosexual Orientation in Our Community" was released.<sup>[46]</sup> It was written primarily by Nathaniel Helfgot, Aryeh Klapper, and Yitzchak Blau. Signatories include more than a hundred rabbis and laypeople. Some of the statement's more notable supporters are Rabbi Marc Angel, co-founder of The Rabbinic Fellowship; Rabbi Shlomo Riskin, founder of Lincoln Square Synagogue, Efrat, and Ohr Torah Stone Institutions; and Rabbi Avi Weiss, head of the Hebrew Institute of Riverdale, founder of Yeshivat Chovevei Torah and Yeshivat Maharat, and co-founder of The Rabbinic Fellowship.

An edict signed by dozens of Israeli Orthodox rabbis and published in 2016 by the Israeli Modern Orthodox rabbinic group Beit Hillel, a group which promotes inclusiveness in Orthodox Judaism, stated, in part, "According to the Torah and halacha, the [same-sex sexual] acts are forbidden, but not the proclivities, and therefore, people with same-sex tendencies, men and women, have no invalidation in halacha or tradition. They are obligated by the commandments of the Torah, they can fulfill a [ritual] obligation on behalf of the public, and carry out all of the community functions just like any member."<sup>[48]</sup> It also stated, in part, "Just as it [is] inconceivable to mock someone for being physically, behaviorally, or mentally different, so too those with same-sex tendencies should not be mocked. On the contrary, those around them — family and community — should show special feeling for them, and apply to them the Torah commandment of 'Love thy neighbor as thyself' and to be diligent in avoiding the prohibition of insulting another."<sup>[48]</sup>

Rabbi Dr. Immanuel Jakobovits describes the traditional opinion on homosexuality as follows: "Jewish law [...] rejects the view that homosexuality is to be regarded merely as a disease or as morally neutral... Jewish law holds that no hedonistic ethic, even if called "love", can justify the morality of homosexuality any more than it can legitimize adultery or incest, however genuinely such acts may be performed out of love and by mutual consent."<sup>[49]</sup> Rabbi Norman Lamm argued that some (although not all) homosexuals should be viewed as diseased and in need of compassion and treatment, rather than willful rebels who should be ostracized. He distinguishes between six varieties of homosexuals, including "genuine homosexuals" who have "strong preferential erotic feelings for members of the same sex", "transitory" and "situational" homosexuals who would prefer heterosexual intercourse but are denied it or seek gain in homosexuality, and heterosexuals who are merely curious.



## **CHAPTER TWENTY-THREE**

### **ORTHODOX JEWS WHO ARE HOMOSEXUAL**

When Steven Greenberg, who received Orthodox rabbinic ordination, publicly announced in 1999 that he was homosexual, there was a significant response from rabbis of all denominations reported in the Jewish newspapers. Rabbi Moshe Tendler, a leading rabbi at Yeshiva University, stated, "It is very sad that an individual who attended our yeshiva sunk to the depths of what we consider a depraved society." As Greenberg has a rabbinic ordination from the Orthodox rabbinical seminary of Yeshiva University (RIETS), he is generally described as the first openly gay Orthodox Jewish rabbi. However, some Orthodox Jews, including many rabbis, dispute his being an Orthodox rabbi.

Orthodox Israeli rabbi Ron Yosef became in 2009 the first Israeli Orthodox Rabbi to come out, by appearing in *Uvda* [he] ("Fact"), Israel's leading investigative television program, in an episode regarding conversion therapies in Israel. Yosef remains in his position as a pulpit Rabbi. Yosef testified that his Yemenite congregation did not accept him being a homosexual very easily and it took them a while to accept it. Yosef received death threats in the year leading up to the 2009 Tel Aviv gay centre shooting. In 2013, he stated he is in a relationship with a man. Yosef has stated his approach to the issue of homosexuality in Judaism as follows: "It is clear to me that lying with another man is forbidden, and our starting point is commitment to halacha and Torah. The goal is not to seek permission. But you need to give us a shoulder and support."

In 2019 Daniel Atwood became the first openly gay Orthodox person to be ordained as a rabbi; he was ordained by the rabbi Daniel Landes, in Jerusalem.



## **CHAPTER TWENTY-FOUR**

### **EX-GAY ORGANIZATIONS**

JONAH was a Jewish ex-gay organization that focuses on "prevention, intervention, and healing of the underlying issues causing same-sex attractions". In 2012, four former clients of JONAH sued the organization for fraud, claiming that it sold them therapies that were ineffective and counterproductive. Soon after in that same year, the Rabbinical Council of America (RCA), a professional association of more than 1,000 Orthodox rabbis around the world, sent an open email to its members that it no longer supported conversion therapy generally, or JONAH specifically.<sup>1</sup> In 2015, a New Jersey jury found JONAH guilty of consumer fraud for promising to be able to change its clients' sexual urges and determined its commercial practices to be unconscionable.<sup>[62]</sup> As part of the sentence, JONAH was required to cease all operations, but continues to operate under the name JIFGA as of 2018.

### **OTHER VIEWPOINTS**

Jiří Mordechai Langer, who studied in the Hasidic community of Belz, arrived in the land of Israel in 1940. "His reconciliation of homosexuality and Judaism involved ...a homosexual Jewish theology; ...a sociology of Jewish homosexuality in Hasidism".

The late UK Chief Rabbi Jonathan Sacks wrote the foreword to Rabbi Chaim Rapoport's book *Judaism and Homosexuality: An Authentic Orthodox View*. In the foreword, Rabbi Sacks has written: "Compassion, sympathy, empathy, understanding - these are essential elements of Judaism. They are what homosexual Jews who care about Judaism need from us today."

Modern Orthodox leader Rabbi Aharon Lichtenstein is reported to have said that the intensity of Orthodox community's condemnation of homosexuality goes beyond what its status as a religious transgression warrants, and that he feels toward homosexual people "criticism, disapproval, but tempered with an element of sympathy".

In both the United States and in Israel several groups have sprung up in the last few years that seek to support those who identify as both Orthodox and homosexual; support Orthodox parents of LGBT children; and promote understanding of homosexuality within Orthodox communities and among Orthodox rabbis. These include an umbrella organization called Eshel, the Gay and Lesbian Yeshiva Day School Alumni Association, the women's group OrthoDykes, the youth group JQYouth, the American-Israeli group headquartered in Jerusalem Bat Kol and the Israeli group Hod ("Majesty"). In 2012, Hod held an advertising campaign against conversion therapies and for self-acceptance of the religious homosexual community in Israel. Online blogs and support groups have enabled many to find other Orthodox LGBT people with whom to share the conflict between Orthodox religious and social norms and LGBT self-identification.<sup>[76]</sup>

Orthodox Rabbis Shmuley Boteach and Zev Farber have questioned the opposition of Orthodox groups to government recognition of same-sex civil marriages (or in Boteach's case, to state-sanctioned civil unions), arguing that although Judaism does not condone homosexuality, governments should not enforce any particular religion's view of marriage, and that conferring civil benefits to committed homosexual couples should be viewed as promoting family values. Boteach wrote in a 2010 *Wall Street Journal* op-ed column on homosexuality that he does not deny that there is a biblical prohibition on male same-sex relationships and a commandment for men and women to marry and have children. Still, he understands those in context. "There are 613 commandments in the Torah... So, when Jewish gay couples tell me they have never been attracted to members of the opposite sex and are desperate alone, I tell them "You have 611 commandments left. That should keep you busy. Now, go create a kosher home ... you are His beloved children." Five years later he wrote that he believed in the equality of all of God's children, and has seen too much homophobia in his life.<sup>[80]</sup> He believes that the biggest threat to marriage doesn't come from gay marriage, but heterosexual divorce, which he says afflicts half of marriages. He opposes government involvement at all in recognizing marriage, but supports state-sanctioned "civil unions" for all. Orthodox Rabbi Shmuly Yanklowitz declared that the Jewish values of justice, equality, and dignity lead him to support the cause of gay rights and advocate for same-sex civil marriage.

In November 2016, dozens of LGBT activists protested in Jerusalem against comments reportedly made by the city's chief rabbi Rabbi Shlomo Amar, who

reportedly told an Israeli newspaper that gay people were an "abomination", and homosexuality a "cult".

In 2017, the Senior Rabbi of the Spanish & Portuguese Sephardi Community Joseph Dweck gave a class describing "the entire revolution of feminism and even homosexuality in our society ... is a fantastic development for humanity". These words were condemned by Rabbi Aaron Bassous as "false and misguided ... corrupt from beginning to end"<sup>443</sup>. This affair caused Dweck to step down from the Sephardic Beth Din but not as a communal leader<sup>444</sup>.

In 2019, Rabbi Daniel Landes wrote, "Leviticus 18:22 ... has not been erased from the Torah. But that biblical commandment does not give us license to ignore or abuse the significant number of carefully observant Jews who are LGBTQ."<sup>445</sup>

There are flim documentaries about Orthodox homosexuals in recent years and these include Trembling Before G-d, Keep Not Silent, and Say Amen.

## **Conservative Judaism**

As a matter of both Jewish law and institutional policy, Conservative ("Masorti") Judaism has wrestled with homosexuality issues since the 1980s.

Herschell Matt a conservative Jewish writer initially argued that homosexuals may be excused because Judaism does recognise 'constraint' as a valid excuse to disobey the law. However, Matt later shifted to outright support for homosexuality, viewing it as part of the natural order. Conservative Rabbi Robert Kirshchner states that Jews have historically adapted their laws to new circumstances, indicating accommodation for homosexuality<sup>446</sup>.

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<sup>443</sup> Sherwood, Harriet (18 June 2017). "Chief rabbi intervenes in Orthodox rabbis' row over homosexuality" *The Guardian*

<sup>444</sup> Rucker, Simon (19 July 2017). "Rabbi Dweck can remain as Sephardi leader, rabbinic panel says". *The Jewish Chronicle*.

<sup>445</sup> Landes, Daniel. "We Need Gay Orthodox Rabbis." *Jewish Journal*. 28 May 2019. 28 May 2019.

<sup>446</sup> David L. Balch (2000). *Homosexuality, Science, and the "plain Sense" of Scripture*. Wm. B. Eerdmans Publishing. pp. 293-. ISBN 978-0-8028-4698-3. Herschell Matt, a Conservative Jewish thinker, moved away from the category of 'illness' to speaking of 'sexual deviance, malfunctioning, or abnormality-usually unavoidable and often irremediable. Matt recognized traditional reasons for condemning homosexuality, but argued that Halakah (traditional law) recognizes the category of 'constraint' (me'ones) excusing one in circumstances beyond one's control. Because there is no possibility of change to a heterosexual preference, the homosexual should be considered to be acting under 'constraint'. A decade later, Matt went further and rejected his own suggestion that homosexuals should be tolerated because they are acting out of uncontrollable compulsion. Homosexuality is rather part of God's creation; therefore, gay men and lesbians may be ordained to the rabbinate. Matt went further than many other Conservative Jews, but virtually all Jewish writers support the decriminalization of private sexual acts. Another Conservative Rabbi,



## **CHAPTER TWENTY-FIVE**

### **THE JEWISH THEOLOGICAL SEMINARY OF AMERICA WHICH IS THE MAIN RABBINICAL SEMINARY OF CONSERVATIVE JUDAISM**

The Committee on Jewish Law and Standards (CJLS) of the Rabbinical Assembly makes the movement's decisions concerning Jewish law. In 1992, the CJLS action affirmed its traditional prohibition on homosexual conduct, blessing same-sex unions, and ordaining openly gay/lesbian/bisexual clergy. However, these prohibitions grew increasingly controversial within the Conservative movement.

In 2006, the CJLS shifted its position and paved the way for significant changes regarding the Conservative movement's policies toward homosexuality. On December 6, 2006, The CJLS adopted three distinct responsa reflecting very different approaches to the subject. One responsum substantially liberalized Conservative Judaism's approach including lifting most (but not all) classical prohibitions on homosexual conduct and permitted the blessing of homosexual unions and the ordination of openly gay/lesbian/bisexual clergy. Two others completely retained traditional prohibitions. Under the rules of the Conservative movement, the adoption of multiple opinions permits individual Conservative rabbis, congregations, and rabbinical schools to select which opinion to accept, and hence to choose individually whether to maintain a traditional prohibition on homosexual conduct or to permit openly gay/lesbian/bisexual unions and clergy.

The liberalizing responsum, adopted as a majority opinion by 13 of 25 votes, was authored by Rabbis Elliot N. Dorff, Daniel Nevins, and Avram Reisner. It lifted most restrictions on homosexual conduct and opened the way to the ordination of openly gay/lesbian/bisexual rabbis and cantors and acceptance of homosexual unions, but

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Robert Kirshchner, pointed out that 'in the interpretation of Jewish tradition, where there is a halachic will, there is a halachic way. In other words, if our understanding of a situation changes, we Jews have always found a way to make the law fit in with our new understanding'

stopped short of religiously recognizing same-sex marriage. The responsum invoked the Talmudic principle of *kavod habriyot*, which the authors translated as "human dignity", as authority for this approach. The responsum maintained a prohibition on male-male anal sex, which it described as the sole Biblically prohibited homosexual act. This act remains a *yehareg ve'al ya'avur* ("die rather than transgress" offense) under the decision<sup>447</sup>.

Two traditionalist responsa were adopted. A responsum by Rabbi Joel Roth<sup>448</sup>, adopted as a majority opinion by 13 votes, reaffirmed a general complete prohibition on homosexual conduct. A second responsum by Rabbi Leonard Levy, adopted as a minority opinion by 6 votes, delineated ways in which to ensure that gays and lesbians would be accorded human dignity and a respected place in Conservative communities and institutions while maintaining the authority of the traditional prohibitions against same-sex sexual activity.

However, the Committee rejected the fourth paper by Gordon Tucker which would have lifted all restrictions on homosexual sexual practices.

The consequences of the decision have been mixed. On the one hand, four members of the Committee - Rabbis Joel Roth, Leonard Levy, Mayer Rabinowitz, and Joseph Prouser- resigned from the CJLS following adoption of the change<sup>449</sup>. On the other hand, the Ziegler School of Rabbinic Studies of the University of Judaism (now the American Jewish University) in Los Angeles had previously stated that it will immediately begin admitting gay/lesbian/bisexual students as soon as the law committee passes a policy that sanctions such ordination<sup>450</sup>. On March 26, 2007, the Jewish Theological Seminary of America in New York followed suit and began accepting openly gay/lesbian/bisexual candidates for admission for their Rabbinical program<sup>451</sup>.

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<sup>447</sup> "Elliott N. Dorff, Daniel Nevins, and Avram Reisner. Homosexuality, Human Dignity, and Halakha. Committee on Jewish Law and Standards, Rabbinical Assembly, December 6, 2006" (PDF). Archived from the original (PDF) on April 13, 2008.

<sup>448</sup> Rebecca Spence (December 8, 2006). "Conservative Panel Votes to Permit Gay Rabbis" The Jewish Daily Forward. Archived from the original on December 8, 2006. Retrieved November 26, 2014.

<sup>449</sup> Ben Harris (2006-12-06). "Conflicting Conservative opinions expected to open the way for gays". Jewish Telegraphic Agency. Archived from the original on 11 December 2006. Retrieved 2006-12-07.

<sup>450</sup> Rebecca Spence (December 8, 2006). "Conservative Panel Votes to Permit Gay Rabbis" ... The Jewish Daily Forward. Archived from the original on December 8, 2006. Retrieved November 26, 2014.

<sup>451</sup>"Chancellor-elect Eisen's Letter to the Community". The Jewish Theological Seminary. March 26, 2007. Archived from the original on December 4, 2014. Retrieved November 26, 2014.

In June 2012, the American branch of Conservative Judaism formally approved same-sex marriage ceremonies in a 13–0 vote<sup>452</sup> which led into a marriage of two Conservative Rabbis bin 2021, first known example of two Rabbis of the same sex marrying each other.

Although the American example was initially an outlier in the global Conservative movement, it is now the case that "all Masorti seminaries, except for the one in Argentina, now accept openly gay students"<sup>453</sup>. Since 2014 in the United Kingdom the Masorti movement offers a Shutfut ("partnership") ceremony to same-gender couples wishing to marry in a Conservative religious ceremony. The Shutfut contains many of the iconic elements of a traditional Jewish wedding service - the chupah, the seven blessings, the wine, the glass breaking, but without the symbolic act of acquisition in a traditional Jewish wedding.

In Israel, the head of the Masorti's Vaad Halakha (equivalent to the CJLS), Rabbi David Golinkin, wrote to the CJLS protesting its reconsideration of the traditional ban on homosexual conduct. Despite the contention within the Israeli movement however in the same year, Israel's Schechter Rabbinical Seminary sanctioned the training of openly gay Rabbis.

Hungary's Neolog movement - distinct from but seen as a fraternal counterpart and in some ways spiritual ancestor of the modern Masorti movement - has been more divided. Although not embracing and providing for same-gender marriage or full inclusion in Jewish life, Mazsihisz, the main representative umbrella body for Neolog Judaism, has affirmed its opposition to exclusion by homophobia and in 2013 dismissed the director of its youth movement for making comments about excluding gay people from all religious life for their sexual orientation. In 2021 the President of Mazsihisz was made to apologise for signing a Joint Declaration of the Churches on the Holiness of Marriage that held "the sanctification of the woman-man relationship by marriage is the foundation of human dignity". His critics included Mazsihisz's Chief Rabbi and earlier that same year the movement made a statement widely seen as condemning new Hungarian laws limiting the exposure of children to content referencing homosexuality.

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<sup>452</sup> "Conservative Judaism has just celebrated its first same-sex wedding between rabbis'... Pink News. November 6, 2021. Retrieved April 28, 2022.

<sup>453</sup> Keshet UK. "Denominational perspectives on LGBT inclusion" (PDF). Archived from the original (PDF) on April 28, 2022. Retrieved April 28, 2022.

Rabbi Bradley Artson, Dean of the Rabbinic School at American Jewish University, claims to have studied every reference he could find to homosexual activity mentioned in ancient Greek and Latin writers. Every citation he found described an encounter between males where one party, the master, physically abused another, the slave. Rabbi Artson could not find a single example where one partner was not subservient to the other. "Homosexual relationships today", Rabbi Artson says, "should not be compared to the ancient world. I know too many homosexual individuals, including close friends and relatives, who are committed to one another in loving long-term monogamous relationships. I know too many same-sex couples that are loving parents raising good descent ethical children. Who's to say their family relationships are less sanctified in the eyes of God than mine is with my wife and our children?"

## **REFORM JUDAISM.**

The Reform Judaism movement which is the largest branch of Judaism in North America, has rejected the traditional view of Jewish Law on homosexuality and bisexuality. As such, they do not prohibit the ordination of openly gay, lesbian, and bisexual people as rabbis and cantors. They view Levitical laws as sometimes seen to be referring to prostitution, making it a stand against Jews adopting the idolatrous fertility cults and practices of the neighbouring Canaanite nations, rather than a blanket condemnation of same-sex intercourse, homosexuality, or bisexuality. Reform authorities consider that, in light of what is seen as current scientific evidence about the nature of homosexuality and bisexuality as inborn sexual orientations, a new interpretation of the law is required.

The Reform Jewish community recognized the world's first explicitly gay-and-lesbian-centred synagogue called Beth Chayim Chadashim in 1972 established in West Los Angeles, resulting in a slew of non-Orthodox congregations being established along similar lines. Beth Chayim Chadashim currently focuses on the entire LGBTQIA+ community, rather than just gays and lesbians.

The Central Conference of American Rabbis (CCAR) the Union for Reform Judaism's principal body in 1977 adopted a resolution calling for decriminalizing legislation of homosexual acts between consenting adults, and calling for an end to

discrimination against gays and lesbians<sup>454</sup>. The resolution called on Reform Jewish organizations to develop programs to implement this stand.

Reform rabbi Lionel Blue was the first British rabbi to publicly declare himself as gay, which he did in 1980.

In the late 1980s, the primary seminary of the Reform movement, Hebrew Union College-Jewish Institute of Religion, changed its admission requirements to allow openly gay and lesbian people to join the student body.

In 1990, the Union for Reform Judaism announced a national policy declaring lesbian and gay Jews to be full and equal members of the religious community. Also, in 1990, the CCAR officially endorsed a report of their own Ad Hoc Committee on Homosexuality and the Rabbinate. This position paper urged that "all rabbis, regardless of sexual orientation, be accorded the opportunity to fulfill the sacred vocation that they have chosen". The committee endorsed the view that "all Jews are religiously equal, regardless of their sexual orientation"<sup>455</sup>.

In 1996, the CCAR passed a resolution approving the same-sex civil marriage. However, this same resolution made a distinction between civil marriages and religious marriages; this resolution thus stated:

However, we may understand homosexuality, whether as an illness, as a genetically based dysfunction or as a sexual preference and lifestyle—we cannot accommodate the relationship of two homosexuals as a "marriage" within the context of Judaism, for none of the elements of qiddushin (sanctification) normally associated with marriage can be invoked for this relationship<sup>456</sup>.

The Central Conference of American Rabbis support the right of gay and lesbian couples to share fully and equally in the rights of civil marriage, and

That the CCAR oppose governmental efforts to ban gay and lesbian marriage.

That this is a matter of civil law, and is separate from the question of rabbinic officiation at such marriages.

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<sup>454</sup> "CCAR". Ccarnet.org. Archived from the original on 2015-03-09. Retrieved 2015-03-16.

<sup>455</sup> "CCAR". Ccarnet.org. Archived from the original on 2015-03-09. Retrieved 2015-03-16.

<sup>456</sup> "Question 18.3.8: Reform's Position On...Homosexuality". Soc.Culture. Jewish Newsgroups. Retrieved November 26, 2014.

In 1998, an ad hoc CCAR committee on Human Sexuality issued its majority report (11 to 1, 1 abstention) which stated that the holiness within a Jewish marriage "may be present in committed same-gender relationships between two Jews and that these relationships can serve as the foundation of stable Jewish families, thus adding strength to the Jewish community". The report called for the CCAR to support rabbis in officiating at same-sex marriages. Also in 1998, the Responsa Committee of the CCAR issued a lengthy teshuvah (rabbinical opinion)<sup>[109]</sup> that offered detailed argumentation in support of both sides of the question whether a rabbi may officiate at a commitment ceremony for a same-sex couple.

In March 2000, the CCAR issued a new resolution stating that "We do hereby resolve that the relationship of a Jewish, same-gender couple is worthy of affirmation through appropriate Jewish ritual and further resolve, that we recognize the diversity of opinions within our ranks on this issue. We support the decision of those who choose to officiate at rituals of union for same-sex couples, and we support the decision of those who do not."

Also in 2000, Hebrew Union College-Jewish Institute of Religion established the Institute for Judaism, Sexual Orientation & Gender Identity to "educate HUC-JIR students on lesbian, gay, bisexual, and transgender issues to help them challenge and eliminate homophobia and heterosexism; and to learn tools to be able to transform the communities they encounter into ones that are inclusive and welcoming of LGBT Jews". It is the first and only institute of its kind in the Jewish world.

In 2003, the Union for Reform Judaism retroactively applied its pro-rights policy on gays and lesbians to the bisexual and transgender communities, issuing a resolution titled, "Support for the Inclusion and Acceptance of the Transgender and Bisexual Communities".

Also in 2003, Women of Reform Judaism issued a statement describing their support for human and civil rights and the struggles of the bisexual and transgender communities, and saying, "Women of Reform Judaism accordingly: Calls for civil rights protections from all forms of discrimination against bisexual and transgender individuals; Urges that such legislation allows transgender individuals to be seen under the law as the gender by which they identify; and Calls upon sisterhoods to hold informative programs about the transgender and bisexual communities."

In 2009, **Siddur Sha'ar Zahav**, a prayer book written to address the lives and needs of LGBTQ as well as heterosexual and cisgender Jews, was published.

In 2014, the CCAR joined a lawsuit challenging North Carolina's ban on same-sex marriage, which is America's first faith-based challenge to same-sex marriage bans.

In 2015, Rabbi Denise Eger became the first openly gay president of the CCAR.

Also in 2015, the High Holy Days Reform Jewish prayer book *Mishkan HaNefesh* was released; it is intended as a companion to *Mishkan T'filah*. *Mishkan HaNefesh* can be translated as "sanctuary of the soul". It replaces a line from the Reform movement's earlier prayerbook, "Gates of Repentance", that mentioned the joy of a bride and groom specifically, with the line "rejoicing with couples under the chuppah [wedding canopy]", and adds a third, non-gendered option to the way worshippers are called to the Torah, offering "mibeit", Hebrew for "from the house of", in addition to the traditional "son of" or "daughter of".<sup>[119]</sup> The *Mishkan HaNefesh* includes several sets of translations for the traditional prayers. Psalm 23 includes the familiar "traditional" translation, an adaptation that is considered "gender-sensitive" but remains faithful to the traditional version, a feminist adaption from Phyllis Appell Bass, and the fourth was published in 1978 by a contemporary rabbi.

## **RECONSTRUCTIONIST JUDAISM**

According to the Reconstructionist movement, homosexuality and bisexuality are considered normal expressions of sexuality and it welcomes gays, bisexuals, as well as lesbians into Reconstructionist communities to participate fully in every aspect of community life.

The Reconstructionist Rabbinical College has since 1985 openly admitted only gay, bisexual, and lesbian candidates to its rabbinical and cantorial programs and commissioned a movement called: Homosexuality and Judaism: *The Reconstructionist Position* in 1993<sup>457</sup>

The Reconstructionist Rabbinical Association (RRA) encourages its members to officiate at same-sex marriages/commitment ceremonies, though the RRA does not require its members to officiate at them. In 2007, the Reconstructionist Rabbinical Association elected as President Rabbi Toba Spitzer, who was the first LGBT person chosen to head a rabbinical association in the United States openly.

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<sup>457</sup> "Becoming a "Kehillah Mekabelet": The Struggles of Transformation" by Roberta Israeloff Archived November 13, 2007, at the Wayback Machine.

Accordingly, Sandra Lawson became the first openly homosexual African-American and first African-American to get admitted at the Reconstructionist Rabbinical College<sup>458</sup> she was ordained in June 2018, which made her the first openly homosexual, female, black rabbi in the world.<sup>459</sup>

In 2013, the Reconstructionist Rabbinical Association also elected Jason Klein, as President and became the first openly gay man chosen to head a national Rabbinical association of one of the major Jewish denominations in the United States<sup>460</sup>.

Also, in 2013, Rabbi Deborah Waxman was elected as the president of the Reconstructionist Rabbinical College as the President<sup>461</sup>, she is believed to be the first woman and first lesbian to lead a Jewish congregational union, and the first female rabbi and first lesbian to lead both Jewish seminary; the Reconstructionist Rabbinical College a congregational union and a seminary<sup>462</sup>.

## **JEWISH RENEWAL**

Jewish Renewal a recent movement in Judaism was founded with the main aim of linking Kabbalistic, Hasidic, musical and meditative practices into modern Jewsm, it describes itself as "a worldwide, transdenominational movement grounded in Judaism's prophetic and mystical traditions".<sup>463</sup>

It ordains people of all sexual orientations as rabbis and cantors. In 2005, Eli Cohen became the first openly gay rabbi ordained by the Jewish Renewal Movement, followed by Chaya Gusfield and Rabbi Lori Klein in 2006, who became the two first openly lesbian rabbis ordained by the Jewish Renewal movement. In 2007, Jalda Rebling, born in Amsterdam and now living in Germany, became the first openly lesbian cantor ordained by the Jewish Renewal movement<sup>464</sup>. In 2011, the bisexual

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<sup>458</sup> "Book Sandra Lawson for Speaking, Events and Appearances". APB Speakers. Retrieved 2019-06-03.

<sup>459</sup> "Elon Rabbi redefines religion". Projects.elonnewsnetwork.com. Retrieved 2019-05-12.

<sup>460</sup> "Gay man chosen to lead U.S. Recon<sup>460</sup> Noegel, Scott B.; Wheeler, Brannon M. (2010). *Lot. The A to Z of Prophets in Islam and Judaism*. Rowman & Littlefield Publishers, Incorporated. pp. 118–126. ISBN 978-0810876033structionist rabbis". Haaretz. The Forward. March 12, 2013. Retrieved March 12, 2013.

<sup>461</sup> "Reconstructionists Pick First Woman, Lesbian as Denominational Leader". The Jewish Week. Jewish Telegraphic Agency. October 10, 2013. Archived from the original on May 19, 2016. Retrieved November 26, 2014.

<sup>462</sup> Anne Cohen (October 18, 2013). "Trailblazing Reconstructionist Deborah Waxman Relishes Challenges of Judaism". The Jewish Daily Forward. Retrieved November 26, 2014.

<sup>463</sup> "About Jewish Renewal". Aleph: Alliance for Jewish Renewal. Archived from the original on October 7, 2014. Retrieved November 26, 2014.

<sup>464</sup> Axelrod, Toby (1999-11-30). "New Renewal cantor looks ahead". JTA. Archived from the original on 2013-04-15. Retrieved 2012-04-14.

rights activist Debra Kolodny was ordained as a rabbi by the Jewish Renewal movement and hired as the rabbi for congregation P'nai Or of Portland<sup>465</sup>. The Statement of Principles of ALEPH: Alliance for Jewish Renewal (and OHALAH and the Rabbinic Pastors Association) states in part, "We welcome and recognize the sanctity of every individual regardless of sexual orientation or gender identity. We recognize respectful and mutual expressions of adult human sexuality as potentially sacred expressions of love, and therefore, we strive to welcome a variety of constellations of intimate relationships and family forms including gay, lesbian, and heterosexual relationships as well as people choosing to be single."<sup>466</sup>

## **HUMANISTIC JUDAISM**

Humanistic Judaism is a movement in Judaism that offers a non-theistic alternative in contemporary Jewish life. In 2004, the Society for Humanistic Judaism issued a resolution supporting "the legal recognition of marriage and divorce between adults of the same sex", and affirming "the value of marriage between any two committed adults with the sense of obligations, responsibilities, and consequences thereof"<sup>467</sup>. In 2010 they pledged to speak out against homophobic bullying<sup>468</sup>.

The Association of Humanistic Rabbis has also issued a pro-LGBT statement titled "In Support of Diverse Sexualities and Gender Identities". It was adopted in 2003 and issued in 2004<sup>469</sup>.

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<sup>465</sup> "Profile: Debra Kolodny". The Lesbian, Gay, Bisexual and Transgender Religious Archives Network. Retrieved November 26, 2014.

<sup>466</sup> "Statement of Principles". OHALAH. Archived from the original on April 3, 2015. Retrieved November 26, 2014.

<sup>467</sup> Society for Humanistic Judaism SHJ "On Homosexual Marriage". Archived from the original on October 10, 2013. Retrieved November 19, 2013.

<sup>468</sup> "Society for Humanistic Judaism Pledges to Speak Out Against Homophobic Bullying". Archived from the original on July 25, 2013. Retrieved July 11, 2013.

<sup>469</sup> "Sexualities & Identities". Association of Humanistic Rabbis. Archived from the original on October 30, 2014. Retrieved November 26, 2014.



## CHAPTER TWENTY-SIX

### LGBT-AFFIRMATIVE ACTIVITIES

Jewish LGBT rights advocates and sympathetic clergy have created various institutions within Jewish life to accommodate gay, lesbian, bisexual, and transgender parishioners. Beth Chayim Chadashim, established in 1972 in West Los Angeles, was the world's first explicitly-gay-and-lesbian-centered synagogue recognized by the Reform Jewish community, resulting in a slew of non-Orthodox congregations being established along similar lines, including Congregation Beit Simchat Torah in New York City, Bet Mishpachah in Washington, D. C., and Congregation or Chadash in Chicago. Beth Chayim Chadashim now focuses on the entire LGBT community, rather than just gays and lesbians.

LGBT-inclusive services and ceremonies specific to Jewish religious culture have also been created, ranging from LGBT-affirmative haggadot for Passover<sup>470</sup> to a "Stonewall Shabbat Seder"<sup>471</sup>.

In October 2012 Rainbow Jews, an oral history project showcasing the lives of Jewish bisexual, lesbian, gay, and transgender people in the United Kingdom from the 1950s until the present, was launched. It is the United Kingdom's first archive of Jewish bisexual, lesbian, gay, and transgender history.

The ONE National Gay and Lesbian Archives has, among other things, the Twice Blessed Collection, circa 1966-2000; this collection "consists of materials documenting the Jewish lesbian, gay, bisexual, and transgender experience, circa 1966-2000, collected by the Jewish Gay, Lesbian, Bisexual, and Transgender Archives, founded and operated by Johnny Abush".

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<sup>470</sup> "GLBT Passover Haggadah". JQ International. Archived from the original on November 12, 2012.

<sup>471</sup> Mark Horn. "The Stonewall Seder". Retrieved November 26, 2014.



## CHAPTER TWENTY-SEVEN

### INDIAN RELIGIONS

Among the religions that originated in ancient and medieval India, including Hinduism, Buddhism, Jainism and Sikhism, teachings regarding homosexuality are less clear than among the Abrahamic traditions, and religious authorities voice diverse opinions. In 2005, an authority figure of Sikhism condemned same-sex marriage and the practice of homosexuality. However, many people in Sikhism do not oppose gay marriage.<sup>[112]</sup> Hinduism is diverse, with no supreme governing body, but the majority of swamis opposed same-sex relationships in a 2004 survey, and a minority supported them.<sup>[113]</sup> Ancient religious texts such as the Vedas often refer to people of a third gender known as hijra, who are neither female nor male. Some see this third gender as an ancient parallel to lesbian, gay, bisexual, transgender and intersex identities.

#### **Hinduism**

Main articles: Hinduism and LGBT topics, Kama, and LGBT themes in Hindu mythology

Lord Shiva and Goddess Parvati in the form of Ardhanarisvara (half-man, half-woman)

Hinduism does not have a central authority. Many Hindu sects have taken various positions on homosexuality, ranging from positive to neutral or antagonistic. Referring to the nature of Samsara, the Rigveda, one of the four canonical sacred texts of Hinduism says 'Vikruti Evam Prakriti' (Perversity/diversity is what nature is all about, or, What seems unnatural is also natural).<sup>[114]</sup> A "third gender" has been acknowledged within Hinduism since Vedic times. Several Hindu texts, such as Manu Smriti<sup>[115]</sup> and Sushruta Samhita, assert that some people are born with either mixed male and female natures, or sexually neuter, as a matter of natural biology (while at the same time there are examples of speaking negatively in regards to male homosexuality as shown by the Manu Smrititi and Arthashastra). In addition,

each Hindu denomination had developed distinct rules regarding sexuality, as Hinduism is not unified and is decentralized in essence.

Hindu groups are historically not unified regarding the issue of homosexuality, each one having a distinct doctrinal view.

The Indian Kama Sutra, written around 150 BC, contains passages describing eunuchs or "third-sex" males performing oral sex on men. The text describes Kama as one of the three objectives to be achieved in life. Though it forbids the educated Brahmins, bureaucrats and wisemen from practicing Auparishtaka (oral sex).

Similarly, some medieval Hindu temples and artifacts openly depict both male homosexuality and lesbianism within their carvings, such as the temple walls at Khajuraho. Some infer from these images that at least part of the Hindu society and religion were previously more open to variations in human sexuality than they are at present.

Khajuraho scene of three women and one man.

Ayoni sex, which includes oral and anal sex, never came to be viewed as much of a sin like in Christianity nor a serious crime and could be practiced in some cases. Close friendship between people of same genders has also been seen as permissible in Hindu texts.<sup>[12]</sup>

Several Hindu priests have performed same-sex marriages, arguing that love is the result of attachments from previous births and that marriage, as a union of spirit, is transcendental to gender.

Hindu views of homosexuality and LGBT (lesbian, gay, bisexual, and transgender) issues more generally are diverse, and different Hindu groups have distinct views.

A number of Hindu texts have portrayed homosexual experience as natural and joyful,<sup>[1]</sup> the Kamasutra affirms and recognises same-sex relations,<sup>[2]</sup> and there are several Hindu temples which have carvings that depict both men and women engaging in homosexual acts. There are also numerous Hindu deities that are shown to be gender-fluid and falling into the LGBT spectrum.<sup>[4]</sup> Same-sex relations and gender variance have been represented within Hinduism from the Vedic times through to the present day, in rituals, law books, religious or narrative mythologies, commentaries, paintings, and even sculptures.

The Arthashastra argues that some homosexual intercourse is an offence, and encourages chastity (however, this also applies to heterosexual intercourse). The Dharmashastra recognises, albeit reluctantly, the existence of homosexuality, without openly condemning it in religious or moral terms. The Manusmriti regards homosexual (as well as heterosexual) acts in an ox cart as a source of ritual pollution, something to be expiated by Brahmin males through ritual immersion.<sup>[5]</sup>

In 2009, the Delhi High Court legalised homosexuality in India, but the Supreme Court of India subsequently overturned the high court's decision.<sup>[6]</sup> The Supreme Court of India, in a later ruling in 2018, reversed its previous verdict and decriminalised homosexual intercourse and relationships.<sup>[7]</sup>

Contemporary Hindu society[edit]

"Hindu society had a clear-cut idea of all these people in the past. Now that we have put them under one label 'LGBT', there is lot more confusion and other identities have got hidden."<sup>[8][9]</sup>

— Gopi Shankar Madurai in National Queer Conference 2013

Sexuality is rarely discussed openly in contemporary Hindu society, especially in modern India where homosexuality was illegal until a brief period beginning in 1860, due to colonial British laws.<sup>[10]</sup> In 2009, The Delhi High Court in a historic judgement decriminalised homosexuality in India; where the court noted that the existing laws violated fundamental rights to personal liberty (Article 21 of the Indian Constitution) and equality (Article 14) and prohibition of discrimination (Article 15). However, the Supreme Court of India re-affirmed the penal code provision and overturned the Delhi High Court decision, effectively re-instating the legal ban on homosexuality in which penalties included life imprisonment until September 6, 2018 when Supreme Court of India decriminalised homosexuality. Furthermore, LGBT people are often subjected to torture, executions and fines by non-government affiliated vigilante groups.

Hinduism is not known to ban homosexuality. Hindu nationalist factions have a varied opinion on the legalisation of homosexuality. In the last thirty years, homosexuality has become increasingly visible in the print and audio-visual media, with many out-LGBT people, an active LGBT movement, and a large Indian LGBT presence on the Internet. From the 1990s onward, modern gay and lesbian Hindu organizations have surfaced in India's major cities and in 2004, plausible calls were made for the first time to repeal India's laws against homosexuality.

Deepa Mehta's 1996 film *Fire*, which depicts a romantic relationship between two Hindu women, was informally banned for "religious insensitivity" after the screening of the movie was disrupted on the grounds that it denigrated Indian culture, not on the grounds of homophobia per se, a position shared and confirmed by feminist Madhu Kishwar. In addition, Bharatiya Janata Party who were in power in India at the time, refused to ban it. Similar protests occurred in 2004 against the lesbian-themed film *Girlfriend* — even though the portrayal of lesbianism was this time distinctly unsympathetic. Several human-rights groups such as the People's Union for Civil Liberties have asserted that sexual minorities in India face severe discrimination and violence, especially those from rural and lower-caste backgrounds.

In her book, *Love's Rite*, Ruth Vanita examines the phenomenon of same-sex weddings, many by Hindu rites, which have been reported by the Indian press over the last thirty years and with increasing frequency. In the same period, same-sex joint suicides have also been reported. Most of these marriages and suicides are by lower-middle-class female couples from small towns and rural areas across the country; these women have no contact with any LGBT movements. Both cross-sex and same-sex couples, when faced with family opposition, tend to resort to either elopement and marriage or to joint suicide in the hope of reunion in the next life. Vanita examines how Hindu doctrines such as rebirth and the genderlessness of the soul are often interpreted to legitimize socially disapproved relationships, including same-sex ones. In a 2004 survey, most — though not all — swamis said they opposed the concept of a Hindu-sanctified gay marriage.<sup>[28]</sup> But several Hindu priests have performed same-sex marriages, arguing that love is the result of attachments from previous births and that marriage, as a union of spirit, is transcendental to gender.

Later, Vanita condenses the ideas in her book into an article, "Same-sex Weddings, Hindu Traditions and Modern India".<sup>[31]</sup> Here, she summarizes specific cases in which women specifically committed joint-suicides, were married and separated, or successfully married. She points out three different "forces that have helped female couples". These are: the law courts, the media, and some Hindu authorities (such as the swamis mentioned earlier in this article) from her book. When female couples can stay together under the social pressures and get to the courts, the courts generally hold up their decisions, holding to the fact that the women are consenting adults. While this does not necessarily stop the harassment, it does lend the couple further legitimacy under the laws. In addition, the more successful same-sex marriages of

women are those in which the women are financially independent. If they have social support from their families and community—for the most part—then they may be able to live in peace together. The media may also play an important role in same-sex marriages. In drawing attention to their marriages, women who do not necessarily know about LGBT rights groups may be contacted and supported by those groups after media attention. However, the flip side of this is that the anti-LGBT groups also may reach out against their marriage.

Psychoanalyst Sudhir Kakar writes that Hindus are more accepting of "deviance or eccentricity" than adherents of Western religions, who typically treat sexual variance as "anti-social or psychopathological, requiring 'correction' or 'cure'". Hindus, he argues, believe instead that each individual must fulfill their personal destiny (svadharma) as they travel the path towards moksha (transcendence).

Commenting on the legalisation of homosexuality in India; Anil Bhanot, general secretary of The United Kingdom Hindu Council said: "The point here is that the homosexual nature is part of the natural law of God; it should be accepted for what it is, no more and no less. Hindus are generally conservative but it seems to me that in ancient India, they even celebrated sex as an enjoyable part of procreation, where priests were invited for ceremonies in their home to mark the beginning of the process."

A high-ranking member of the influential right-wing Hindu group Rashtriya Swayamsevak Sangh (RSS) has publicly stated that he does not believe homosexuality should be illegal, and that the RSS had no official stance on this issue since it was a matter of personal preference. After the Supreme Court of India struck down parts of Section 377 of the Indian Penal Code, the RSS stated that while relationships between people of the same gender are unnatural, it is not a criminal act. In its latest position, the RSS has accepted that people from the LGBT community are an integral part of the Indian society.

## **THE THIRD GENDER**

Hindu philosophy has the concept of a third sex or third gender<sup>472</sup>. This category includes a wide range of people with mixed male and female natures such as effeminate males, masculine females, transgender people, transsexual people, intersex people, androgynes, and so on. Many MTF third-genders are not attracted

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<sup>472</sup> (Sanskrit: तृतीय प्रकृति, *tṛtīya-prakṛti* – literally, "third nature")

only or at all to men, but are attracted either exclusively to women or are bisexual. Many FTM transgender people are attracted to men. Such persons are not considered fully male or female in traditional Hinduism, being a combination of both. They are mentioned as third sex by nature (birth) and are not expected to behave like cisgender men and women. They often keep their own societies or town quarters, perform specific occupations (such as masseurs, hairdressers, flower-sellers, domestic servants, etc.) and are generally attributed a semi-divine status. Their participation in religious ceremonies, especially as cross-dressing dancers and devotees of certain temple gods/goddesses, is considered auspicious in traditional Hinduism. Some Hindus believe that third-sex people have special powers allowing them to bless or curse others.

In 2008, the state of Tamil Nadu recognised the "Third Gender"; with its civil supplies department giving in the ration card a provision for a new sex column as 'T', distinct from the usual 'M' and 'F' for males and females respectively. This was the first time that authorities anywhere in India have officially recognised the third gender.

## **HINDU RELIGIOUS NARRATIVES**

The Hindu god Shiva is often represented as Ardhanarisvara, a unified entity of him with his consort Parvati. This sculpture is from the Elephanta Caves near Mumbai.

In the Hindu narrative tradition, stories of gods and mortals changing gender occur. Sometimes they also engage in heterosexual activities as different reincarnated genders. Homosexual and transgender Hindus commonly identify with and worship the various Hindu deities connected with gender diversity such as Ardhanarisvara (the androgynous form of Shiva and his consort Parvati), Aravan (a hero whom the god Krishna married after becoming a woman), Harihara (an incarnation of Shiva and Vishnu combined), Bahuchara Mata (a goddess connected with transsexuality and eunuchism), Gadadhara (an incarnation of Radha in male form), Chandi-Chamunda (twin warrior goddesses), Bhagavati-devi (a Hindu goddess associated with cross-dressing), Gangamma (a goddess connected with cross-dressing and disguises) and the goddess Yellamma. There are also specific festivals connected to the worship of these deities, some of which are famous in India for their cross-dressing devotees. These festivals include the Aravan Festival of Koovagam, the Bahuchara Mata

Festivals of Gujarat and the Yellamma Festivals of Karnataka, among others. Deities displaying gender variance include Mohini, the female avatar of the god Vishnu and Vaikuntha Kamalaja, the androgynous form of Vishnu and his consort Lakshmi.

LGBT interpretations are also drawn in the legends of birth of the deities Ayyappa (a god born from the union of Shiva and Mohini), Bhagiratha (an Indian king born of two female parents) and Kartikeya (where the fire-god Agni "swallows" the semen of Shiva after disturbing his coitus with his consort Parvati). Some homosexual Hindus also worship the gods Mitra and Varuna, who are associated with two lunar phases and same-sex relations in ancient Brahmana texts.

Gender variance is also observed in heroes in Hindu scriptures. The Hindu epic Mahabharata narrates that the hero Arjuna takes a vow to live as a member of the third sex for a year as the result of a curse he is compelled to honor. He thus transforms into Brihannala, a member of the third gender, for a year and becomes a dance teacher to a princess. Another important character, Shikhandi, is born female, but raised as a man and even married to a woman. She becomes male due to the grace of a Yaksha. Shikhandi eventually becomes the reason for the death of the warrior Bhishma, who refuses to fight a "woman." Another character, Bhishma appeases Yudhishtira's curiosity about relative enjoyment of partners during sex by relating the story of King Bhangasvana, who has had a hundred sons is turned into a woman while on a hunt. She returns to her kingdom, relates the story, turns the kingdom over to her children and retires to the forest to be the spouse of a hermit, by whom she has a hundred more sons. Ila, a king from Hindu narratives, is also known for their gender changes.

Some versions of the Kritivasa Ramayana, the most popular Bengali text on the pastimes of Ramachandra (an incarnation of Vishnu), relate a story of two queens who conceived a child together. When the king of the Sun Dynasty, Maharaja Dilipa, died, the demigods become concerned that he did not have a son to continue his line. Shiva, therefore, appeared before the king's two widowed queens and commanded them, "You two make love together and by my blessings, you will bear a beautiful son." The two wives, with great affection for each other, executed Shiva's order until one of them conceived a child. The sage Astavakra accordingly named the child "Bhagiratha" – he who was born from two vulvas. Bhagiratha later became a king and is credited with bringing the river Ganges down to earth through his austerities.

## **HINDU TEXTS**

People of a third gender (tritiya-prakriti), not fully men nor women, are mentioned here and there throughout Hindu texts such as the Puranas but are not specifically defined. In general, they are portrayed as effeminate men, often cowardly, and with no desire for women. Modern readers often draw parallels between these and modern stereotypes of lesbian, gay, bisexual and transgender people. However, Hindu texts (Mostly Dharmasastras) such as the Manusmriti, Vide Atri Smṛti, Vide Baudhāyana Dharmasūtra, and the Vide Apastambha Dharmasūtra do treat homosexuality as a sin, in some cases legally punishable. In addition, each Hindu denomination had developed distinct rules regarding sexuality, as Hinduism is not a monolith and is decentralized in essence.

Historians Ruth Vanita and Saleem Kidwai, in their book *Same-Sex Love in India: Readings from Literature and History*, compiled extracts from Indian texts, from ancient to modern times, including many Hindu texts, translated from 15 Indian languages. In their accompanying analytical essays, they also wrote that Hindu texts have discussed and debated same-sex desire from the earliest times, in tones ranging from critical to non-judgmental to playful and celebratory.

Mythologist Devdutt Pattanaik summarizes the place of homosexuality in Hindu literature as follows: "though not part of the mainstream, its existence was acknowledged but not approved." Other Indologists assert that homosexuality was not approved for brahmanas or the twice-born but accepted among other castes.

In his book, *Tritiya-Prakriti: People of the Third Sex*, Vaishnava monk Amara Das Wilhelm demonstrates how ancient expressions of Hinduism accommodated homosexual and transgender persons much more positively than we see in India today: "Early Vedic teachings stressed responsible family life and asceticism but also tolerated different types of sexualities within general society."

## **MAHANIRVANA TANTRA**

The Mahanirvana Tantra exclude the third-gendered from the right of inheritance, although establishing they have the right to be financially supported by their family.

## **KAMA SUTRA**

At the Lakshmana temple in Khajuraho (954 CE), a man receives fellatio from a seated male as part of an orgiastic scene.

The Kama Sutra is an ancient text dealing with kama or desire (of all kinds), which in Hindu thought is one of the four normative and spiritual goals of life. The Kama Sutra is the earliest extant and most important work in the Kama Shastra tradition of Sanskrit literature. It was compiled by the philosopher Vatsyayana around the 4th century, from earlier texts, and describes homosexual practices in several places, as well as a range of sex/gender 'types'. The author acknowledges that these relations also involve love and a bond of trust.

The author describes techniques by which masculine and feminine types of the third sex (*tritiya-prakriti*), as well as women, perform fellatio. The Second Part, Ninth Chapter of Kama Sutra specifically describes two kinds of men that we would recognize today as masculine- and feminine-type homosexuals but which are mentioned in older, Victorian British translations as simply "eunuchs." The chapter describes their appearances – feminine types dressed up as women whereas masculine types maintained muscular physiques and grew small beards, mustaches, etc. – and their various professions as masseurs, barbers and prostitutes are all described. Such homosexual men were also known to marry, according to the Kama Sutra: "There are also third-sex citizens, sometimes greatly attached to one another and with complete faith in one another, who get married together." In the "Jayamangala" of Yashodhara, an important twelfth-century commentary on the Kama Sutra, it is also stated: "Citizens with this kind of homosexual inclination, who renounce women and can do without them willingly because they love one another, get married together, bound by a deep and trusting friendship."

After describing fellatio as performed between men of the third sex, the Sutra then mentions the practice as an act between men and women, wherein the homosexuals' acts are scorned, especially for Brahmanas<sup>473</sup>. The Kama Sutra also refers to *svairini*, who are "independent women who frequent their own kind or others<sup>474</sup>" or, in another passage: "the liberated woman, or *svairini*, is one who refuses a husband and has relations in her own home or in other houses". In a famous commentary on the Kama Sutra from the 12th century, Jayamangala, explains: "A woman known for her independence, with no sexual bars, and acting as she wishes, is called *svairini*. She makes love with her own kind. She strokes her partner at the point of union, which she kisses." (*Jayamangala* on Kama Sutra The various practices of lesbians are described in detail within the Second Part, Eighth Chapter of the Kama Sutra.

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<sup>473</sup> (KS 2.9.37)

There are other ancient Hindu/Sanskrit texts that refer to homosexuality. The Sushruta Samhita, for example, a highly respected Hindu medical text dating back to at least 600 B.C., mentions two different types of homosexual men (*kumbhika* – men who take the passive role in anal sex; and *asekya* – men who devour the semen of other men) as well as transgender people (*sandha* – men with the qualities, behavior and speech of women). It also states that men who behave like women, or women who behave like men, are determined as such at the time of their conception in the womb. The Sushruta Samhita also mentions the possibility of two women uniting and becoming pregnant as a result of the mingling of their sexual fluids. It states that the child born of such a union will be "boneless." Such a birth is indeed described in the Krittivasa Ramayana of Bengal (see below).

Other texts list the various types of men who are impotent with women (known in Sanskrit as *sandha*, *kliba*, *napumsaka*, and *panda*). The Sabda-kalpa-druma Sanskrit-Sanskrit dictionary, for instance, lists twenty types, as does the Kamatantra and Smriti-Ratnavali of Vacaspati (14th century). The Narada Smriti similarly lists fourteen different types. Included among the lists are transgender people (*sandha*), intersex people (*nisarga*), and three different types of homosexual men (*mukhebhaga*, *kumbhika* and *asekya*). Such texts demonstrate that third-sex terms like *sandha* and *napumsaka* actually refer to many different types of "men who are impotent with women," and that simplistic definition such as "eunuch" or "neuter" may not always be accurate and in some cases totally incorrect. In his article Homosexuality and Hinduism, Arvind Sharma expresses his doubt over the common English translation of words like *kliba* into "eunuch" as follows: "The limited practice of castration in India raises another point significant for the rest of the discussion, namely, whether rendering a word such as "kliba" as "eunuch" regularly is correct..."

The Arthashastra of Kautilya represents the principle text of secular law and illustrates the attitude of the judiciary towards sexual matters. Heterosexual vaginal sex is proposed as the norm by this text and legal issues arising from deviation therefrom are punishable by fines and in extreme cases by capital punishment. Homosexual acts are cited as a small offence punishable by a fine. It punishes non-vaginal sex with a small fine however, women are fined less than men.

The digest or dharmanibandha work "Dandaviveka" written by Vardhamana Upadhyaya in 15th century in Mithila pronounced that semen shouldn't ejaculate

outside the vagina. Ayoni sex here is divided into two categories, one which includes intercourse with humans of both genders.

The Narada Purana in states that those who have non-vaginal intercourse will go to Retobhojana where they have to live on semen. Ruth Vanita states that the punishment in the afterlife suggested by it is comical and befitting the act. The Skanda Purana states that those who indulge in such acts will acquire impotency.

## **DHARMSASTRAS**

The Dharmasastras especially later ones prescribed against non-vaginal sex like the Vashistha Dharmasutra. The Yājñavalkya Smṛti prescribes fines for such acts including those with other men.

The Manusmriti is less judgmental about LGBT relationships. XI. 174 prescribes eating the five products of the cow or Panchagavya and foregoing food for a night for several sexual acts committed by a man including those with other men. XI. 175 states that those men who engage in intercourse with a man should take a bath while being clothed. According to XI.68, a man who engages in such acts is traditionally considered to lose his caste, though Ruth Vanita suggests the prescriptions by Manusmriti act as a substitute. Verses 8.369-370 of Manusmriti which prescribe punishment for a female having intercourse with a maiden are wrongly thought to be against same-sex activity between females by some modern authors like Wendy Doniger. However, verse 8.367 contains a similar punishment for all those who do it regardless of gender. The emphasis Vanita states here is on a maiden's sexual purity.

## **THIRD-GENDER HINDU SECTS**

Below are listed some of the most common third-gender sects found in Hinduism. There are an estimated half million crossdressing "eunuchs" in modern-day India, associated with various sects, temples and Hindu deities.<sup>[62][self-published source]</sup> Despite being called "eunuchs", the majority of these persons (91%) do not practice castration but are more accurately associated with transgender.

## **THE HIJRA**

### **A HIJRA**

The Hijras are a third-gender group in the Indian subcontinent. Some of them undergo castration, which is connected to Bahuchara Mata who is identified with the earth goddess. According to legends, she cut off her breasts in order to avoid rape by a group of bandits. The operation is termed by them nirvan. They compare it with tapas which consists of avoiding sex. Also used to justify emasculation is a creation myth of Shiva who emasculated himself. The aravanis also undergo castration. Hijras also use Arjuna becoming a eunuch during exile as a result of a curse as a justification for castration. Despite this, all the seven major hijra clans are claimed to have been established by Muslims.

There are an estimated 50,000 hijra in northern India. After interviewing and studying the hijra for many years, Serena Nanda writes in her book, *Neither Man Nor Woman: The hijras of India*, as follows: "There is a widespread belief in India that hijras are born hermaphrodites [intersex] and are taken away by the hijra community at birth or in childhood, but I found no evidence to support this belief among the hijras I met, all of whom joined the community voluntarily, often in their teens." Nanda also states: "There is absolutely no question that at least some hijras – perhaps even the majority – are homosexual prostitutes. Sinha's (1967) study of hijras in Lucknow, in North India, acknowledges the hijra role as performers, but views the major motivation for recruitment to the hijra community as the satisfaction of the individual's homosexual urges..."<sup>[69]</sup> The hijras especially worship Bahuchara, the Hindu goddess presiding over transsexuality.

## **THE ARAVANI OR ALI**

Aravanis – the "brides" of Aravan, mourn his death

The most numerous third-gender sect (estimated at 150,000) is the aravani or ali of Tamil Nadu in southern India. The aravanis are typically transgender and their main festival, the popular Koovagam or Aravan Festival celebrated in late April/early May, is attended by thousands, including many transgender people and homosexuals. The aravani worship the Hindu god, Aravan, and do not practice any system of castration.

## **THE JOGAPPA**

A lesser-known third-gender sect in India is the jogappa of South India (Karnataka and Andhra Pradesh), a group similarly associated with prostitution. The jogappa are connected with the goddess Yellamma (Renuka), and include both transgender people and homosexuals. Both serve as dancers and prostitutes, and they are usually in charge of the temple devadasis (maidservants of the goddess who similarly serve as dancers and female courtesans). Large festivals are celebrated at these temples wherein hundreds of scantily-clad devadasis and jogappas parade through the streets. The jogappa do not practice castration.

## **Buddaism**

The most common formulation of Buddhist ethics are the Five Precepts and the Eightfold Path, one should neither be attached to nor crave sensual pleasure. The third of the Five Precepts is "To refrain from committing sexual misconduct." However, "sexual misconduct" is a broad term, and is subjected to interpretation relative to the social norms of the followers. The determination of whether or not same-gender relations is appropriate for a layperson is not considered a religious matter by many Buddhists.

The relationship between Buddhism and sexual orientation varies by tradition and teacher. According to some scholars, early Buddhism appears to have placed no special stigma on homosexual relations, since the subject was not mentioned<sup>475</sup>.

According to the Pāli Canon and Āgama (the Early Buddhist scriptures), there is not any saying that same or opposite gender relations have anything to do with sexual misconduct, and some Theravada monks express that same-gender relations do not violate the rule to avoid sexual misconduct, which means not having sex with someone under age (thus protected by their parents or guardians), someone betrothed or married or who has taken vows of religious celibacy.

Some later traditions gradually began to add new restrictions on sexual misconduct, like non-vagina sex, though some academics argue it usually involves situations seem as coerced sex. This non-vagina sex as sexual misconduct view is not based on what Buddha's said, but from some later Abhidharma texts.

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<sup>475</sup> James William Coleman, *The New Buddhism: The Western Transformation of an Ancient Tradition*. Oxford University Press 2002, page 146.

Buddhism is often characterized as distrustful of sensual enjoyment and sexuality in general. Traditionally, sex and lust are seen as hindering to spiritual progress in most schools of Buddhism; as such monks are expected to refrain from all sexual activity, and the Vinaya (the first book of the Tripitaka) specifically prohibits sexual intercourse, then further explain that anal, oral, and vaginal intercourse amount to sexual intercourse, which will result in permanent exclusion from Sangha. A notable exception in the history of Buddhism occurred in Japan during the Edo period, in which male homosexuality, or more specifically, love between young novices and older monks, were celebrated.

References to pandaka, a eunuch/impotence category that is sometimes interpreted to include homosexual males, can be found throughout the Pali canon as well as other Sanskrit scriptures. In the Chinese version of Sarvastivada Vinaya, the pandaka is mentioned as also trying to have sex with women, not just men Leonard Zwilling refers extensively to Buddhaghosa's *Samantapasadika*, where pandaka are described as being filled with defiled passions and insatiable lusts, and are dominated by their libido. Some texts of the Abhidharma state that a pandaka cannot achieve enlightenment in their own lifetime, (but must wait for rebirth) and Asanga and Vasubandhu discussed if a pandaka was able to be enlightened or not. According to one scriptural story, Ananda—Buddha's cousin and disciple—was a pandaka in one of his many previous lives.

Some later classic Buddhist masters and texts disallow contact between monks/Bodhisattva and pandakas/women and classify non-vagina sex as sexual misconduct, including for lay followers.

The third of the five precepts of Buddhism states that one is to refrain from sexual misconduct; this precept has sometimes been interpreted to include homosexuality. The Dalai Lama of the Gelug sect of Tibetan Buddhism previously interpreted sexual misconduct to include lesbian and gay sex, and indeed any sex other than penis-vagina intercourse, including oral sex, anal sex, and masturbation or other sexual activity with the hand; the only time sex is acceptable is when it performed for its purpose of procreation. In 2009, when interviewed by Canadian TV news anchor Evan Solomon on CBC News: Sunday about whether or not homosexuality is acceptable in Buddhism, the Dalai Lama responded that "it is sexual misconduct."<sup>[150]</sup> However, the Dalai Lama supports human rights for all, "regardless of sexual orientation." In the most recent interview on this topic (March 10, 2014), the Dalai Lama said gay marriage is "OK", provided it's not in contradiction with

the values of one's chosen religion. Also in an Indian and Tibetan tradition, the Nalandabodhi sangha has stated that they are welcoming of all sexual orientations.

In Thailand, some accounts propose that "homosexuality arises as a karmic consequence of violating Buddhist proscriptions against heterosexual misconduct. These karmic accounts describe homosexuality as a congenital condition which cannot be altered, at least in a homosexual person's current lifetime, and have been linked with calls for compassion and understanding from the non-homosexual populace." However, Buddhist leaders in Thailand have also condemned homosexuality, ousted monks accused of homosexual acts, and banned kathoey from ordination. In 2009, Senior monk Phra Maha Wudhijaya Vajiramedh introduced a "good manners" curriculum for novices in the monkhood, stating to the BBC that he was concerned by "the flamboyant behaviour of gay and transgender monks, who can often be seen wearing revealingly tight robes, carrying pink purses and having effeminately-shaped eyebrows." However, in Thailand, several leaders in the Theravada tradition including Phra Payom Kalayano have expressed support for LGBT rights.

A later popular Japanese legend attributed the introduction of monastic homosexuality to Japan to Shingon founder Kukai, although scholars now dismiss the veracity of this assertion, pointing out his strict adherence to the Vinaya. Nonetheless, the legend served to "affirm same sex relation between men and boys in seventeenth century Japan." However, Japanese Buddhist scholar and author of "Wild Azaleas" Kitamura Kigin argued that there was a tendency in monasteries to avoid heterosexuality and to encourage homosexuality.

Although Mahayana Buddhism has some texts against homosexuality (from later Abhidharma texts and Buddhist apocrypha), the majority of its teachings assert that all beings who correctly practice the dharma may reach enlightenment, since all possess an innate Buddha nature. Enlightenment being achievable even in a single life. Some Mahayana Buddhist leaders were active in the movement for same-sex marriage rights in Taiwan which legalized same-sex marriages in 2019.

Well known Zen Buddhist, Thich Nhat Hanh, notes the spirit of Buddhism is inclusiveness and states "when you look at the ocean, you see different kinds of waves, many sizes and shapes, but all the waves have water as their foundation and substance. If you are born gay or lesbian, your ground of being is the same as mine. We are different, but we share the same ground of being."

The capacity of Buddhism to reform itself and its great variety of distinct beliefs and schools, provide many liberal streams of Buddhism, which are accepting of all sexual orientations. Reformists of Buddhism are mainly predominant in cosmopolitan cities. In global traditions, there is a widescale support for LGBT rights including the European Buddhist Union, the Buddhist Churches of America, many Shin Buddhist groups, and Zen leaders such as Thich Nhat Hanh. The Federation of Australian Buddhist Councils (FABC), representing Buddhist laypeople, and the Australian Sangha Association vocally supported same-sex marriage in Australia. Soka Gakkai International-USA (SGI-USA) is the most diverse Buddhist community in the United States with more than 500 chapters and some 100 centers throughout the country supports LGBT rights. In a PEW research poll, 88% of American Buddhists stated that homosexuality should be accepted. This was a higher level of support than any other religious group studied.

## **BUDAISM**

Buddha is often portrayed as a male figure, such as in this painting from a monastery in Laos.

Within the earliest monastic texts such as the Vinaya (c. 4th century BCE), male monks are explicitly forbidden from having sexual relations with any of the four genders: male, female, *ubhatovyañjanaka* and *paṇḍaka*; various meanings of these words are given below. Later, the Buddha allowed the ordination of women, forbade ordination to these other types of people, with exceptions to a few particular types of *paṇḍaka*. The Buddha's proscriptions against certain types of people joining the monastic sangha (ordained community) are often understood to reflect his concern with upholding the public image of the sangha as virtuous; in some cases, this is explicitly stated. Social acceptability was vital for the sangha, as it could not survive without material support from lay society.

### **Ubhatovyañjanakas**

The word *ubhatovyañjanaka* is usually thought to describe people who have both male and female sexual characteristics: hermaphrodites (intersex). In the Vinaya, it is said that *ubhatovyañjanaka* should not be ordained, on account of the possibility that they would entice a fellow monk or nun into having sex.<sup>[15]</sup> Although it has been

seen by some that the category of *ubhatovyañjanaka* is of later addition to the early buddhist texts, since it does not appear in the early suttas, the *Pāṭimokkhas*, nor in the early parts of the Vinaya.

## **Paṇḍakas**

The *paṇḍaka* is a complex category that is variously defined in different Buddhist texts. In the earliest texts, the word seems to refer to a socially stigmatized class of trans-feminine and/or cross-dressing people, some of whom may have been sex workers. Paisarn Likhitpreechakul argue that these people are grouped together with groups who are excluded from ordination as well; those with physical disabilities such as deafness or dwarfism, or those who have committed crimes. "The Story of the Prohibition of the Ordination of Pandaka" from the Vinaya claims that the ban is a response to the example of a paṇḍaka monk with a desire to have sex. Being refused by other monks, he had sex with animal handlers, who then told the wider community and brought disgrace upon the sangha. Since the word *paṇḍaka* does not appear in either of the early Suttas nor in the early parts of the Vinaya, it has been seen by some as a possible indication that *paṇḍaka's* inclusion in the Vinaya did not happen in the Buddha's lifetime but was added later.

In the Lotus Sutra, it said Bodhisattva should not go near Paṇḍaka, as like what monk rules said in Vinaya. The Theravadin text Milinda Panha, claims that Paṇḍakas let out secrets through their imperfection.



## CHAPTER TWENTY-EIGHT

### LGBTQ+ PEOPLE IN LATER TRADITIONS

Some modern commentators interpret the word *ubhatovyanjañaka* as including those who are not physically intersex, but display behavioral and psychological characteristics of both sexes, such as a woman who is attracted to other women.<sup>[27]</sup>

5th-century

Buddhist

writer Buddhaghosa describes *ubhatobyanjanaka* as people with the body of one sex but the "power", or gender of the other. Leonard Zwilling argues that in this account Buddhaghosa does not in fact describe "hermaphroditism" but rather bisexuality or homosexuality.<sup>[28]</sup> Janet Gyatso pointed out that Zwilling destroys his own argument that pandakas are homosexuals when he writes, "The Vinaya, in fact, goes so far as to distinguish sexual activity between normative males from sexual relations between a socially normative male and a pandaka."<sup>[29]</sup>

In other texts, the term *pañḍaka* can include those born sexually indeterminate or with no sex, eunuchs, those whose impotence changes every half month, males who gain sexual potency by absorbing other men's semen, or spying on other people having sex. It sometimes includes males or females with any sexual dysfunction, such as impotence or irregular menstrual cycles. The common element seems to be those whose sexuality is either limited physiologically, or those who are sexually impotent. Together these impotence types are almost always portrayed negatively as a pariah class, especially in the earliest texts. In modern contexts, *pañḍaka* is sometimes alleged to include lesbians, gay men, and transgender and intersex people, although in ancient times, a man who sexually penetrated another man or a *pañḍaka* was not himself considered a *pañḍaka*.

Some texts of the Abhidharma state that a *pañḍaka* cannot achieve enlightenment in their own lifetime, but must wait for reincarnation as a man or woman. Ananda — Buddha's cousin and disciple — was said to be a *pañḍaka* in one of his many previous lives, as was the Buddhist nun Isidāsī (from the Therīgāthā). In both cases, birth as a *pañḍaka* was a result of poor karma, and the idea that being a *pañḍaka* stems from

bad behaviour in a previous life is common in Buddhist literature. Asanga and Vasubandhu discussed if a *paṇḍaka* was able to be enlightened or not.

In the *Samantapasadika*, a work of the 5th century CE Theravadin commentator and scholar Buddhaghosa's, *paṇḍaka* are described as being filled with defiling passions (*ussanakilesa*), unquenchable lusts (*avapasantaparilaha*) and are dominated by their libido (*parilahavegabhibhuta*). The 4th century Mahayana Buddhist writers Vasubandhu and Asanga contend that the *paṇḍaka* has no discipline for spiritual practice, due to their defiling passions of both male and female sexes. They lack the moral fortitude to counter these passions because they lack modesty and shame. Incapable of showing restraint, such a being is abandoned by their parents and lacking such ties are unable to hold strong views. Asanga, like Vasubandhu, refuses the *paṇḍaka* recognition as a layman on the grounds that such persons are unfit to associate with or serve the Sangha. Asanga, however, considers them capable to practice the path of a layman individually if they so desire, but without receiving recognition as a layman or being introduced in the sangha. A position similar to Asanga view was also featured in the Lotus Sutra, where sangha members were advised to avoid the *paṇḍaka*.<sup>[33]</sup>

Buddha's proscriptions against certain types of people joining the monastic sangha (ordained community) are often understood to reflect his concern with upholding the public image of the sangha as virtuous. Peter Jackson, the scholar of sexual politics and Buddhism in Thailand, speculates that the Buddha was initially reluctant to allow women to join the sangha for this reason. Jackson explains:

Buddhism, the middle path, has always been concerned with the maintenance of social order and since the Buddha's time the sangha has never claimed to provide a universal vehicle for the spiritual liberation of all individuals in society, explicitly excluding those who are considered to reflect badly on the monkhood in terms of prevailing social norms and attitudes.

Social acceptability was vital for the sangha, as it could not survive without material support from lay society.

Several Theravada Buddhist texts state that the members of the *paṇḍaka* are excluded from a variety of Buddhist practices (in addition to ordination):

- acting as preceptors in ordination ceremonies
- making donations to begging monks

- meditating and
- ability to understand the Dharma.

The Mahakala Ma Ning, a wrathful deity revered in Tibetan Buddhism, especially the Nyingma school, as a defender of the Dharma. The term ma ning has been translated as "genderless" or "eunuch", and equates to paṇḍaka. In this macabre 19th-century image the Ma Ning holds a human heart in their hand, and also a garland of hearts around their waist.

Classical Mahayana scholars like Shantideva and Aśvaghōṣa considered non-vagina sex (including men sex with men) to be sexual misconduct. Shantideva based his views on quotes from the Saddharma-smṛtyupasthana Sutra.<sup>[6][37][38][39][40]</sup> According to Mizuno Kōgen's study, Saddharma-smṛtyupasthana Sutra is related to Ghoṣa's Abhidharmāmṛtarasāśāstra, and is compiled by Sarvastivada sect (possibly from someone related to Ghoṣa after the 2nd century).<sup>[41][42]</sup> In the Great Treatise on the Perfection of Wisdom (Sanskrit: Mahā-prajñāpāramitā-śāstra), the Madhyamaka scholar Nagarjuna mentioned the non-vagina sex restriction as based on coerced action toward one's own spouse.<sup>[7][8]</sup>

In contrast, later texts, particularly Tibetan Buddhist writings, occasionally value paṇḍaka positively for their "middleness" and balance. The paṇḍaka in these Tibetan works is translated with the term ma ning — "genderless" or "without genitals". The 13th-century Tibetan monk Gyalwa Yang Gönpa, who was one of the significant figures in the early Drukpa Kagyu sect, writes about ma ning as a balanced state between maleness and femaleness. Yang Gönpa describes ma ning as "the abiding breath between male exhalation and female inhalation" and "the balanced yogic channel, as opposed to the too tight male channel, and the too loose female one".

Most Mahayana teachings assert that all beings who correctly practice the dharma may reach enlightenment, since all possess innate Buddha nature. Enlightenment being achievable even in a single life.

## **Tibetan Buddhism**

There are different views among Tibetan Buddhist teachers on acceptable expressions of sexuality.

Historically, Gampopa (12th century), one of the main early masters of the Kagyu school of Tibetan Buddhism, followed the Indian Buddhist tradition, starting with the 3rd-century Hinayana texts of Vasubandhu, and stated

that oral and anal sex, whether with a man or a woman, are violations of the third precept regarding inappropriate sexual behavior. Longchenpa, the 13th-century founder of the Nyingma school, citing the 3rd-century Mahayana texts of the Indian master Asanga, elaborated that inappropriate sexual behavior also include the hands among inappropriate parts of the body for sexual activity. In the same way, Gelug predecessor Je Tsongkhapa also adheres to such rules in his studies.

Various contemporary teachers of Tibetan Buddhist lineages, including the 17th Gyalwang Karmapa, have offered understanding towards LGBTQ people while noting that same-sex relationships do not necessarily constitute misconduct for lay people. The Dalai Lama has maintained the views of Je Tsongkhapa

The 14th Dalai Lama has "voiced his support for the full recognition of human rights for all people, regardless of sexual orientation," while noting that from a Buddhist point of view, lesbian and gay sex is "generally considered sexual misconduct." In the most recent interview with the Dalai Lama on this topic (March 10, 2014), the Dalai Lama said gay marriage is OK provided it's not in contradiction with the values of one's chosen religion.

The Dalai Lama has also stated that any sex other than penis-vagina intercourse with one's own monogamous partner, including oral sex, anal sex, and masturbation is improper from the Buddhist perspective. In his 1996 book *Beyond Dogma*, he states, "A sexual act is deemed proper when the couples use the organs intended for sexual intercourse and nothing else... homosexuality, whether it is between men or between women, is not improper in itself. What is improper is the use of organs already defined as inappropriate for sexual contact."

The Dalai Lama cited the Indian Buddhist texts of Vasubandhu, Asanga, and Ashvaghosha as his sources concerning what constitutes inappropriate sexual behavior. In 1997 he stated: "Sexual organs were created for reproduction between the male element and the female element — and everything that deviates from that is not acceptable from a Buddhist point of view." The Dalai Lama has repeatedly said to LGBT groups that he can't rewrite the texts. He thinks that this is the type of issue that would need to be discussed by a council of Buddhist elders from all Buddhist traditions.

## **Theravada Buddhism**

Peter Jackson, an Australian scholar of sexual politics and Buddhism in Thailand, writes that "Buddhism is a complex tradition and there is no single canonical or

scripturally sanctioned position on homosexuality."<sup>[57]</sup> Thailand is one of several countries with a large population of Theravada Buddhist.

In traditional Thai Buddhist accounts of sexuality, "[sexual] actions and desires have an involuntary cause [and] do not themselves accrue any future karmic consequences. They are the outworking of past karma, not sources for the accumulation of future karma. According to Bunmi, homosexual activity and the desire to engage in homosexual activity fall into this category and are not sinful and do not accrue karmic consequences."<sup>[57]</sup> Jackson writes that this understanding of homosexuality "prevailed in Thailand until recent decades."<sup>[57]</sup>

In the 1980s in Thailand, during the AIDS epidemic, there was "a shift in Buddhist attitudes from relative tolerance of homosexuality to condemnation." These views were "unprecedented in recent Thai history."<sup>[57]</sup> During this time there were two ways Buddhists viewed homosexuality: in the sympathetic view, it was said that homosexuality arose from the karma of previous lifetimes; in the intolerant view, it was seen as arising from immoral conduct in one's present life.<sup>[57]</sup>

In 1989, the supreme governing body of the Thai sangha affirmed that "gays" (here translated from Thai kathoey) are prohibited from being ordained.<sup>[58]</sup> Their declaration has apparently gone unheeded in some quarters, as Phra Pisarn Thammapatee (AKA Phra Payom Kalayano), one of the most eminent monks in the country, demanded in 2003 that 1,000 gay monks be ousted from the sangha, and that better screening processes are put in place to keep out any gay postulants.

Recently, Phra Payom Kalayano, an eminent monk and abbot, affirmed the rights of gay monks to join the Sangha: "In the past, katoey had no hope of being ordained because the rules were stricter and society was less open minded. But they have just as much right as anyone else to join the monkhood." This view has been affirmed by other Thai Theravada monks. But it's not known if that statement given by Phra Payom was supported only by some monks of his sangha or by official structures of his Theravada school. There is no information if any other Thai branches of Theravada has changed their attitude towards LGBT ordination because other Theravada branches does not seem to have changed their attitude on this issue.



## CHAPTER TWENTY-NINE

### JAPANESE BUDDHISM

See also: Homosexuality in Japan § Monastic same-sex love

Several writers have noted the strong historical tradition of open bisexuality and homosexuality among male Buddhist institutions in Japan. When the Tendai priest Genshin harshly criticised homosexuality as immoral, others mistook his criticism as having been because the acolyte wasn't one's own. Chigo Monogatari, "acolyte stories" of love between monks and their chigo were popular, and such relationships appear to have been commonplace, alongside sex with women.

Western Christian travellers to Japan from the 16th century have noted (with distaste) the prevalence and acceptance of forms of homosexuality among Japanese Buddhists<sup>[67]</sup>—Jesuit priest Francis Cabral wrote in 1596 that "abominations of the flesh" and "vicious habits" were "regarded in Japan as quite honourable; men of standing entrust their sons to the bonzes to be instructed in such things, and at the same time to serve their lust".<sup>[68]</sup>

A 17th-century Japanese Buddhist scholar, Kitamura Kigin, wrote that Buddha explained the pursuit of homosexuality over heterosexuality among priests:

It has been the nature of men's hearts to take pleasure in a beautiful woman since the age of male and female gods, but to become intoxicated by the blossom of a handsome youth... would seem to be both wrong and unusual. Nevertheless, the Buddha preached that [Mount] Imose was a place to be avoided and the priests of the law entered this Way as an outlet for their feelings, since their hearts were, after all, made of neither stone nor wood. Like water that plunges from the peak of Tsukubane to form the deep pools of the Minano River, this love has surpassed in depth the love between women and men in these latter days. It plagues the heart not only of courtier and aristocrat but also of brave warriors. Even the mountain dwellers who cut brush for fuel have learned to take pleasure in the shade of young saplings."  
— Wild Azaleas (1676)

A later Japanese legend attributed the introduction of monastic homosexuality to Japan to Shingon founder Kukai, although scholars now dismiss the veracity of this assertion, pointing out his strict adherence to the Vinaya. Nonetheless, the legend served to "affirm same-sex relation between men and boys in 17th century Japan."

## **Chinese Buddhism**

About Buddhism and homosexuality in China, scholar A. L. De Silva writes, "Generally the attitude has been one of tolerance. Matteo Ricci, the Jesuit missionary who lived in China for 27 years from 1583, expressed horror at the open and tolerant attitude that the Chinese took to homosexuality and naturally enough saw this as proof of the degeneracy of Chinese society."

Venerable Hsing Yun, one of the premier figures in contemporary Chinese Buddhism, has stated that Buddhism should never teach intolerance toward homosexuality, and that people should expand their minds.

Marriage is an institution that reflects the values of the society that supports it. If the people of a society no longer believe that it is important to be married, then there is no reason why they cannot change the institution of marriage. Marriage is a custom. Customs can always be changed. We can find the same core point in this question as we have in others — the ultimate truth of the matter is that individuals can and should decide for themselves what is right. As long as they are not violating others or breaking the laws of the society in which, they are living, then they are free to do what they believe is right. It is not for me or anyone else to tell them that they must get married if they want to live together. That is their choice and their choice alone.

The same analysis can be applied to homosexuality. People often ask me what I think about homosexuality. They wonder, is it right, is it wrong? The answer is, it is neither right nor wrong. It is just something that people do. If people are not harming each other, their private lives are their own business; we should be tolerant of them and not reject them.

However, it will still take some time for the world to fully accept homosexuality. All of us must learn to tolerate the behavior of others. Just as we hope to expand our minds to include all of the universe, so we should also seek to expand our minds to include all of the many forms of human behavior.

Tolerance is a form of generosity and it is a form of wisdom. There is nothing anywhere in the Dharma that should ever lead anyone to become intolerant. Our goal

as Buddhists is to learn to accept all kinds of people and to help all kinds of people discover the wisdom of the teachings of Shakyamuni Buddha.

## **HSING YUN, BUDDHISM PURE AND SIMPLE**

Hsing Yun is a best-selling author throughout the Sinosphere, as well as an advocate of Humanistic Buddhism, an approach to reform Chinese Buddhism to match the needs of contemporary laypeople. As such, his views may not be wholly reflective of the older Buddhist views in China. However, at an earlier point (1998), he is quoted as remarking that "according to Buddhism, any emotional involvement, whether homosexual or heterosexual, is a form of attachment ... and, therefore, is a source of suffering," and when the topic of homosexuality, in particular, came up "the master spoke more strongly, calling homosexuality a perverted view (xiejian)."

An example of an older view in opposition to homosexuality is given by the traditional master, Hsuan Hua, an important figure for Buddhism in both China and the United States. Master Hsuan Hua stated that homosexuality "plants the seeds that lead to rebirth in the lower realms of existence".<sup>[76]</sup> In his commentary on the Sutra of Forty-two Chapters, he described homosexuality as behavior caused by confusion, as the product of sexual desires.<sup>[77]</sup>

Some Mahayana Buddhist leaders were active in the movement for same-sex marriage rights in Taiwan which legalized same-sex marriages in 2019.<sup>[78][79][80][81]</sup>

## **BUDDHISM IN THE WEST**

Soeng Hyang, current headmaster of the Kwan Um School of Zen

In contrast to Buddhism in Asia, modern Buddhism in the Western world (European Union, United States of America, Canada, Australia and New Zealand) is typically associated with a concern for social equality—partly as a result of its largely middle-class intellectual membership base, and its philosophical roots in freethought and secular humanism.<sup>[82]</sup> When applying Buddhist philosophy to the question of homosexuality, western Buddhists often emphasize the importance the Buddha placed on tolerance, compassion, and seeking answers within one's self. They stress these overarching values rather than examining specific passages or texts. As a result, western Buddhism is often relatively gay-friendly, especially since the 1990s. As an interpretation of what is sexual misconduct is an individual decision and not subject to judgment by any central authority, a view of accepting all peoples, but rejecting certain types of sexual acts is more predominant. LGBT people such

as Issan Dorsey, Caitriona Reed, Pat Enkyo O'Hara and Soeng Hyang have been ordained as Buddhist monastics and clergy.

An interesting position comes from the western scholar Alexander Berzin,

The texts in Buddhist traditions have been written from the point of view of a heterosexual male. We need to explore the intention of the teachings on sexual misconduct, which ultimately is to eliminate attachment, obsessive desire, and dissatisfaction. If a heterosexual male finds no bounds to these disturbing emotions, he might have sex with someone else's partner, as well as other men. We can apply the same logic and explore what constitutes boundless attachment and dissatisfaction for homosexual and bisexual males or females. For example, having sex with somebody else's partner and so on could be destructive for these types of person as well".

The Dzogchen Ponlop Rinpoche, holder of the Karma Kagyu and Nyingma lineages, in a 2008 talk delivered to LGBT Dharma practitioners at the Shambhala Meditation Center of New York, stressed that for vajrayana lay practitioners, homosexual relationships are no better or worse than heterosexual relationships and that only unhealthy relationships, in general, are to be avoided. Both the Nalandabodhi sangha, which was founded by The Dzogchen Ponlop Rinpoche, and the Shambhala sanghas founded by Chögyam Trungpa Rinpoche have stated that they are welcoming of all sexual orientations.<sup>[83][84]</sup> The Shambhala Meditation Center of New York hosts a weekly practice group, Queer Dharma, specifically catering to the needs of the LGBTQ Buddhist community. According to the Danish Karma Kagyu Lama Ole Nydahl, Buddha saw homosexuality as circumstances making life more difficult, but also explained the reason for homosexuality could be aversion against the opposite sex in a former life. Nydahl says however that sexual orientation is not really important in order to practice Buddhism. Well known Zen Buddhist, Thich Nhat Hanh, notes the spirit of Buddhism is inclusiveness and states "when you look at the ocean, you see different kinds of waves, many sizes and shapes, but all the waves have water as their foundation and substance. If you are born gay or lesbian, your ground of being is the same as mine. We are different, but we share the same ground of being."

The U.S. branch of Soka Gakkai International, a Japan-based new religious movement (Japanese new religion) influenced by Nichiren Buddhism, announced in 1995 that they would start holding wedding ceremonies for same-sex couples,<sup>1</sup> and in 2001 established a conference for LGBT members and their supporters. A

Buddhist temple in Salt Lake City connected with Jodo Shinshu, another Japanese school of Buddhism, also holds religious rites for same-sex couples.

Another Buddhist organization founded in the West, Juniper Foundation, wrote an article *A Buddhist Vote for Same Sex Marriage* demonstrating how Buddhist thinking embraces same-sex marriage:

The heart of Buddhist thought is its insight philosophy, which uses critical inquiry to challenge dogma and to reveal how seemingly fixed ideas are more arbitrary than we might think. Applying this philosophy, we see that social customs are not fixed laws but evolving conventions that serve a purpose in a particular culture and time. Marriage is one of these conventions. It is not a rigid law but a social custom that evolves.

In western traditions, there is widescale support for LGBT rights including the European Buddhist Union, the Buddhist Churches of America, many Shin Buddhist groups, and Zen leaders such as Thich Nhat Hanh. In a PEW research poll, 88% of American Buddhists stated that homosexuality should be accepted. This was a higher level of support than any other religious group studied.<sup>[100]</sup> In 2012, the Australian branch of Buddhism voiced its support for same-sex marriage in a hearing of the Australian Parliament that sought to gather views on whether to legalize same-sex marriage.

## **BAHÁ'Í FAITH**

Bahá'í law limits permissible sexual relations to those between a man and a woman in marriage. Believers are expected to abstain from sex outside matrimony<sup>476</sup>. Bahá'ís do not, however, attempt to impose their moral standards on those who have not accepted the Revelation of Bahá'u'lláh. The Bahá'í Faith takes no position on the sexual practices of those who are not adherents<sup>477</sup>. While requiring uprightness in all matters of morality, whether sexual or otherwise, the Bahá'í teachings also take account of human frailty and call for tolerance and understanding in regard to human

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<sup>476</sup> "A selection of extracts from the Bahá'í writings on family life and marriage". [www.bahai.org](http://www.bahai.org).

<sup>477</sup> "Office of Community Administration, ed. (9 July 2015), *Compilation: Concerning issues related to homosexuality* (PDF), National Spiritual Assembly of the Bahá'ís of the United States" (PDF).

failings. In this context, to regard homosexuals with prejudice would be contrary to the spirit of the Bahá'í teachings<sup>478</sup>.

the bahá'í faith has an emphasis on what it describes as traditional family values<sup>479</sup>, and marriage between a man and a woman is the only form of sexual relationship permitted for bahá'ís<sup>480</sup>. with an emphasis on chastity and restraint outside of matrimony, bahá'í practices exclude premarital, extramarital, or homosexual intimacy<sup>481</sup>. bahá'í institutions have taken no position on the sexual practices of those who are not adherents<sup>482</sup>, and Bahá'ís have been discouraged from promoting or opposing efforts to legalize same-sex marriage<sup>483</sup>.

The scriptural basis for Bahá'í practices comes from the writings of Bahá'u'lláh (1817–1892), the faith's founder, who forbade fornication, adultery, and sodomy. The Bahá'í position towards homosexuality was elaborated on by Shoghi Effendi, Bahá'u'lláh's great grandson and appointed head of the religion from 1921 to 1957. He answered specific questions and described homosexuality as an affliction that should be overcome, while leaving Bahá'í membership open to anyone regardless of sexual orientation. This position leaves Bahá'ís with a same-sex orientation under similar guidance as a heterosexual person, that is, if they find themselves unable to contract a marriage with someone of the opposite sex, they should remain celibate.

The supreme governing institution of the Bahá'í Faith is the Universal House of Justice, first elected in 1963, which has written more extensively on the subject of homosexuality. For example, they have clarified that Bahá'ís should not single out homosexual practice over other transgressions of Bahá'í conduct, should not treat those with a homosexual orientation with disdain or prejudice<sup>484</sup>, and should not attempt to impose their standards on society<sup>485</sup>.

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<sup>478</sup> "The Baha'i Teachings and Homosexuality". Baha'is of the United States.

<sup>479</sup> Wilcox, Melissa M. (2006). "Same-Sex Eroticism and Gender Fluidity in New and Alternative Religions". In Gallagher, Eugene V.; Ashcraft, W. Michael (eds.). *History and Controversies. Introduction to New and Alternative Religions in America*. Vol. 1. Westport, Connecticut • London: Greenwood Press. ISBN 978-0275987121.

<sup>480</sup> Hartz, Paula (2009). *World Religions: Baha'i Faith* (3rd ed.). New York, NY: Chelsea House Publishers. ISBN 978-1-60413-104-8.

<sup>481</sup> Lepard, Brian D. (October 2008). *In the Glory of the Father: The Bahai Faith and Christianity* (New ed.). United States: Bahai Publishing. ISBN 978-1931847346.

<sup>482</sup> Office of Community Administration, ed. (9 July 2015), *Compilation: Concerning issues related to homosexuality* (PDF), National Spiritual Assembly of the Bahá'ís of the United States

<sup>483</sup> Universal House of Justice (27 October 2010). "Letter to an American Bahá'í". Retrieved 2017-07-10.

<sup>484</sup> Universal House of Justice (22 March 1987), Letter written to an individual.

<sup>485</sup> Universal House of Justice (9 May 2014). "Letter to an American Bahá'í". Retrieved 2018-09-08.

The exclusion of same-sex marriage among Bahá'ís has garnered considerable criticism in the western world, where the Bahá'í teachings on sexuality "may appear to be unreasonable, dogmatic, and difficult to apply in Western society"<sup>486</sup>. Particularly in the United States, Bahá'ís have attempted to reconcile the immutable conservative teachings on sexuality with the otherwise socially progressive teachings of the Faith, but it continues to be a source of controversy<sup>487</sup>. Former Bahá'í William Garlington said the Bahá'í position in America, "can at most be characterized as one of sympathetic disapproval" toward homosexuality<sup>488</sup>, and professor Melissa Wilcox describes Bahá'í teachings as leaving "little room for tolerance of same-sex eroticism", "not given to statements of its disapproval", and "not generally vocally anti-LGBT."<sup>[2]</sup>

## **BAHÁ'Í VIEWS ON SEXUALITY**

Bahá'í teachings stress the importance of absolute chastity for any unmarried person<sup>489</sup>, and focus on personal restraint. The Bahá'í Faith, however, leaves the application of laws of social conduct largely up to the individual, and Bahá'ís do not advocate for or discriminate against homosexual people<sup>490</sup>.

While in authoritative teachings homosexuality is described as a condition that an individual should control and overcome<sup>491</sup>, Bahá'ís are left to apply the teachings at their own discretion, and are discouraged from singling out homosexual practice over other transgressions, such as the consumption of alcohol, or heterosexual promiscuity<sup>492</sup>. Membership in the Bahá'í community is therefore open to lesbian and gay adherents<sup>493</sup>. The Bahá'í Faith has been described as a religion "ambiguous or contested on the issue of LGBT inclusion<sup>494</sup>". The religion has a strong emphasis

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<sup>486</sup> Kennedy, Sharon H.; Kennedy, Andrew (1988). "Bahá'í Youth and Sexuality A Personal/Professional View" (PDF). *The Journal of Bahá'í Studies*. **1** (1).

<sup>487</sup> Garlington, William (2008). *The Baha'i Faith in America* (Paperback ed.). Lanham, Maryland: Rowman & Littlefield. ISBN 978-0-7425-6234-9.

<sup>488</sup> *ibid.*

<sup>489</sup> On behalf of Shoghi Effendi (5 March 1975), Research Department of the Universal House of Justice (ed.), *Homosexuality* (published 5 July 1993), p. 4

<sup>490</sup> Gallagher, Eugene; Ashcroft, William (2006). *Introduction to New and Alternative Religions in America: History and controversies*. Greenwood Publishing Group. p. 256. ISBN 978-0-275-98713-8.

<sup>491</sup> Universal House of Justice (12 January 1973a), Letter to an Individual.

<sup>492</sup> On behalf of Shoghi Effendi (26 March 1950), Letter to an individual.

<sup>493</sup> On behalf of Shoghi Effendi (4 November 1948), "Letter to the National Spiritual Assembly of the Baha'is of Canada", *Messages to Canada*, Bahá'í Canada Publications

<sup>494</sup> Gallagher, Eugene; Ashcroft, William (2006). *Introduction to New and Alternative Religions in America: History and controversies*. Greenwood Publishing Group. p. 256. ISBN 978-0-275-98713-8.

on traditional values found in Abrahamic religions, which discourage liberal sexuality.

Bahá'í teachings state that Bahá'ís should not treat homosexual people as condemned outcasts, nor expect people who are not Bahá'í to follow Bahá'í laws<sup>495</sup>. The Bahá'í writings teach adherents to treat everyone with respect and dignity, and to eschew an attitude of discrimination and social intolerance toward homosexuals<sup>496</sup>.

The opportunity for civil same-sex marriage was mentioned in a 2010 letter by the Universal House of Justice as being a public issue that is not in keeping with the Bahá'í teachings, but one that Bahá'ís "would neither promote nor necessarily oppose."<sup>497</sup>

## **SIKHISM AND SEXUAL ORIENTATION**

Sikhism has no written view on the matter, but in 2005, a Sikh religious authority described homosexuality as "against the Sikh religion and the Sikh code of conduct and totally against the laws of nature," and called on Sikhs to support laws against gay marriage<sup>498</sup>. Many Sikhs are against this view, however<sup>499</sup>, and state that the Sikh Scriptures promote equality and do not condemn homosexuality<sup>500</sup>.

Sikhism has no specific teachings about homosexuality and the Sikh holy scripture, the Guru Granth Sahib, does not explicitly mention heterosexuality, homosexuality or bisexuality. The universal goal of a Sikh is to have no hate or animosity to any person, regardless of factors like race, caste, color, creed or gender<sup>501</sup>.

Statements and teachings of Guru Granth Sahib[edit]

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<sup>495</sup> Universal House of Justice (16 March 1992a), Letter.

<sup>496</sup> Universal House of Justice (11 September 1995). "Letter written to the National Spiritual Assembly of the Bahá'ís of the United States". *The American Bahá'í* (published 1995-11-23). Qawl 152 BE. Retrieved 2017-07-10.

<sup>497</sup> Universal House of Justice (27 October 2010). "Letter to an American Bahá'í". Retrieved 2017-07-10.

<sup>498</sup> World Sikh group against gay marriage bill, CBC News, Tuesday, 29 March 2005.

<sup>499</sup> "Sikhism and same Sex Marriages". *sarbat.net*. p. 1. Archived from the original on 14 August 2010. Retrieved 3 September 2010.

<sup>500</sup> "Sikhism, Yoga and Sexuality" (PDF). *Project Naad*. 2 September 2010. p. 33. Archived from the original (PDF) on 11 October 2010. Retrieved 2 September 2010.

<sup>501</sup> Collins, Zurich (26 May 2011). "Homosexuality and Sikhism". *Gaylaxy*. Retrieved 10 Sep 2022.

Giani Joginder Singh Vedanti of the Akal Takht (the temporal Sikh authority in India) has condemned homosexuality. In March 2005, he told visiting Sikh-Canadian Members of Parliament (MPs) that they had a religious duty to oppose same-sex marriage: "The basic duty of Sikh MPs in Canada should be to support laws that stop this kind of practice [homosexuality], because there are thousands of Sikhs living in Canada, to ensure that Sikhs do not fall prey to this practice"<sup>502</sup>.

The divide between supporters and opponents of LGBT rights has become increasingly clear, creating a largely generational rift between older conservatives and younger liberals. Many Sikhs believe there is nothing wrong with being LGBT or supporting LGBT rights more generally, including same-sex marriage<sup>503</sup>. These Sikhs believe that the view of some preachers in the Akal Takht is flawed<sup>504</sup>.

The Sikh Rehat Maryada emphasizes the importance of a family lifestyle, and many Sikhs believe that since same-sex partners can't reproduce and make a family that homosexuality should be condemned. This heteronormative way of viewing the family is questioned by those who believe Sikhism is more tolerant of people not viewed as "normal"<sup>505</sup>. Many Sikh adherents believe the Rehat Maryada is meant to be interpreted and applied to life liberally rather than treated as a binding contract<sup>506</sup>.

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<sup>502</sup> "World Sikh group against gay marriage bill". CBC News. 29 March 2005. Retrieved September 17, 2021.

<sup>503</sup> "Sikhism and same Sex Marriages". sarbat.net. p. 1. Archived from the original on 14 September 2010. Retrieved 3 September 2010.

<sup>504</sup> Jhutti-Johal, Jagbir (June 9, 2011). *Sikhism Today*. A&C Black. ISBN 9781847062727.

<sup>505</sup> Sorajjakool, Siroj; Carr, Mark; Man, Julius J (September 10, 2009). *World Religions for Health Care Professionals*. Routledge. ISBN 9781135220808.

<sup>506</sup> "How Sikhs Got Their Rehat Maryada". SikhNet. January 2, 2013. Retrieved September 17, 2021.



## **CHAPTER THIRTY**

### **HOMOSEXUALITY IN SCRIPTURE**

According to the Sikh Council there's no objection to same sex couples wanting to make commitments/vows to each other, as they currently do so when they enter civil partnerships. Nor do we object to same sex couples having all legal and other rights, similar to a married couple within a civic union. However, we object to the word marriage being used to replace civil union. The word marriage and its concept are sometimes also used to describe or used as a translation of the 'Anand Karaj' ceremony. The 'Anand Karaj' is specifically a Sikh ceremony, when union between a man and a woman is solemnised in the presence of Guru Granth Sahib. The Sikh Reht Maryada (Sikh Code of Conduct and Conventions)", clearly states that the 'Anand Karaj' ceremony can only take place in the presence of the Guru Granth Sahib in a Gurdwara between a male and female<sup>507</sup>.

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<sup>507</sup> "Sikh Council UK Policy on Same Sex Marriages" (PDF). Sikh Council UK. August 2010.



## CHAPTER THIRTY-ONE

### CURRENT DISCUSSION

Although the topic of homosexuality in Sikhism is taboo, the younger generation is looking to the internet for answers. The internet has become a new way for young Sikhs, born inside and outside of India, to discuss religion and current issues anonymously. The internet allows people access to information without the discomfort of talking about it within the community<sup>508</sup>. The internet has become a tool for young Sikhs to get information about current issues that may not be discussed directly within their communities.

Certain individuals use the internet to discuss homosexuality in the community. A Sikh, Manjinder Singh, describes his experiences as a gay Sikh man, using his own platform on YouTube to reach a wider audience in an attempt to generate dialogue in the community that begins by defining what it means to be queer. In one of his videos, he has a conversation with his mother about homosexuality in Punjabi<sup>509</sup>. This video defines what it means to be gay, lesbian, bisexual, and being transgender in Punjabi and is targeted to the audience that doesn't necessarily understand the different sexual and gender identities. Other famous Sikh YouTube stars such Sikh Canadian comedian Jus Reign (Jasmeet Singh)<sup>510</sup>, and Lilly Singh have openly voiced their support for LGBT rights. In fact, Lilly Singh announced her bisexuality on Youtube<sup>511</sup>.

In January 2005, the Jathedar (custodian) of Sri Akal Takht Sahib, Amritsar, Punjab, India, the highest seat of Sikh temporal-religious (miri-piri) authority for interpreting Sikh teachings, issued an edict denouncing same-sex marriages, and urging the worldwide Sikh community not to allow such marriages to take place at any

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<sup>508</sup> Jakobsh, Doris R. (2006). "Authority in the Virtual Sangat, by Doris R. Jakobsh". Online - Heidelberg Journal of Religions on the Internet. doi:10.11588/rel.2006.1.374.

<sup>509</sup> Manjinder Singh Sidhu (June 7, 2015). "Coming Out Panjabi". YouTube. Archived from the original on 2021-12-21. Retrieved September 17, 2021.

<sup>510</sup> "MY THOUGHTS ON GAY RIGHTS (Vlog 273)". YouTube. Retrieved September 17, 2021. <sup>[dead YouTube link]</sup>

<sup>511</sup> Baggs, Michael (February 25, 2019). "Lilly Singh: Why the YouTuber Coming Out As Bisexual is 'Worth Celebrating'". BBC. Retrieved September 17, 2021.

Gurdwara." This was in response to clarification sought from Sikhs in Canada as similar legislation was being discussed and consulted on in Canada<sup>512</sup>.

## **IDENTITY FORMATION**

Both the Sikh identity and sexual identities affect a person's self concept and how they relate to their community. Like other religions, Sikhism strives to cultivate a sense of identity through religious practices, but in Sikhism, there is a shared common physical identity too. Through the process of identity formation, people begin to build a sense of individuality that allows them to find communities of people that they identify with. Identity formation at the intersection of Sikh and sexual identities has not been a focus of many studies. As the Sikh diaspora starts forming in places like Britain, some researchers are interested in understanding how these ethnic, religious, and sexual identities affect one's self-concept<sup>513</sup>. Many queer Sikhs find it difficult to reconcile their religious identity with their sexual identity<sup>514</sup>.

## **NARRATIVE.**

Some research is aiming to understand how the Sikh narrative and the narrative of sexuality coincide and conflict with one another. In an article written by David Mair for the University of Birmingham, David examines the life narrative of an openly gay, practicing Sikh named Daljeet. This study aimed to understand how clashing narratives affect one's self-concept and relationship to the community at large. After having an in-depth conversation with Daljeet, David found that many of the struggles that he faced were because of the clash of narratives in his own life. Daljeet's narratives of Indian masculinity, ethnicity, religion, and sexuality conflicted with one another and his self-concept is deeply affected by it. Those who do not conform to hetero-normative and binary definitions of gender and sexuality

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<sup>512</sup> <http://sikhcounciluk.org/wp-content/uploads/2010/08/Sikh-Council-UK-Policy-on-Same-Sex-Marriages.pdf><sup>bare</sup>  
URL PDF

<sup>513</sup> Jaspal, Rusi (2012). "British Sikh Identity and the Struggle for Distinctiveness and Continuity" (PDF). *Journal of Community & Applied Social Psychology*. **23** (3): 225–239. doi:10.1002/casp.2115. hdl:2086/8038.

<sup>514</sup> Jaspal, Rusi (2012). "'I never faced up to being gay': sexual, religious and ethnic identities among British Indian and British Pakistani gay men" (PDF). *Culture, Health & Sexuality*. **14** (7): 767–780. doi:10.1080/13691058.2012.693626. hdl:2086/8019. PMID 22651130. S2CID 43364046.

are tasked with creating a new narrative that incorporates all aspects of their identity in an encompassing way<sup>515</sup>.

## EAST ASIAN RELIGIONS.

Among the Taoic religions of East Asia, such as Taoism, passionate homosexual expression is usually discouraged because it is believed to not lead to human fulfillment.<sup>[186]</sup>

## CONFUCIANISM

Confucianism, being primarily a social and political philosophy, focused little on sexuality; whether homosexual or heterosexual. However, the ideology did emphasize male friendships, and Louis Crompton has argued that the "closeness of the master-disciple bond it fostered may have subtly facilitated homosexuality".<sup>[187]</sup> Homosexuality is not mentioned in the Analects of Confucius.<sup>[188]</sup>

## TAOISM.

There is no single official position on homosexuality in Taoism, as the term Taoism is used to describe a number of disparate religious traditions encompassing a variety of views. Although Taoist alchemy generally emphasized that ejaculation in heterosexual relationships represented a draining of the male's "life essence," this concept was not generally extended to non-heterosexual sex.

In a similar way to Buddhism, Taoist schools sought throughout history to define what would be sexual misconduct. Broadly speaking, the precept against "sexual misconduct" in Taoism relates to extramarital sex. The term for a married couple usually in Chinese suggests a male with a female, though Taoist scripture itself does not explicitly say anything against same-sex relations. Many sorts of precepts mentioned in the Yunji Qiqian, The Mini Daoist Canon, does not explicitly say anything against same-gender relations as well.

Homosexuality is not unknown in Taoist history, such as during the Tang dynasty when Taoist nuns exchanged love poems. As a sexual misconduct however would

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<sup>515</sup> Mair, David (2010). "Fractured narratives, fractured identities: cross-cultural challenges to essentialist concepts of gender and sexuality". *Psychology and Sexuality*. **1** (2): 156–169. doi:10.1080/19419899.2010.484597. S2CID 144930321.

depend on what sect or school they were from as some traditions considered homosexuality to be misconduct and others did not mention it at all. There are also certain talismans recorded in different traditions that claim to "cure" a person of the "homosexual disease/desire". Attitudes about homosexuality within Taoism often reflect the values and sexual norms of broader Chinese society and what region of China the sect resided in (see Homosexuality in China).

## **RADICAL FAERIES**

The Radical Faeries are a worldwide queer spiritual movement, founded in 1979 in the United States.

## **WICCA**

The Wiccan Charge of the Goddess, one of the most famous texts in Neopaganism, states in the words of the Goddess, "all acts of love and pleasure are my rituals".<sup>[193]</sup> In traditional forms of Wicca, such as Gardnerian and Alexandrian Wicca, magic is often performed between a man and a woman, and the "Great Rite" is a sex ritual performed between a Priest and Priestess representing the God and Goddess;<sup>[194]</sup> however, this is not generally seen as excluding homosexuals or magic between same-sex couples. Most groups still insist, however, that initiations be conferred from man to woman or woman to man.

## **SATANISM**

Both major Satanic traditions, The Satanic Temple and the Church of Satan,<sup>[195]</sup> emphasise the right of the individual to free sexual expression. Lucien Greaves, spokesperson of The Satanic Temple, has stated the Temple "will always fight... to the death to ensure that there are equal rights for the gay community."



## **CHAPTER THIRTY-TWO**

### **UNITARIAN UNIVERSALISM**

Main article: Unitarian Universalism and LGBTQ people

The first ordained minister of a major religious sect in the U.S. or Canada to come out as gay was the UU Minister James Stoll in 1969. There have been denominational resolutions supporting LGBTQ people since 1970, when a resolution was passed that condemned discrimination against homosexuals. Unitarian Universalism was the first denomination to accept openly transgender people as full members with eligibility to become clergy; in 1988 the first openly transgender person was ordained by the Unitarian Universalist Association (UUA).

The UUA has supported the marriage equality since 1996 and compared those who resisted such equality to the resistance to the abolition of slavery, women's suffrage, and the end of anti-miscegenation laws. Three-quarters of all UU congregations have undertaken a series of organizational, procedural, and practical steps to become acknowledged as a "Welcoming Congregation": a congregation that is intentionally welcoming and inclusive of LGBTQ members. On June 29, 1984, the UUA became the first major denomination "to approve religious blessings on homosexual unions." Unitarian Universalists were in the forefront of the work to make same-sex marriages legal in their local states and provinces, as well as on the national level. In May 2004, Arlington Street Church, Boston, was the site of the first state-sanctioned same-sex marriage in the United States. LGBTQ people are regularly ordained as ministers, and have also served at the highest levels of leadership in the denomination, including as president of the Canadian Unitarian Council, interim co-president of the Unitarian Universalist Association, and co-moderator of the UUA.

## **HUMANISM**

Humanism is a non-religious, non-theistic approach to life that supports full equality for LGBTQ individuals, including the right to marry. Humanism and Its Aspirations, a statement of humanist principles from the American Humanist Association, states that "humanists are concerned for the well being of all, are committed to diversity, and respect those of differing yet humane views...work to uphold the equal enjoyment of human rights and civil liberties in an open, secular society and maintain it is a civic duty to participate in the democratic process and a planetary duty to protect nature's integrity, diversity, and beauty in a secure, sustainable manner." The American Humanist Association provides a LGBT Humanist Pride award and has funded a LGBT-inclusive prom for Itawamba County Agricultural High School in Mississippi. The organisation LGBT Humanists UK "is a United Kingdom-based not-for-profit that campaigns for lesbian, gay, bisexual and transgender (LGBT) equality and human rights and promotes Humanism as an ethical worldview." It was formerly an independent group, but since 2012 has been a part of the charity Humanists UK. In 2009 they gave Stephen Fry an award "for his services to humanism and gay rights."

Humanists UK Chief Executive Andrew Copson, who is gay, once wrote that "humanists have always been champions of LGBT rights" and cited his organisation's many years campaigning for decriminalisation and LGBT equality in the UK, including legal same-sex marriages. He pointed out the large number of LGBT people in the movement, including Stephen Fry, Christian Jessen, and Peter Tatchell, as well as historical associations with humanism like the writer Virginia Woolf and E M Forster.<sup>[216]</sup> In a statement following the Orlando nightclub shooting for the International Humanist and Ethical Union, of which Copson is also President, he went further, saying "Humanism is the ultimate, long-standing and unfaltering ally of LGBTI people everywhere".

## **CANDOMBLÉ**

In Candomblé, homosexuality is usually accepted and explained by the sex of one's orisha.<sup>[218]</sup> Homosexuality would be more probable in a man with a female orisha, a woman with a male orisha, or any of them with an androgynous orisha (such as Olokun).

## **UNIFICATION CHURCH**

Unification Church views heterosexual marriage which becomes "fruitful" by raising their children as God's ideal. Any other sexual relationship, than between husband and wife, is considered a sin. Unification Church founder Sun Myung Moon opposed homosexuality and free sex and in some of his speeches compared such relationships to "dirty dung filled water" and that "Satan and dirty dung-eating dogs go after that". He prophesied that "gays will be eliminated" in a "purge on God's orders".

## **RELIGIOUS GROUPS AND PUBLIC POLICY.**

Opposition to same-sex marriage and LGBT rights is often associated with conservative religious views. The American Family Association and other religious groups have promoted boycotts of corporations whose policies support the LGBT community.

In conservative Islamic nations, laws generally prohibit same-sex sexual behaviour, and interpretation of Sharia Law on male homosexuality carries the death penalty. This has been condemned as a violation of human rights by human rights organisation Amnesty International and by the writers of the Yogyakarta principles. With the signature of the US in 2009, the proposed UN declaration on LGBT rights has now been signed by every European secular state and all western nations, as well as other countries—67 members of the UN in total. An opposing statement put forward by Muslim nations was signed by 57-member states, mostly in Africa and Asia. 68 out of the total 192 countries have not yet signed either statement. In 2011 the United Nations Human Rights Council passed a landmark resolution initiated by South Africa supporting LGBT rights (See Sexual Orientation and Gender Identity at the United Nations).

## **CHAPTER THIRTY-THREE**

### **ATHEIST INTERPRETATION**

Atheism is simply the lack of belief in a deity or deities and does not necessarily dictate one's beliefs on other topics such as homosexuality. However, many atheists support the rights of LGBTQ+ individuals and believe that sexual orientation is not something that should be discriminated against or stigmatized. They may view homosexuality as a natural aspect of human sexuality, rather than as a choice or a moral failing.

According to Nicole Frame MS, Non-religious have been growing in numbers in the United States over the past decade. Using 2014 survey data from the Public Religion Research Institute, the attitudes toward same-sex marriage and same-sex adoption of the non-religious were considered and the two non-religious groups examined were Non-theists (atheists and agnostics) and the Religiously Disengaged (non-religious but not atheist or agnostic). Our hypotheses ask if Non-<sup>516</sup>theists are more likely to support same-sex marriage and same-sex adoption than the Religiously Disengaged. The hypotheses are tested across regression models that account for lingering religiosity, religious upbringing, and knowing a homosexual person.

### **ATHEIST VIEWS**

The American Atheists organization states on their website that they support equal rights for LGBTQ+ individuals and advocate for the separation of church and state to ensure that religious beliefs do not impact the rights of marginalized communities

A survey conducted by the Pew Research Center in 2014 found that 77% of atheists and agnostics in the United States believed that homosexuality should be accepted by society<sup>517</sup>

The Freedom from Religion Foundation, an organization that advocates for the separation of church and state, has frequently spoken out against discrimination

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<sup>516</sup> Intragroup Differences of the Non-Religious: Attitudes Toward Same-Sex Marriage and Same-Sex Adoption in the United States Nicole Frame, MS Pages 1509-1524 | Published online: 20 Dec 2019.

<sup>517</sup> <https://www.pewforum.org/religious-landscape-study/views-about-homosexuality/>

based on sexual orientation and has been involved in legal cases defending LGBTQ+ rights<sup>518</sup>

These sources suggest that many atheists support LGBTQ+ rights and do not view homosexuality as immoral or unnatural. However, it is important to note that atheism is a diverse and individualistic worldview, and beliefs on this topic may vary among individuals who identify as atheists.

The Pew Research Center found that 4% of American adults identified as atheists and 5% as agnostics in 2018 and 2019, compared with 2% atheists and 3% agnostics in 2009. Another 17% of Americans described their religion as “nothing in particular” in the survey, up from 12% in 2009<sup>519</sup>.

Despite the rising numbers, atheists and agnostics aren't well understood. For all the research on religion and spirituality, the systematic study of nonbelievers has only taken off in the last 10 or 15 years. “For a hundred years, [psychologists] have been looking at belief mostly through the lens of Protestant Christianity,” says Miguel Farias, PhD, a professor of psychology and head of the Brain, Belief and Behaviour group at Coventry University in England. “It's only recently that we realized there are all these people we haven't really looked at. To actually look at belief, we must consider all the variety of things that atheists or agnostics might believe.”

With that shift, researchers have begun painting a clearer picture of the psychology of nonbelief. And though atheists still encounter prejudice in religious nations such as the United States and Uganda, much of the evidence suggests that nonbelievers and believers might not be so different after all.

According to a study In the United States, 39% of people who said they don't believe in God described themselves as atheists<sup>520</sup>

Nonbelief comes in many varieties. Technically, an atheist is someone who doesn't believe in a god, while an agnostic is someone who doesn't believe it's possible to know for sure that a god exists. It's possible to be both—an agnostic atheist doesn't believe but also doesn't think we can ever know whether a god exists. A gnostic atheist, on the other hand, believes with certainty that a god does not exist.

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<sup>518</sup> <https://ffrf.org/news/news-releases/item/37667-ffrf-files-brief-against-hhs-rule-allowing-discrimination-against-lgbtq-folks>

<sup>519</sup>

<sup>520</sup> Understanding Unbelief, University of Kent, 2019.

Despite the fuzzy definitions, researchers are beginning to home in on the factors that influence whether someone believes. Some prominent and outspoken atheists, such as the evolutionary biologist Richard Dawkins, PhD, have famously argued that anyone with keen critical thinking skills should reject religion. According to this line of thinking, people with stronger analytical abilities are more likely to be nonbelievers, since belief in a higher power requires having faith in something that can't be proven. The flip side of that argument is that believers may be more inclined toward intuitive thinking—trusting their guts that a god exists, even in the absence of hard evidence.

Back in 2012, Gervais was one of several researchers who published results suggesting analytic thinking was associated with atheism (*Science*, Vol. 336, No. 6080, 2012). However, newer research casts doubt on the idea that analytical thinking leads people to reject religion. “The current picture is a lot more nuanced,” Gervais says.

Nearly half of all LGBTQ people are religiously unaffiliated, and yet we've lost count of how many times we have heard those words—or similar ones—at LGBTQ community events or from staff members of LGBTQ organizations<sup>521</sup>. The stark contrast in hearing this language from leaders who are powerful and visible advocates for LGBTQ equality serves to frame the difference in the political power and achievements of the LGBTQ and Secular Movements.

The LGBTQ Movement has a long and impressive history of encouraging people to come out and celebrate their identities. Pioneers like Harvey Milk have paved the way for occasions like pride parades to become annual events in hundreds of cities and towns throughout the nation. Coming Out Day is another event that serves to normalize LGBTQ people and to provide role models for young people grappling with their identity<sup>522</sup>

The Secular Movement has been led by some extraordinary figures, and we at American Atheists are proud to be continuing the work of our founder, Madalyn Murray O'Hair. But in general, there hasn't been much work done to help closeted atheists come out. Although about a quarter of Americans are religiously unaffiliated, the visibility of atheists, agnostics, and other non-religious Americans

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<sup>521</sup> Coming Out as LGBTQ, Coming Out as Atheists, OCTOBER 11, 2018 AMERICAN ATHEISTS BLOG POSTS.

<sup>522</sup> This blog post was written by Nick Fish and Alison Gill in celebration of the 30th Annual National Coming Out Day.

lags far behind that of the LGBTQ community. Outspoken atheists are the exception rather than the rule, and while there are 75 million non-religious Americans, very few of them are open about their lack of religious belief.

According to Nick Fish, being openly atheist can be difficult. In the more religious areas of the nation, coming out as an atheist can result in discrimination, harassment, family rejection, loss of friends, and even violence. Even in more cosmopolitan areas of the country, where being an atheist can seem almost commonplace, many are still reluctant to discuss their beliefs.

He argues that while it can be risky to come out, it's also essential to normalizing their identity, which allows others to recognize their shared humanity.

According to the Pew Forum, 87% of adults in America know someone who is gay or lesbian, and 30% know someone who is trans. Pew's research also shows that among those who have become more accepting of LGBTQ people, most say that they have LGBTQ friends or family members. Despite the fact that there are at least twice as many atheists in the US than there are LGBTQ people, only 60% of adults say that they know someone who is atheist. Pew also reports that people who know at least one atheist feel much warmer about our community than those who do not. This in effect highlights that the fact that gay atheists exist.

The first President of American Atheists argues that Whether one is LGBTQ, atheist, or both, being visible as a community is essential to build political power, to advocate for their rights, and humanize them in the eyes of the public, to oppose stigma, and to provide role models for their youths.

There was an action by the American Atheists brought who brought suit against Arkansas State Senator Jason Rapert for violation of their Atheist First Amendment rights by blocking them from engaging in public forums on social media. This lawsuit was part of the Atheists ENGAGE, a new campaign launched by American Atheists to fight discrimination by government officials in public forums.

Nick Fish is the first President of American Atheists who is openly gay and Alison Gill, Vice President of Litigation and Policy, is the first openly trans women in a senior leadership position in any atheist organization.

## **DECLINED BELIEF AND HIGH RATES OF NON-RELIGIOUSNESS AMONGST LGBTQIA+**

According to Philip Schwadel & Aleksandra, Lesbian, gay and bisexual Americans are less religious than straight adults by traditional measures.

A new analysis of data from Pew Research Center's 2014 Religious Landscape Study highlights that bisexual and gay adults are less likely to affirm to attendance of weekly services<sup>523</sup>. This is with implication that their rate of being religious is less and as such, possible atheists.

For starters, gay, lesbian and bisexual adults are substantially less likely than straight adults to affiliate with a religious group. Four-in-ten (41%) identify as atheist, agnostic or "nothing in particular," compared with just 22% of straight adults who say the same. (The survey asked respondents whether they identify as lesbian, gay, bisexual or straight but did not ask about other identities related to gender and sexuality.)

LGBTQIA+ adults less likely than straight Americans to say they believe in God, attend religious services weekly A similar dynamic is at work when it comes to religious service attendance, which is one of the most standard measures of religious participation. About two-in-ten bisexuals (19%) and 16% of lesbian and gay Americans say they attend religious services weekly. By comparison, 36% of straight adults attend a house of worship regularly<sup>524</sup>.

Further study by Pew Research reveals that LGBTQIA+ Americans – who made up 5% of respondents in the survey – were also much less likely to say that scripture was the word of God, with 38% of bisexuals and 33% of gays and lesbians saying this. By comparison, 61% of straight Americans see the Bible or other holy scripture as God's word. Likewise, while about a third of gays, lesbians and bisexuals (34%) say that religion is very important in their lives, more than half of straight Americans say this (54%).

The religious gap between LGB and straight adults narrows somewhat on the question of belief in God or a higher power. About three-quarters of LGB adults

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<sup>523</sup> Discovering Atheism: Heterogeneity in Trajectories to Atheist Identity and Activism Get access Arrow  
Stephen LeDrew.

<sup>524</sup> Sociology of Religion, Volume 74, Issue 4, WINTER 2013, Pages 431–453, <https://doi.org/10.1093/socrel/srt014>  
Published: 04 April 2013.

(77%) say they believe in God, lower than the share of straight Americans who say this (89%).

Though LGBTQIA+ adults may be less religious than straight Americans by some measures, the gaps between these groups generally narrow when it comes to questions about spirituality.

LGBTQIA+ adults about as likely as straight Americans to meditate, think about the meaning of life. For example, LGB adults are as likely as straight adults to say they think about the meaning and purpose of life at least weekly. LGB Americans also are as likely as straight Americans to meditate at least once a week, with roughly four-in-ten in each group saying they do this.

LGBTQIA+ Americans are more likely than straight adults to say they regularly feel a deep sense of wonder about the universe. Roughly half of gay and lesbian adults (51%) and bisexuals (53%) say this, compared with 45% of straight Americans.

At the same time, LGB adults are less likely than straight adults to say they feel a deep sense of spiritual peace and well-being at least once a week, and are somewhat less likely to say they regularly feel a strong sense of gratitude or thankfulness.

## **CRITICISM TOWARDS ATHEISM AND HOMOSEXUALITY**

According to Solomon Sami Azar<sup>525</sup>, Disgruntled homosexuals invent Atheism, He states that if you are a heterosexual atheist You were brainwashed by the homosexuals as all humans are a simple gullible creature until Truth found.

He reasserts that atheists are nothing more than disgruntled homosexuals- if by small chance you are a heterosexual atheist this is simply because you were brainwashed by the homosexuals as all humans are a simple gullible monkey creature without knowledge of our infinite souls and guidance by god....Homosexuals are nothing more than abused children which made by god TO MIRROR the disgust in so called normal civilized behavior of sex lusting monkey people of the earth- everyone repent. God guided separation of church and state so many ignorant self centered savages from the earth could be gathered in one dog kennel called America and try to melt together in Jesus name- very subtle and you may say entrapment as the dog

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<sup>525</sup> International Kindle Paperwhite.

learned how to obey- enough time given- submit or simply watch everything you ever loved slaughtered before your eyes- survivors grow stronger-this is how it works on earth contrary to free love hippie fagot and agnostic ways of stupidity - Repent.



## **CHAPTER THIRTY-FOUR**

### **THE AFRICAN ATTITUDE TOWARDS ATHEISM AND HOMOSEXUALITY.**

Ban on gay film is uncalled for”, says the Atheists in Kenya Society. On 29 November, representatives of Atheists in Kenya Society appeared before the Registrar of the High Court. The society will next appear before the Judge on 15 March 2023.

Atheists in Kenya Society is an Associate Member of Humanists International and was founded in 2013 The organization, which unites Kenya’s atheist community, became the first non-religious society to be registered under the Societies Act<sup>526</sup> in February 2016 after its initial rejection. However, only two months later the organization’s registration was suspended after the then-attorney general, Prof. Githu Muigai cited complaints from religious groups.

It was founded by its current President, Harrison Mumia who challenged their suspension at the High Court, succeeding in the reinstatement of society’s status in 2018.

In a press release on 24 September, the Atheists in Kenya Society, an Associate of Humanists International, advocated against the ban on an LGBTI+ themed film and demanded more diversity in mainstream film in the country.

The statement came after authorities in Kenya pulled the plug on a film, “I Am Samuel”, that depicted a romantic love between men and called it an affront to the country’s constitution.

The Atheist in Kenya Society further urged Kenya’s Film Classification Board to stop engaging in “political homophobia” and focus on drafting policies on digitalization that will spur creativity in Kenya’s film industry.

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<sup>526</sup> The Societies Act Kenya, Cap 108.

Harrison Nyende Mumia, President of Atheists in Kenya Society, in a press release said:

“The ban is a reflection of anti-LGBT attitudes that sadly, are still in full force in many African countries, including Kenya where LGBTQ continue to be routinely targeted by government authorities, religious groups, and those who claim to be fighting to preserve ‘traditional values’.”

Giovanni Gaetani, Membership Engagement Manager, commented:

“Humanists International supports the position of our Associate Atheists In Kenya Society and calls the Kenyan authorities to cancel the ban on the film “I Am Samuel” in order to respect the right to artistic freedom and freedom of expression, but more importantly to reaffirm the fact that LGBTI+ rights are human rights, protected under the Universal Declaration of Human Rights and other international treaties and declarations. Such a ban would instead reinforce the infamous stigma on LGBTI+ people in Kenya and all around the world.

“Humanists International works to endorse, defend and promote the human rights of LGBTI+ persons, as stated in 2018 in our policy statement approved during the General Assembly in Auckland, New Zealand<sup>527</sup>

From the above discussion, its conclusive that the Atheist view and interpretation of homosexuality is positive as different Atheist Gay groups around the world advocate for gay rights and against bans and acts that threaten the plight of gayism and homosexuality despite the criticism as discussed above.

## **LGBTQIA+**

The LGBTQIA+ acrynom stands for Lesbian, Gay, Bisexual, Transgender, Queer/ Questioning, Intersex, Asexual and + (Plus) which signifies the other gender indenties/ sex orientations such as Pansexual, non-binary, Objectophilia among others which letters can’t fully describe yet. This chapter consindrs each element distinctively as discussed below. Lesbianism Collins Dictionary defines Lesbianism refers to homosexual relationships between women or the preference that a woman shows for sexual relationships with women.

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<sup>527</sup> Talyor Online Page; Journal of Homosexuality Volume 68, 2021 - Issue 9776.

Lesbianism, also called sapphism or female homosexuality is the tendency of a human female to be emotionally and usually sexually attracted to other females, or the state of being so attracted.

As it was first used in the late 16th century, the word Lesbian was the capitalized adjectival term referring to the Greek island of Lesbos. Its connotation of “female homosexuality” was added in the late 19th century, when an association was made with the tender and often passionate poetry written by Lesbian poet Sappho<sup>528</sup> to and about other women in her female coterie.

Just as heterosexual orientation produces a great variety of behaviours, so, too, lesbianism presents no unified face. Some lesbians hide or deny their orientation, marrying in order to be accepted by their families and communities. Others—often in the relative anonymity of an urban setting—prefer to live openly as lesbians, sometimes bearing and rearing children.

Broadly speaking, in late 20th-century Europe and North America, many of the issues faced by lesbians were not radically different from those that concerned either heterosexual women or many gay men. Like heterosexual women, lesbians were affected by such issues as equal pay or the historical exclusion of women from medical research studies, the latter of which led to a lack of understanding about the effect of lesbian sexuality on women’s health. Like many gay men, many lesbians in long-term relationships regretted the lack of legal recognition for same-sex unions. Other issues of concern to lesbians included child rearing (ranging from the inability to adopt a partner’s offspring to laws barring same-sex adoption, the sharing of medical health benefits with a partner, the right to make health decisions for a partner, taxes, inheritance, and other questions of family law. Starting in the early 21st century, many jurisdictions, particularly in Europe and North America, adopted laws or constitutional provisions establishing the legality of same-sex unions or recognizing the right of same-sex couples to marry (see same-sex marriage; in other jurisdictions, such changes were affected through court decisions (see, for example, *Obergefell v. Hodges*). Rights regarding family law were also addressed in those changes or by other means.

Daughters of Bilitis (DOB), one of the first lesbian organizations to be established. Founded in San Francisco in 1955, the organization took its name from a collection

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<sup>528</sup> Sappho c. 610 BCE.

of poems written by Pierre Louÿs called Songs of Bilitis. Bilitis was a female character who was romantically associated with Sappho, the female Greek lyric poet.

When DOB was established, there were few opportunities for lesbians to meet, and lesbians were subject to discrimination and public hostility. The organization began as a small, secret social club for lesbians, starting with just eight members. Among the founding members of DOB were Del Martin and Phyllis Lyon, who would become well-known lesbian rights activists. During the late 1950s other DOB chapters were founded across America and in Australia too, although membership numbers remained relatively small.

Early in the development of DOB, its role and membership criteria came under scrutiny by its members. Conflicting views led some of the original founding members to leave DOB. Those changes contributed to redefining DOB as a political organization focused on lesbian rights, rather than as a purely social organization. That was a radical development, given the social stigma of homosexuality at the time.

In October 1956 DOB published the first issue of *The Ladder*, edited by Lyon, initially under the pen name Ann Ferguson. *The Ladder* is usually regarded as the first lesbian serial in America, although a short-lived publication titled *Vice Versa* had existed in the late 1940s. *The Ladder* ceased publication in 1972, following the 1970 secret takeover of the magazine by its editor, Barbara Grier, and the DOB national president at the time, Rita LaPorte, both of whom favoured a stronger lesbian feminist stance than that which the DOB generally advocated. That event reflected one of the core tensions that surrounded DOB: whether it should align itself with male-dominated gay rights groups, such as its ally the Mattachine Society, or whether it should identify itself with lesbian separatist feminists. Those conflicting perspectives led to DOB's dissolution of its national organization in the 1970s, although local chapters persisted after that for several years.

Although it was plagued by tensions that reflected the difficult and politically loaded social climate, DOB is credited with numerous achievements. Socially, DOB facilitated one of the first opportunities for lesbians to meet and share their everyday struggles. Politically, DOB began the long quest to achieve visibility and acceptance for lesbians and to place lesbian rights on the civil rights agenda.

## **BISEXUALITY**

In 1859, anatomist Robert Bentley Todd first used the term 'bisexuality' to refer to the possession of 'male' and 'female' physical characteristics in the same body – today, we might understand this as being intersex. This meaning was taken up by nineteenth-century sexologists – scientists and psychologists studying sex and sexuality, including Henry Havelock Ellis and Richard von Krafft-Ebing – who explored evolution and speculated about “the latent organic bi-sexuality in each sex”, noting that “at an early stage of development, the sexes are indistinguishable”.

By the beginning of the twentieth century, this meaning had shifted to focus on a combination of 'masculine' and 'feminine' gendered characteristics – what today we would describe as androgyny. The modern meaning of bisexuality, which describes sexual and/or romantic attraction rather than sexed or gendered characteristics, only developed in the 1910s. However, for many years the different meanings of bisexuality were used at the same time and sometimes in the same texts. Sigmund Freud made his famous claim about 'universal' bisexuality in 1915, but referred to this both as a combination of masculinity and femininity and as a sexual or romantic attraction, writing, “the sexual object is a kind of reflection of the subject’s bisexual nature”.

In the late 1970s the current understanding of bisexuality, as an orientation or capacity for attraction, became widely accepted in the UK as "the more common usage". Around this point, bi groups and events started being established. The UK's first bi group, London Bisexual Group, was formed in 1981, followed by other groups in Edinburgh (1984), Brighton (1985), Manchester (1986) and Glasgow (1988), as well as a London-based Bisexual Women's Group. A magazine, *Bi-Monthly*, was founded, as well as two bi helplines in London and Edinburgh, and the UK's longest continually-running LGBTQ+ community event, the annual BiCon.

Bi terminology and politics continued to evolve since the 1980s. While definitions of bisexuality initially focused on attractions to 'both' genders, over time it became more common to refer to 'attraction to more than one gender'. The term 'pansexual' became popular in the 1990s in response to concerns about bisexuality upholding the gender binary, using the prefix 'pan' ('all') to suggest attraction that is not limited by gender. But this doesn't mean that bi people are therefore only attracted to two genders. Some people attracted to more than one gender identify as both bi and pan, some as one or the other, and some as neither. The 1990 manifesto of *Anything that*

Moves, a US bi magazine, explicitly stated that bisexuality shouldn't be understood as binary: "Do not assume that bisexuality is binary or duogamous in nature: that we have "two" sides or that we must be involved simultaneously with both genders to be fulfilled human beings. In fact, don't assume that there are only two genders".

Though bisexuality as a sexual orientation is part of LBGTQIA+ and a sexual deviation as well, the complex history of bisexuality and the shifting use of language being used to erase bi people's identities, or suggest that they are a 'phase'. This has hugely damaging effects on bi people and communities. Stonewall's Bi Report shows that bi people often report not feeling welcome in LGBTQ+ spaces, and experience much higher rates of discrimination from within the LGBTQ+ community. 43% of bi people have never attended an LGBTQ+ space or event, compared to 29% of gay men and lesbians. Research also indicates that bi people are also more likely to experience poor mental health, in part because of this erasure and discrimination.



## CHAPTER THIRTY-FIVE

### Transgender

According to the Merriam Webster Dictionary, Transgender means relating of, or being a person whose gender identity differs from the sex the person had or was identified as having at birth, especially : of, relating to, or being a person whose gender identity is opposite the sex the person had or was identified as having at birth.

A transgender person (often abbreviated to trans person) is someone whose gender identity or gender expression does not correspond with their sex assigned at birth<sup>529</sup>

Additionally, they may undergo sex reassignment therapies such as hormone therapy and sex reassignment surgery to more closely align their primary and secondary sex characteristics with their gender identity. Not all transgender people desire these treatments, however, and others may be unable to access them for financial or medical reasons. Those who do desire to medically transition to another sex may identify as transsexual<sup>530</sup>

Transgender people are known to have existed since ancient times. A wide range of societies had traditional third gender roles, or otherwise accepted trans people in some form.<sup>531</sup> However, a precise history is difficult because the modern concept of

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<sup>529</sup> Altilio, Terry; Otis-Green, Shirley (2011). *Oxford Textbook of Palliative Social Work*. Oxford University Press. p. 380. ISBN 978-0199838271. Archived from the original on December 1, 2016. Retrieved April 12, 2016. 'Transgender' is an umbrella term for people whose gender identity and/or gender expression differs from the sex that they were assigned at birth (Gay and Lesbian Alliance Against Defamation [GLAAD], 2007).

<sup>530</sup> Bevan, Dana J. (17 November 2014). *The Psychobiology of Transsexualism and Transgenderism*. Santa Barbara, California: ABC-CLIO/Greenwood Publishing. p. 42. ISBN 9781440831270. OCLC 1021404840. Archived from the original on 15 May 2022. Retrieved 14 May 2022. The term transsexual was introduced by Cauldwell (1949) and popularized by Harry Benjamin (1966) [...]. The term transgender was coined by John Oliven (1965) and popularized by various transgender people who pioneered the concept and practice of transgenderism. It is sometimes said that Virginia Prince (1976) popularized the term, but history shows that many transgender people advocated the use of this term much more than Prince.

<sup>531</sup> "The Trans History You Weren't Taught in School. YES! Magazine. Archived from the original on 2022-01-23. Retrieved 2022-01-23.

being transgender, and gender in general, did not develop until the mid-1900s. Historical understandings are thus inherently filtered through modern principles, and were largely viewed through a medical lens until the late 1900s<sup>532</sup>.

Ancient Greek Hippocrates (interpreting the writing of Herodotus) discusses transgender individuals briefly. He describes the "disease of the Scythians" (regarding the Enaree), which he attributes to impotency due to riding on a horse without stirrups. Hippocrates's reference was well discussed by medical writings of the 1500s–1700s. Pierre Petit writing in 1596 viewed the "Scythian disease" as natural variation, but by the 1700s writers viewed it as a "melancholy", or "hysterical" psychiatric disease. By the early 1800s, being transgender separate from Hippocrates' idea of it was claimed to be widely known, but remained poorly documented. Both trans women and trans men were cited in European insane asylums of the early 1800s. One of the earliest recorded transgender individuals in America was Thomas(ine) Hall, a seventeenth century colonial servant<sup>533</sup>. The most complete account of the time came from the life of the Chevalier d'Éon (1728–1810), a French diplomat. As cross-dressing became more widespread in the late 1800s, discussion of transgender people increased greatly and writers attempted to explain the origins of being transgender. Much study came out of Germany, and was exported to other Western audiences. Cross-dressing was seen in a pragmatic light until the late 1800s; it had previously served a satirical or disguising purpose. But in the latter half of the 1800's, cross-dressing and being transgender became viewed as an increasing societal danger.

William A. Hammond wrote an 1882 account of transgender Pueblo shamans (mujerados), comparing them to the Scythian disease. Other writers of the late 1700s and 1800s (including Hammond's associates in the American Neurological Association) had noted the widespread nature of transgender cultural practices among native peoples. Explanations varied, but authors generally did not ascribe native transgender practices to psychiatric causes, instead condemning the practices

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<sup>532</sup> Janssen, Diederik F. (2020-04-21). "Transgenderism Before Gender: Nosology from the Sixteenth Through Mid-Twentieth Century". *Archives of Sexual Behavior*. **49** (5): 1415–1425. doi:10.1007/s10508-020-01715-w. ISSN 0004-0002. PMID 32319033. S2CID 216073926.

<sup>533</sup> Hickman, H.; Porfilio, B.J. (2012). *The New Politics of the Textbook: Problematizing the Portrayal of Marginalized Groups in Textbooks*. *Constructing Knowledge: Curriculum Studies in Action*. SensePublishers. p. 235. ISBN 978-94-6091-912-1. Retrieved 2023-01-10.

in a religious and moral sense. Native groups provided much study on the subject, and perhaps the majority of all study until after WWII<sup>534</sup>

Critical studies first began to emerge in the late 1800s in Germany, with the works of Magnus Hirschfeld. Hirschfeld coined the term "transvestite" in 1910 as the scope of transgender study grew. His work would lead to the 1919 founding of the Institut für Sexualwissenschaft in Berlin. Though Hirschfeld's legacy is disputed, he revolutionized the field of study. The Institute was destroyed when the Nazis seized power in 1933, and its research was infamously burned in the May 1933 Nazi book burnings<sup>535</sup>. Transgender issues went largely out of the public eye until after World War II. Even when they re-emerged, they reflected a forensic psychology approach, unlike the more sexological that had been employed in the lost German research<sup>536</sup>.

The term transsexual was introduced by Cauldwell (1949) and popularized by Harry Benjamin (1966) On the other hand, the term transgender was coined by John Oliven (1965) and popularized by various transgender people who pioneered the concept and practice of transgenderism. It is sometimes said that Virginia Prince (1976) popularized the term, but history shows that many transgender people advocated the use of this term much more than Prince.

The opposite of transgender is cisgender, which describes people whose gender identity matches their assigned sex<sup>537</sup>.

By 1984, the concept of a "transgender community" had developed, in which transgender was used as an umbrella term.<sup>[39]</sup> In 1985, Richard Elkins established the "Trans-Gender Archive" at the University of Ulster.<sup>[36]</sup> By 1992, the International Conference on Transgender Law and Employment Policy defined transgender as an expansive umbrella term including "transsexuals, transgenderists, cross dressers", and anyone transitioning.

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<sup>534</sup> Janssen, Diederik F. (2020-04-21). "Transgenderism Before Gender: Nosology from the Sixteenth Through Mid-Twentieth Century". *Archives of Sexual Behavior*. **49** (5): 1415–1425. doi:10.1007/s10508-020-01715-w. ISSN 0004-0002. PMID 32319033. S2CID 216073926.

<sup>535</sup> "Holocaust Memorial Day Trust | 6 May 1933: Looting of the Institute of Sexology".

<sup>536</sup> "Queer Science: The Use and Abuse of Research into Homosexuality". *The Washington Post*..

<sup>537</sup> Blank, Paula (2014-09-24). "Will the Word "Cisgender" Ever Go Mainstream?" *The Atlantic*.

According to Leslie Feinberg's pamphlet, transgender was identified as a term to unify all forms of gender nonconformity<sup>538</sup>; in this way transgender has become synonymous with queer. In 1994, gender theorist Susan Stryker defined transgender as encompassing "all identities or practices that cross over, cut across, move between, or otherwise queer socially constructed sex/gender boundaries", including, but not limited to, "transsexuality, heterosexual transvestism, gay drag, butch lesbianism, and such non-European identities as the Native American berdache or the Indian Hijra".

Between the mid-1990s and the early 2000s, the primary terms used under the transgender umbrella were "female to male" (FtM) for men who transitioned from female to male, and "male to female" (MtF) for women who transitioned from male to female. These terms have now been superseded by "trans man" and "trans woman", respectively. This shift in preference from terms highlighting biological sex ("transsexual", "FtM") to terms highlighting gender identity and expression ("transgender", "trans man") reflects a broader shift in the understanding of transgender people's sense of self and the increasing recognition of those who decline medical reassignment as part of the transgender community.

Transfeminine is a term for any person, binary or non-binary, who was assigned male at birth and has a predominantly feminine gender identity or presentation; transmasculine is the equivalent term for someone who was assigned female at birth and has a predominantly masculine gender identity or presentation.<sup>[44]</sup>

## **TRANSSEXUAL**

Inspired by Magnus Hirschfeld's 1923 term *seelischer Transsexualismus*, the term *transsexual* was introduced to English in 1949 by David Oliver Cauldwell<sup>[note 2]</sup> and popularized by Harry Benjamin in 1966, around the same time transgender was coined and began to be popularized.<sup>[5]</sup> Since the 1990s, *transsexual* has generally been used to refer to the subset of transgender people<sup>[5][53][54]</sup> who desire to transition permanently to the gender with which they identify and who seek medical assistance (for example, sex reassignment surgery) with this.

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<sup>538</sup> Leslie Feinberg's *Transgender Liberation: A Movement Whose Time has Come*", circulated in 1992.

## **Distinctions Between the Terms Transgender and Transsexual**

The distinctions suffice from distinctions between gender and sex.<sup>[55][56]</sup> As such, Transsexuality may be said to deal more with physical aspects of one's sex, while transgender considerations deal more with one's psychological gender disposition or predisposition, as well as the related social expectations that may accompany a given gender role.<sup>[57]</sup> Many transgender people reject the term transsexual.<sup>[6][58][8]</sup> Christine Jorgensen publicly rejected transsexual in 1979 and instead identified herself in newsprint as trans-gender, saying, "gender doesn't have to do with bed partners, it has to do with identity."<sup>[59][60]</sup> Some have objected to the term transsexual on the basis that it describes a condition related to gender identity rather than sexuality. Some transsexual people object to being included in the transgender umbrella.<sup>[62]</sup>

Anthropologist David Valentine in his book asserts that transgender was coined and used by activists to include many people who do not necessarily identify with the term and states that people who do not identify with the term transgender should not be included in the transgender spectrum<sup>539</sup> Leslie Feinberg likewise asserts that transgender is not a self-identifier (for some people) but a category imposed by observers to understand other people she describes people who have had such operations as transgender rather than transsexual. That "Sexuality is who you sleep with, but gender is who you are"<sup>540</sup>.

According to the Transgender Health Program (THP) at Fenway Health in Boston, there are no universally-accepted definitions, and confusion is common because terms that were popular at the turn of the 21st century may now be deemed offensive. The THP recommends that clinicians ask clients what terminology they prefer, and avoid the term transsexual unless they are sure that a client is comfortable with it<sup>541</sup>

Harry Benjamin invented a classification system for transsexuals and transvestites, called the Sex Orientation Scale (SOS), in which he assigned transsexuals and

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<sup>539</sup> Valentine David. *Imagining Transgender: An Ethnography of a Category*, Duke University, 2007.

<sup>540</sup> "News from California: 'Transgender'". *Appeal-Democrat/Associate Press*. May 11, 1982. pp. A–10. . she describes people who have had such operations' "transgender" rather than transsexual. "Sexuality is who you sleep with, but gender is who you are," she explained.

<sup>541</sup> *Glossary of Gender and Transgender Terms (PDF)*. Boston, Mass.: Fenway Health. January 2010. p. 15.

transvestites to one of six categories based on their reasons for cross-dressing and the relative urgency of their need (if any) for sex reassignment surgery<sup>542</sup>.

Contemporary views on gender identity and classification differ markedly from Harry Benjamin's original opinions. Sexual orientation is no longer regarded as a criterion for diagnosis, or for distinction between transsexuality, transvestism and other forms of gender-variant behavior and expression. Benjamin's scale was designed for use with heterosexual trans women, and trans men's identities who do not align with its categories<sup>543</sup>.

Spread of Transgenerism and significant events for its growth and gain of moral support.

## **MEDIA REPRESENTATION.**

More transgender people are being represented and included within the realm of mass culture, the stigma that is associated with being transgender can influence the decisions, ideas, and thoughts based upon it. Media representation, culture industry, and social marginalization all hint at popular culture standards and the applicability and significance to mass culture as well. These terms play an important role in the formation of notions for those who have little recognition or knowledge of transgender people. Media depictions represent only a minuscule spectrum of the transgender group<sup>544</sup>, which essentially conveys that those that are shown are the only interpretations and ideas society has of them.

However, in 2014, the United States reached a "transgender tipping point", according to Time. At this time, the media visibility of transgender people reached a level higher than seen before. Since then, the number of transgender portrayals across TV platforms has stayed elevated. Research has found that viewing multiple transgender TV characters and stories improves viewers' attitudes toward transgender people and related policies.

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<sup>542</sup> Benjamin, H. (1966). *The transsexual phenomenon*. New York: Julian Press, page 23.

<sup>543</sup> Hansbury, Griffin (2008). *The Middle Men: An Introduction to the Transmasculine Identities*. *Studies in Gender and Sexuality* Volume 6, Issue 3, 2005 doi:10.1080/15240650609349276.

<sup>544</sup> "MTV to launch new channel for gay viewers in 2005 – May. 25, 2004". CNN. Archived from the original on 2015-12-11. Retrieved 2015-12-08.



## **CHAPTER THIRTY-SIX**

### **INTERNATIONAL TRANSGENDER DAY OF VISIBILITY**

International Transgender Day of Visibility is an annual holiday occurring on March 31 dedicated to celebrating transgender people and raising awareness of discrimination faced by transgender people worldwide. The holiday was founded by Michigan-based transgender activist Rachel Crandall in 2009.

### **TRANSGENDER AWARENESS WEEK**

Transgender Awareness Week is a one-week celebration leading up to Transgender Day of Remembrance. The purpose of Transgender Awareness Week is to educate about transgender and gender non-conforming people and the issues associated with their transition or identity.

#### **Transgender Day of Remembrance**

Transgender Day of Remembrance (TDOR) is held every year on November 20 in honor of Rita Hester, who was killed on November 28, 1998, in an anti-transgender hate crime. TDOR serves a number of purposes:

- it memorializes all of those who have been victims of hate crimes and prejudice,
- it raises awareness about hate crimes towards the transgender community,
- and it honors the dead and their relatives<sup>545</sup>

### **TRANS MARCH**

Annual marches, protests or gatherings take place around the world for transgender issues, often taking place during the time of local Pride parades for LGBT people.

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<sup>545</sup> "About TDOR at Transgender Day of Remembrance". [Transgenderdor.org](http://Transgenderdor.org). 1998-11-28. Archived from the original on 2011-07-23. Retrieved 2011-07-06.

These events are frequently organised by trans communities to build community, address human rights struggles, and create visibility.<sup>[251][252][253][254]</sup>

## **INTERSEX**

Intersex, in humans and other animals, describes variations in sex characteristics including chromosomes, gonads, sex hormones, or genitals which according to the UN Office of the High Commissioner for Human Rights, "do not fit typical binary notions of male or female bodies"<sup>546</sup>.

Intersex people were historically termed hermaphrodites, "congenital eunuchs", or even congenitally "frigid". Such terms have fallen out of favor, now considered to be misleading and stigmatizing<sup>547</sup>.

From its introduction as a medical term to its rebranding in the 1990s, the word "intersex" has been reclaimed in recent years by activists fighting for bodily autonomy within the community.

In the 1900s, doctors began describing people born with anatomy that differs from binary ideas about biological sex as "intersex." Over the next century, intersex people were stigmatized by the medical community and pushed into unnecessary surgeries to "correct" what they saw as an aberration from the norms of the human body.

But in the 1970s, activists and intersex community members began a campaign to reclaim the term as an identity and community rather than a medical diagnosis, pushing to normalize being intersex and help people understand what it means. Today, organizers are pushing back on unnecessary surgeries, especially against intersex children<sup>548</sup>.

The term has been pushed into the spotlight in recent years by hormone limits for athletes in major sporting events like Olympic Games, preventing some intersex competitors from entering.

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<sup>546</sup> "Free & Equal Campaign Fact Sheet: Intersex" (PDF). United Nations Office of the High Commissioner for Human Rights. 2015. Archived (PDF) from the original on 4 March 2016. Retrieved 28 March 2016.

<sup>547</sup> Dreger, Alice D; Chase, Cheryl; Sousa, Aron; Gruppuso, Phillip A.; Frader, Joel (18 August 2005). "Changing the Nomenclature/Taxonomy for Intersex: A Scientific and Clinical Rationale" (PDF). *Journal of Pediatric Endocrinology and Metabolism*. 18 (8): 729–33. doi:10.1515/JPEM.2005.18.8.729. PMID 16200837. S2CID 39459050. Archived from the original (PDF) on 20 December 2016. Retrieved 27 July 2016.

<sup>548</sup> Michael Burk, *Gender and Identity What Does It Mean to Be Intersex?* - July 15, 2022.

## **What Does Intersex Mean?**

“Intersex” is an umbrella term that refers to people who carry variations in their reproductive and sexual anatomy that differ from what is traditionally male or female. An intersex person can appear to have one kind of genitalia on the outside and another internally. They might have some XX chromosomes and some XY chromosomes. They can have ambiguous genitalia or not, and know at birth that they’re intersex or find out later.

According to the Oxford English Dictionary, the word “intersex” has been around since the late 1700s. Before the twentieth century, the term was rare and referred to relations “between the sexes.” It was only in 1917 that a German geneticist named Richard Goldschmidt used the term in the way we understand it today.

Being intersex does not refer to a person’s gender identity. Just like people who are endosex (not intersex), someone who is intersex can be any gender. Additionally, intersex does not refer to a person’s sexuality.

Prior to the term “intersex” being popularized in the 1900s, the term “hermaphrodite” was used in 18th and 19th-century medical literature to describe individuals who were intersex. Now considered a derogatory slur, the term evoked a mythical creature and the pursuit of a body with both male and female reproductive anatomy.

It was only after the geneticist Richard Goldschmidt used the term in his 1917 paper<sup>549</sup> “Intersexuality and the Endocrine Aspect of Sex” that intersex and hermaphrodite were used interchangeably in articles through the 1920s, ‘30s, and ‘40s.

The 1950s marked a turning point for the word intersex and the ways being intersex was stigmatized by both doctors and the public. Dr. John Money, a psychologist, began writing in the 1950s that intersex people were psychologically healthy — but would turn out even better if babies were made to look like the gender they were being raised.

Until the ‘50s, most surgeries to alter intersex traits were done on adults who chose to undergo such procedures or whose doctors pressured them to do it. The Hopkins team gave way to a new protocol where intersex children were given so-called “corrective” genital surgeries and hormone treatments, often without their

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<sup>549</sup> Richard Goldschmidt; *Intersexuality and the Endocrine Aspect of Sex*, 1917.

knowledge and consent, and even if the surgeries were not medically necessary. For the next few decades, the word “intersex” proliferated along with such surgeries, until the community came together to reclaim the terminology.

### **Intersex Advocacy and activism.**

In the late 1980s, the intersex movement began to percolate. Intersex people who had been subject to secrecy about their medical records and made to feel ashamed of their bodies began organizing support groups and circles. An activist named Bo Laurent wrote a letter to *The Sciences*, a magazine, in response to a paper about sex and gender in 1993. In it, Laurent announced the founding of the Intersex Society of North America.

“Surgical and hormonal treatment allows parents and doctors to imagine that they have eliminated the child's intersexuality. Unfortunately, the surgery is immensely destructive of sexual sensation and of the sense of bodily integrity,” the letter read.

The first ever public intersex demonstration was held on October 2, 1996, when I-S-N-A activists protested a conference held by the American Academy of Pediatrics in Boston. Activists used the slogan “hermaphrodites with attitude” on signs, shirts, and newsletters as a way to reclaim the term “hermaphrodite.” This shifted to “intersex” as they sought to work with doctors to stop nonconsensual surgeries. The anniversary of this first public protest for intersex rights became Intersex Awareness Day.

Throughout the early 2000s, intersex people gained more visibility in popular media and books. Jeffrey Eugenides published his bestselling book *Middlesex* in 2002, a fictional story of an intersex young man. After selecting *Middlesex* for her book club, Oprah featured intersex people on her show in 2007 to talk about their experiences. However, both *Middlesex* and Oprah's feature on intersex people have been criticized for fetishizing the shame and suffering they experience. From *House* to *Grey's Anatomy*, representation on popular shows from the mid-2000s only furthered salacious tropes about the community.

While the term “intersex” gained more traction and challenged the idea that there was anything to “fix” with intersex bodies, new terminology arrived in 2005. DSD, or “disorders of sex development,” was introduced in medical settings as another way to describe being intersex. DSD frames being intersex as a disorder in need of treatment, rather than a biological variation. Activists fear that if parents of intersex

kids are told their child has a “disorder of sex development,” they won’t be able to make an informed choice about surgery or even know it means “intersex.”

In recent years, intersex people have also had to push back against unfair regulations imposed on athletes looking to compete in major international sporting events. Intersex athletes were barred from competing in their events at the Olympics due to hormone restrictions. These regulations force intersex athletes to take medications to lower their natural testosterone levels, often by taking medications with harmful side effects and unknown long-term effects. “Excluding female athletes or endangering our health solely because of our natural abilities puts World Athletics on the wrong side of history,” Semenya said in 2020.

Today, the term “intersex” is still being reclaimed by people as a way of challenging how both the medical community and general public have policed their bodies. Intersex people continue to fight non-consensual surgeries, and seek legislation to protect children from these procedures, and are pushing back against the regulation of their bodies in general. “Intersex” is entering new terrain as a human rights issue to allow people to make choices about their own bodies.



## CHAPTER THIRTY-SEVEN

### INTERSEX AND HOMOSEXUALITY

Intersex can be contrasted with homosexuality or same-sex attraction. Numerous studies have shown higher rates of same sex attraction in intersex people<sup>550</sup>, with a recent Australian study of people born with atypical sex characteristics finding that 52% of respondents were non-heterosexual<sup>551</sup>.

Clinical research on intersex subjects has been used to investigate means of preventing homosexuality<sup>552</sup>. In 1990, Heino Meyer-Bahlburg wrote on a "prenatal hormone theory of sexual orientation." The author discussed research finding higher rates of same sex attraction among women with congenital adrenal hyperplasia, and consistent sexual attraction to men among women with complete androgen insensitivity syndrome - a population described by the author as "genetic males."

Meyer-Bahlburg also discussed sexual attraction by individuals with partial androgen insensitivity syndrome, 5 $\alpha$ -Reductase deficiency and 17 $\beta$ -Hydroxysteroid dehydrogenase III deficiency, stating that sexual attraction towards females in individuals with these conditions was facilitated by "prenatal exposure to and utilization of androgens<sup>553</sup>."

He concluded that It was too early to conclude that there is a pre- or perinatal hormonal contribution to the development of homosexuality, except perhaps in persons with clearcut physical signs of intersexuality. The scientific basis is insufficient to justify the assessment of chromosomes and sex hormones in the fetus, or the prenatal treatment with sex hormones, for the purpose of preventing the development of homosexuality, quite apart from the ethical issues involved<sup>554</sup>.

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<sup>550</sup> Meyer-Bahlburg, Heino F.L. (January 1990). "Will Prenatal Hormone Treatment Prevent Homosexuality?". *Journal of Child and Adolescent Psychopharmacology*. 1 (4): 279–283. doi:10.1089/cap.1990.1.279. ISSN 1044-5463.

<sup>551</sup> "New publication "Intersex: Stories and Statistics from Australia"". Organisation Intersex International Australia. February 3, 2016. Archived from the original on August 29, 2016. Retrieved 2016-08-18.

<sup>552</sup> Dreger, Alice; Feder, Ellen K; Tamar-Mattis, Anne (29 June 2010), Preventing Homosexuality (and Uppity Women) in the Womb?, *The Hastings Center Bioethics Forum*, archived from the original on 2 April 2016.

<sup>553</sup> Meyer-Bahlburg, Heino F.L. (January 1990). "Will Prenatal Hormone Treatment Prevent Homosexuality?". *Journal of Child and Adolescent Psychopharmacology*. 1 (4): 279–283. doi:10.1089/cap.1990.1.279. ISSN 1044-5463.

<sup>554</sup> Meyer-Bahlburg, Heino F.L. (January 1990). "Will Prenatal Hormone Treatment Prevent Homosexuality?". *Journal of Child and Adolescent Psychopharmacology*. 1 (4): 279–283. doi:10.1089/cap.1990.1.279. ISSN 1044-5463.

In 2010, Saroj Nimkarn and Maria New wrote that, "Gender-related behaviors, namely childhood play, peer association, career and leisure time preferences in adolescence and adulthood, maternalism, aggression, and sexual orientation become" masculinized in women with congenital adrenal hyperplasia. Medical intervention to prevent such traits has been likened by Dreger, Feder and Tamar-Mattis to a means of preventing homosexuality and "uppity women."

According to the Association of American Medical Colleges, adding intersex to LGTQIA+ is both of merit and disadvantageous to intersex people, its argued on one hand that So LGBTQ + I? that acknowledgement makes intersex more visible and may be safer spaces but this suggests biology as identity (which it isn't) and could cause more problems on the other hand<sup>555</sup>.

## **ASEXUALITY**

Robert L. Crooks defines Asexuality as the lack of sexual attraction to others, or low or absent interest in or desire for sexual activity<sup>556</sup>. It may be considered a sexual orientation or the lack thereof<sup>557</sup>. It may also be categorized more widely, to include a broad spectrum of asexual sub-identities<sup>558</sup>.

It should be noted that asexuality is distinct from abstention from sexual activity and from celibacy<sup>559</sup>, which are behavioral and generally motivated by factors such as an individual's personal, social, or religious beliefs<sup>560</sup>. Sexual orientation, unlike sexual behavior, is believed to be "enduring"<sup>561</sup>.

Prause, Nicole and Cynthia A. Graham Some asexual people engage in sexual activity despite lacking sexual attraction or a desire for sex, for a number of reasons,

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<sup>555</sup> Reasons to Add and Reasons NOT to Add "I" (Intersex) to LGBT in Healthcare A Webinar for the AAMC May 4, 2015.

<sup>556</sup> Robert L. Crooks; Karla Baur (2016). *Our Sexuality*. Cengage Learning. p. 300. ISBN 978-1305887428.

<sup>557</sup> Marshall Cavendish, ed. (2010). "Asexuality". *Sex and Society*. Vol. 2. Marshall Cavendish. pp. 82–83. ISBN 978-0-7614-7906-2.

<sup>558</sup> Scherrer, Kristin (2008). "Coming to an Asexual Identity: Negotiating Identity, Negotiating Desire". *Sexualities*. 11 (5): 621–641. doi:10.1177/1363460708094269. PMC 2893352. PMID 20593009.

<sup>559</sup> DePaulo, Bella (September 26, 2011). "ASEXUALS: Who Are They and Why Are They Important?". *Psychology Today*. Archived from the original on October 1, 2015.

<sup>560</sup> *The American Heritage Dictionary of the English Language* (3d ed. 1992), entries for celibacy and thence abstinence.

<sup>561</sup> "Sexual orientation, homosexuality and bisexuality". American Psychological Association. Archived from the original on August 8, 2013.

such as a desire to physically pleasure themselves or romantic partners, or a desire to have children<sup>562</sup>.

Acceptance of asexuality as a sexual orientation and field of scientific research is still relatively new as a growing body of research from both sociological and psychological perspectives have begun to develop. While some researchers assert that asexuality is a sexual orientation, other researchers disagree<sup>563</sup>. Asexual individuals may represent about one percent of the population<sup>564</sup>.

Various asexual communities have started to form since the impact of the Internet and social media in the mid-1990s. The most prolific and well-known of these communities is the Asexual Visibility and Education Network, which was founded in 2001 by David Jay<sup>565</sup>.

According to Decker, asexuality isn't complex. It's not a sickness. It's not an automatic sign of trauma. It's not a behavior. It's not the result of a decision. It's not a chastity vow or an expression that we are 'saving ourselves'. We aren't by definition religious. We aren't calling ourselves asexual as a statement of purity or moral superiority. We're not amoebas or plants. We aren't automatically gender confused, anti-gay, anti-straight, anti-any-sexual orientation, anti-woman, anti-man, anti-any-gender or anti sex. We aren't automatically going through a phase, following a trend, or trying to rebel. We aren't defined by prudishness. We aren't calling ourselves asexual because we failed to find a suitable partner. We aren't necessarily afraid of intimacy. And we aren't asking for anyone to 'fix' us<sup>566</sup>.

## **DEFINITION, IDENTITY AND RELATIONSHIPS**

Because there is significant variation among those who identify as asexual, the term asexuality can encompass broad definitions<sup>567</sup>. Researchers generally define asexuality as the lack of sexual attraction or the lack of interest in sexual activity<sup>568</sup>,

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<sup>562</sup> Prause, Nicole; Cynthia A. Graham (2007). "Asexuality: Classification and Characterization" (PDF). *Archives of Sexual Behavior*. 36 (3): 341–356. doi:10.1007/s10508-006-9142-3. PMID 17345167. S2CID 12034925.

<sup>563</sup> Bogaert, AF (April 2015). "Asexuality: What It Is and Why It Matters". *The Journal of Sex Research*. 52 (4): 362–379. doi:10.1080/00224499.2015.1015713. PMID 25897566. S2CID 23720993.

<sup>564</sup> Katherine M. Helm (2015). *Hooking Up: The Psychology of Sex and Dating*. ABC-CLIO. p. 32. ISBN 978-1610699518.

<sup>565</sup> Swash, Rosie (February 25, 2012). "Among the asexuals". *The Guardian*. Archived from the original on February 11, 2021.

<sup>566</sup> Decker, 2015, p. 3.

<sup>567</sup> Karli June Cerankowski; Megan Milks (2014). *A sexualities: Feminist and Queer Perspectives*. Routledge. pp. 89–93. ISBN 978-1-134-69253-8.

<sup>568</sup> Bogaert, Anthony F. (2006). "Toward a conceptual understanding of asexuality". *Review of General Psychology*. 10 (3): 241–250. doi:10.1037/1089-2680.10.3.241. S2CID 143968129.

though specific definitions vary—the term may be used to refer to individuals with low or absent sexual behavior or exclusively romantic non-sexual partnerships in addition to low or absent sexual desire or attraction.

The Asexual Visibility and Education Network (AVEN), an online forum dedicated to asexuality, defines an asexual as "someone who does not experience sexual attraction", as well as adding that asexuality "at its core" is "just a word that people use to help figure themselves out", and encourages people to use the term asexual to define themselves "as long as it makes sense to do so"<sup>569</sup>. Asexuality is often abbreviated as ace, a phonetic shortening of asexual<sup>570</sup>, and the community as a whole is likewise referred to as the ace community<sup>571</sup>.

Despite lacking sexual attraction, some asexual might engage in purely romantic relationships, while others may not<sup>572</sup>. Some who identify as asexual report that they experience sexual attraction, though lack the inclination to act on it, citing no desire to engage in sexual activity—some asexual also lack the desire to engage in non-sexual physical activity such as cuddling or hand-holding, while others choose to do so<sup>573</sup>, as such asexual people may seek relationships without romantic or sexual activity, known as "queerplatonic relationships"<sup>574</sup> and Certain asexual may participate in sexual activity out of an intellectual curiosity<sup>575</sup>. Some may also masturbate as a form of solitary release, while others may not feel a need to do so<sup>576</sup>. The desire for masturbation or other sexual activity is often referred to as sex drive by asexual, who disassociate it from sexual attraction and being asexual; asexual who masturbate generally consider it to be a normal product of the human body rather than a sign of latent sexuality, and others do not find it pleasurable<sup>577</sup>.

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<sup>569</sup> "Overview". The Asexual Visibility and Education Network. 2008. Archived from the original on November 19, 2016.

<sup>570</sup> Decker, Julie S. (2015). *The Invisible Orientation: An Introduction to Asexuality*. Simon and Schuster. ISBN 9781510700642. Archived from the original on April 12, 2021.

<sup>571</sup> Shira Tarrant (2015). *Gender, Sex, and Politics: In the Streets and Between the Sheets in the 21st Century*. Routledge. pp. 254–256. ISBN 978-1317814764. Archived from the original on May 24, 2021.

<sup>572</sup> Christina Richards; Meg Barker (2013). *Sexuality and Gender for Mental Health Professionals: A Practical Guide*. SAGE. pp. 124–127. ISBN 978-1-4462-9313-3.

<sup>573</sup> DePaulo, Bella (September 26, 2011). "ASEXUALS: Who Are They and Why Are They Important?". *Psychology Today*. Archived from the original on October 1, 2015.

<sup>574</sup> Decker, Julie S. (2015). *The Invisible Orientation: An Introduction to Asexuality*. Simon and Schuster. ISBN 9781510700642. Archived from the original on April 12, 2021. Retrieved April 20, 2019.

<sup>575</sup> Prause, Nicole; Cynthia A. Graham (2007). "Asexuality: Classification and Characterization" (PDF). *Archives of Sexual Behavior*. 36 (3): 341–356. doi:10.1007/s10508-006-9142-3. PMID 17345167. S2CID 12034925.

<sup>576</sup> Westphal, Sylvia Pagan. "Feature: Glad to be asexual". *New Scientist*. Archived from the original on December 19, 2007.

<sup>577</sup> Yule, Morag A.; Brotto, Lori A.; Gorzalka, Boris B. (2014). "Sexual fantasy and masturbation among asexual individuals". *The Canadian Journal of Human Sexuality*. 23 (2): 89–95. doi:10.3138/cjhs.2409. S2CID 4091448.

Some asexual men are unable get an erection and are unable to attempt penetration<sup>578</sup>. Asexuals also differ in their views on performing sexual acts—some are indifferent and may engage in sexual activity for the benefit of a romantic partner, while others are more strongly averse to the idea, though they are not typically against sex as a whole<sup>579</sup>.

Many who identify as asexual also choose to adopt other identities, which often include gender identity and classification of romantic orientation<sup>580</sup>. These are often integrated with a person's asexual identity, and a sexual may still identify as heterosexual, lesbian, gay, or bisexual regarding romantic or emotional aspects of sexual orientation or sexual identity in addition to identifying as asexual<sup>581</sup>.

The romantic aspects of sexual orientations may also be indicated by a variety of romantic identities, including biromantic, heteroromantic, homoromantic, or panromantic, and those who do not experience romantic attraction may identify as a romantic<sup>582</sup>. Individuals who are both a romantic and asexual are sometimes known as "aro-ace" or "aroace"<sup>583</sup>. The term "gray asexuality" refers to the spectrum between asexuality and non-asexuality (also referred to as all sexuality)<sup>584</sup>. Individuals who identify as gray asexual may occasionally experience sexual attraction, or only experience sexual attraction as a secondary component once a reasonably stable or large emotional connection has been formed with the target, known as demi sexuality<sup>585</sup>.

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<sup>578</sup> Carrigan, Mark (August 2011). "There's More to Life Than Just Sex? Difference and Commonality Within the Asexual Community". *Sexualities*. 14 (4): 462–478. doi:10.1177/1363460711406462. S2CID 146445274.

<sup>579</sup> Bridgeman, Shelley (August 5, 2007). "No sex please, we're asexual". *The New Zealand Herald*. Archived from the original on November 3, 2018.

<sup>580</sup> MacNeela, Pádraig; Murphy, Aisling (December 30, 2014). "Freedom, Invisibility, and Community: A Qualitative Study of Self-Identification with Asexuality". *Archives of Sexual Behavior*. 44 (3): 799–812. doi:10.1007/s10508-014-0458-0. ISSN 0004-0002. PMID 25548065. S2CID 23757013.

<sup>581</sup> Christina Richards; Meg Barker (2013). *Sexuality and Gender for Mental Health Professionals: A Practical Guide*. SAGE. pp. 124–127. ISBN 978-1-4462-9313-3. Archived from the original on July 28, 2014.

<sup>582</sup> *Ibid.*

<sup>583</sup> Kliegman, Julie (October 29, 2021). "What Does AroAce Mean? Not Everyone Who's Aromantic Is Asexual". *Bustle*.

<sup>584</sup> Chasin, CJ DeLuzio (2015). "Making Sense in and of the Asexual Community: Navigating Relationships and Identities in a Context of Resistance". *Journal of Community & Applied Social Psychology*. 25 (2): 167–180. doi:10.1002/casp.2203. ISSN 1099-1298.

<sup>585</sup> Adler, Melissa (2010). "Meeting the Needs of LGBTIQ Library Users and Their Librarians: A Study of User Satisfaction and LGBTIQ Collection Development in Academic Libraries". In Greenblatt, Ellen (ed.). *Serving LGBTIQ Library and Archives Users*. North Carolina: McFarland & Company. ISBN 978-0-7864-4894-4.

## PREVALENCE

Kinsey scale of sexual responses, indicating degrees of sexual orientation. The original scale included a designation of "X", indicating a lack of sexual behavior<sup>586</sup>. Most scholars agree that asexuality is rare, constituting 1% or less of the population<sup>587</sup>. Asexuality is not a new aspect of human sexuality, but it is relatively new to public discourse<sup>588</sup>. In comparison to other sexualities, asexuality has received little attention from the scientific community, with quantitative information pertaining to the prevalence of asexuality low in numbers<sup>589</sup>. S. E. Smith of *The Guardian* is not sure asexuality has actually increased, rather leaning towards the belief that it is simply more visible. Alfred Kinsey rated individuals from 0 to 6 according to their sexual orientation from heterosexual to homosexual, known as the Kinsey scale. He also included a category he called "X" for individuals with "no socio-sexual contacts or reactions."<sup>590</sup> Although, in modern times, this is categorized as representing asexuality<sup>591</sup>, scholar Justin J. Lehmiller stated, "the Kinsey X classification emphasized a lack of sexual behavior, whereas the modern definition of asexuality emphasizes a lack of sexual attraction. As such, the Kinsey Scale may not be sufficient for accurate classification of asexuality<sup>592</sup>." Kinsey labeled 1.5% of the adult male population as X. In his second book, *Sexual Behavior in the Human Female*, he reported this breakdown of individuals who are X: unmarried females = 14–19%, married females = 1–3%, previously married females = 5–8%, unmarried males = 3–4%, married males = 0%, and previously married males = 1–2%<sup>593</sup>.

Further empirical data about an asexual demographic appeared in 1994, when a research team in the United Kingdom carried out a comprehensive survey of 18,876 British residents, spurred by the need for sexual information in the wake of the AIDS pandemic. The survey included a question on sexual attraction, to which 1.05% of

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<sup>586</sup> Justin J. Lehmiller (2017). *The Psychology of Human Sexuality*. John Wiley & Sons. p. 250. ISBN 978-1119164708. Archived from the original on March 20, 2021.

<sup>587</sup> Etaugh, Claire A.; Bridges, Judith S. (October 16, 2017). *Women's Lives: A Psychological Exploration*, Fourth Edition. Taylor & Francis. ISBN 978-1-315-44938-8. Archived from the original on March 9, 2022.

<sup>588</sup> Smith, S. E. (August 21, 2012). "Asexuality always existed, you just didn't notice it". *The Guardian*. Archived from the original on April 8, 2015.

<sup>589</sup> LeBreton, Marianne E. (2014). Bogaert, Anthony F. (ed.). "Understanding Asexuality". *QED: A Journal in GLBTQ Worldmaking*. 1 (3): 175–177. doi:10.14321/qed.1.3.0175. ISSN 2327-1574. JSTOR 10.14321/qed.1.3.0175.

<sup>590</sup> Kinsey, Alfred C. (1953). *Sexual Behavior in the Human Female*. W.B. Saunders. ISBN 978-0-253-33411-4.

<sup>591</sup> Mary Zeiss Stange; Carol K. Oyster; Jane E. Sloan (February 23, 2011). *Encyclopedia of Women in Today's World*. SAGE Publications. p. 158. ISBN 978-1-4129-7685-5. Archived from the original on September 14, 2020.

<sup>592</sup> Justin J. Lehmiller (2017). *The Psychology of an Sexuality*. John Wiley & Sons. p. 250. ISBN 978-1119164708. Archived from the original on March 20, 2021.

<sup>593</sup> Kinsey, Alfred C. (1953). *Sexual Behavior in the Human Female*. W.B. Saunders. ISBN 978-0-253-33411-4.

the respondents replied that they had "never felt sexually attracted to anyone at all"<sup>594</sup>.

The study of this phenomenon was continued by Canadian sexuality researcher Anthony Bogaert in 2004, who explored the asexual demographic in a series of studies. Bogaert's research indicated that 1% of the British population does not experience sexual attraction, but he believed that the 1% figure was not an accurate reflection of the likely much larger percentage of the population that could be identified as asexual, noting that 30% of people contacted for the initial survey chose not to participate in the survey. Since less sexually experienced people are more likely to refuse to participate in studies about sexuality, and asexual tend to be less sexually experienced than sexual, it is likely that asexual were under-represented in the responding participants. The same study found the number of homosexuals and bisexuals combined to be about 1.1% of the population, which is much smaller than other studies indicate<sup>595</sup>.

Contrasting Bogaert's 1% figure, a study by Aicken et al., published in 2013, suggests that, based on Natsal-2 data from 2000 to 2001, the prevalence of asexuality in Britain is only 0.4% for the age range 16–44. This percentage indicates a decrease from the 0.9% figure determined from the Natsal-1 data collected on the same age-range a decade earlier<sup>596</sup>. A 2015 analysis by Bogaert also found a similar decline between the Natsal-1 and Natsal-2 data<sup>597</sup>. Aicken, Mercer, and Cassell found some evidence of ethnic differences among respondents who had not experienced sexual attraction; both men and women of Indian and Pakistani origin had a higher likelihood of reporting a lack of sexual attraction<sup>598</sup>.

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<sup>594</sup> Wellings, K. (1994). *Sexual Behaviour in Britain: The National Survey of Sexual Attitudes and Lifestyles*. Penguin Books.

<sup>595</sup> Bogaert, Anthony F. (2004). "Asexuality: prevalence and associated factors in a national probability sample". *Journal of Sex Research*. 41 (3): 279–87. doi:10.1080/00224490409552235. PMID 15497056. S2CID 41057104.

<sup>596</sup> Aicken, Catherine R. H.; Mercer, Catherine H.; Cassell, Jackie A. (May 1, 2013). "Who reports absence of sexual attraction in Britain? Evidence from national probability surveys". *Psychology & Sexuality*. 4 (2): 121–135. doi:10.1080/19419899.2013.774161. ISSN 1941-9899. S2CID 62275856. Archived from the original on September 23, 2019. Retrieved October 14, 2018.

<sup>597</sup> Bogaert, A. F. (2015). "Asexuality: What It Is and Why It Matters". *Journal of Sex Research*. 52 (4): 362–379. doi:10.1080/00224499.2015.1015713. PMID 25897566. S2CID 23720993.

<sup>598</sup> Aicken, Catherine R. H.; Mercer, Catherine H.; Cassell, Jackie A. (May 1, 2013). "Who reports absence of sexual attraction in Britain? Evidence from national probability surveys". *Psychology & Sexuality*. 4 (2): 121–135. doi:10.1080/19419899.2013.774161. ISSN 1941-9899. S2CID 62275856. Archived from the original on September 23, 2019.

In a survey conducted by YouGov in 2015, 1,632 British adults were asked to try to place themselves on the Kinsey scale. 1% of participants answered "No sexuality". The breakdown of participants was 0% men, 2% women; 1% across all age ranges<sup>599</sup>.

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<sup>599</sup> "1 in 2 young people say they are not 100% heterosexual" (PDF). August 16, 2015. See the full poll results. Archived from the original on April 9, 2021.



## CHAPTER THIRTY-EIGHT

### ASEXUALITY AS A SEXUAL ORIENTATION, MENTAL HEALTH AND CAUSE

There is significant debate over whether or not asexuality is a sexual orientation<sup>600</sup>. It has been compared and equated with **Hypoactive Sexual Desire Disorder (HSDD)**, a diagnosis which was in the DSM-4, in that both imply a general lack of sexual attraction to anyone; HSDD has been used to medicalize asexuality, but asexuality is generally not considered a disorder or a sexual dysfunction (such as anorgasmia, anhedonia, etc.), because it does not necessarily define someone as having a medical problem or problems relating to others socially<sup>601</sup>. Unlike people with HSDD, asexual people normally do not experience "marked distress" and "interpersonal difficulty" concerning feelings about their sexuality, or generally a lack of sexual arousal; asexuality is considered the lack or absence of sexual attraction as a life-enduring characteristic<sup>602</sup>

One study found that, compared to HSDD subjects, asexual reported lower levels of sexual desire, sexual experience, sex-related distress and depressive symptoms<sup>603</sup>. Researchers Richards and Barker report that asexual do not have disproportionate rates of alexithymia, depression, or personality disorders<sup>604</sup>. Some people, however, may identify as asexual even if their non-sexual state is explained by one or more of the aforementioned disorders<sup>605</sup>.

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<sup>600</sup> Bogaert, AF (April 2015). "Asexuality: What It Is and Why It Matters". *The Journal of Sex Research*. 52 (4): 362–379. doi:10.1080/00224499.2015.1015713. PMID 25897566. S2CID 23720993.

<sup>601</sup> Chain, CJ Delusion (2013). "Reconsidering Asexuality and Its Radical Potential" (PDF). *Feminist Studies*. 39 (2): 405. doi:10.1353/fem.2013.0054. S2CID 147025548. Archived (PDF) from the original on March 3, 2014.

<sup>602</sup> Christina Richards; Meg Barker (2013). *Sexuality and Gender for Mental Health Professionals: A Practical Guide*. SAGE. pp. 124–127. ISBN 978-1-4462-9313-3.

<sup>603</sup> Brotto, L. A.; Yule, M. A.; Gorzalka, B.B. (2015). "Asexuality: An Extreme Variant of Sexual Desire Disorder?". *The Journal of Sexual Medicine*. 12 (3): 646–660. doi:10.1111/jsm.12806. PMID 25545124. S2CID 30504509.

<sup>604</sup> Christina Richards; Meg Barker (2013). *Sexuality and Gender for Mental Health Professionals: A Practical Guide*. SAGE. pp. 124–127. ISBN 978-1-4462-9313-3. Archived from the original on July 28, 2014.

<sup>605</sup> Karli June Cerankowski; Megan Milks (2014). *Asexualities: Feminist and Queer Perspectives*. Routledge. p. 246. ISBN 978-1-134-69253-8.

Since the release of the DSM-5 in 2013 which split HSDD into diagnoses for female sexual arousal disorder and male hypoactive sexual desire disorder, both disorders have been criticized for similar issues to HSDD.[46] Although the DSM-5 mentions asexuality as an exclusion criterion for these two disorders, it is necessary for individuals to self-identify as asexual to meet the differential diagnosis and this requirement has been criticized for imposing a diagnosis on people who are possibly asexual but do not yet identify as such<sup>606</sup>. As of 2021, HSDD continues to be used to describe transgender women<sup>607</sup>.

The first study that gave empirical data about asexual was published in 1983 by Paula Nurius, concerning the relationship between sexual orientation and mental health<sup>608</sup>. 689 subjects—most of whom were students at various universities in the United States taking psychology or sociology classes—were given several surveys, including four clinical well-being scales. Results showed that asexuals were more likely to have low self-esteem and more likely to be depressed than members of other sexual orientations; 25.88% of heterosexuals, 26.54% bisexuals (called "ambisexuals"), 29.88% of homosexuals, and 33.57% of asexuals were reported to have problems with self-esteem. A similar trend existed for depression. Nurius did not believe that firm conclusions can be drawn from this for a variety of reasons<sup>609</sup>.

In a 2013 study, Yule et al. looked into mental health variances between Caucasian heterosexuals, homosexuals, bisexuals, and asexuals. The results of 203 male and 603 female participants were included in the findings. Yule et al. found that asexual male participants were more likely to report having a mood disorder than other males, particularly in comparison to the heterosexual participants. The same was found for female asexual participants over their heterosexual counterparts; however, non-asexual, non-heterosexual females had the highest rates. Asexual participants of both sexes were more likely to have anxiety disorders than heterosexual and non-heterosexual participants, as were they more likely than heterosexual participants to

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<sup>606</sup> Van Houdenhove, Ellen; Enzlin, Paul; Gijs, Luk (April 1, 2017). "A Positive Approach Toward Asexuality: Some First Steps, But Still a Long Way to Go". *Archives of Sexual Behavior*. 46 (3): 647–651. doi:10.1007/s10508-016-0921-1. ISSN 1573-2800. PMID 28091869. S2CID 20911875.

<sup>607</sup> Cocchetti, Carlotta; Ristori, Jiska; Mazzoli, Francesca; Vignozzi, Linda; Maggi, Mario; Fisher, Alessandra Daphne (November 2021). "Management of hypoactive sexual desire disorder in transgender women: a guide for clinicians". *International Journal of Impotence Research*. 33 (7): 703–709. doi:10.1038/s41443-021-00409-8. ISSN 1476-5489. PMID 33558671. S2CID 231850308.

<sup>608</sup> Elisabetta Ruspini; Megan Milks (2013). *Diversity in family life*. Policy Press. pp. 35–36. ISBN 978-1447300939. Archived from the original on July 26, 2020.

<sup>609</sup> Nurius, Paula (1983). "Mental Health Implications of Sexual Orientation". *The Journal of Sex Research*. 19 (2): 119–136. doi:10.1080/00224498309551174.

report having had recent suicidal feelings. Yule et al. hypothesized that some of these differences may be due to discrimination and other societal factors<sup>610</sup>.

With regard to sexual orientation categories, asexuality may be argued as not being a meaningful category to add to the continuum, and instead argued as the lack of a sexual orientation or sexuality<sup>611</sup>. Other arguments propose that asexuality is the denial of one's natural sexuality, and that it is a disorder caused by shame of sexuality, anxiety or sexual abuse, sometimes basing this belief on asexuals who masturbate or occasionally engage in sexual activity simply to please a romantic partner<sup>612</sup>. Within the context of sexual orientation identity politics, asexuality may pragmatically fulfill the political function of a sexual orientation identity category<sup>613</sup>.

The suggestion that asexuality is a sexual dysfunction is controversial among the asexual community. Those who identify as asexual usually prefer it to be recognized as a sexual orientation<sup>614</sup>. Scholars who argue that asexuality is a sexual orientation may point to the existence of different sexual preferences. They and many asexual people believe that the lack of sexual attraction is valid enough to be categorized as a sexual orientation<sup>615</sup>. The researchers argue that asexuals do not choose to have no sexual desire and generally start to find out their differences in sexual behaviors around adolescence. Because of these facts coming to light, it is reasoned that asexuality is more than a behavioral choice and is not something that can be cured like a disorder<sup>616</sup>. There is also analysis on whether identifying as asexual is becoming more popular.

Research on the etiology of sexual orientation when applied to asexuality has the definitional problem of sexual orientation not consistently being defined by

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<sup>610</sup> Yule, Morag A.; Brotto, Lori A.; Gorzalka, Boris B. (2013). "Mental Health and Interpersonal Functioning in Self-Identified Asexual Men and Women". *Psychology & Sexuality*. 4 (2): 136–151. doi:10.1080/19419899.2013.774162. S2CID 147120909.

<sup>611</sup> Bogaert, AF (April 2015). "Asexuality: What It Is and Why It Matters". *The Journal of Sex Research*. 52 (4): 362–379. doi:10.1080/00224499.2015.1015713. PMID 25897566. S2CID 23720993.

<sup>612</sup> Bridgeman, Shelley (August 5, 2007). "No sex please, we're asexual". *The New Zealand Herald*. Archived from the original on November 3, 2018.

<sup>613</sup> Chasin, CJ DeLuzio (2015). "Making Sense in and of the Asexual Community: Navigating Relationships and Identities in a Context of Resistance". *Journal of Community & Applied Social Psychology*. 25 (2): 167–180. doi:10.1002/casp.2203. ISSN 1099-1298.

<sup>614</sup> Marshall Cavendish, ed. (2010). "Asexuality". *Sex and Society*. Vol. 2. Marshall Cavendish. pp. 82–83. ISBN 978-0-7614-7906-2. Archived from the original on October 16, 2015.

<sup>615</sup> Decker, Julie Sondra (2015). *The Invisible Orientation: An Introduction to Asexuality*. New York City, New York: Skyhorse Publishing. ISBN 978-1-5107-0064-2. Archived from the original on July 26, 2020.

<sup>616</sup> Over, Ray; Koukounas, Eric (1995). "Habituation of Sexual Arousal: Product and Process". *Annual Review of Sex Research*. 6 (1): 187–223. doi:10.1016/S0301-0511(01)00096-5. PMID 11473795. S2CID 35865728. Archived from the original on September 23, 2019.

researchers as including asexuality<sup>617</sup>. While heterosexuality, homosexuality and bisexuality are usually, but not always, determined during the early years of preadolescent life, it is not known when asexuality is determined. "It is unclear whether these characteristics [viz., "lacking interest in or desire for sex"] are thought to be lifelong, or if they may be acquired."<sup>618</sup>

One criterion usually taken to be defining of a sexual orientation is that it is stable over time. In a 2016 analysis in the Archives of Sexual Behavior, Brotto et al. found "only weak support" for this criterion being met among asexual individuals<sup>619</sup>. An analysis of data from the National Longitudinal Study of Adolescent to Adult Health by Stephen Cranney found that, of 14[a] individuals who reported no sexual attraction in the study's third wave (when subjects ranged in age from 18 to 26), only 3 continued to identify in this way at the fourth wave, six years later<sup>620</sup>. However, Cranney notes that asexual identification in the third wave was still significant as a predictor of asexual identification in the subsequent wave. In a subsequent commentary, Cranney stated that the interpretation of this data was complicated by the absence of any "set quantitative standard for how long a sexual desire must last before it is considered stable or intrinsic enough to be considered an orientation"<sup>621</sup>.

## **Sexual activity and sexuality**

While some asexuals masturbate as a solitary form of release or have sex for the benefit of a romantic partner, others do not (see above)<sup>622</sup>. Fischer et al. reported that "scholars who study the physiology around asexuality suggest that people who are asexual are capable of genital arousal but may experience difficulty with so-called subjective arousal." This means that "while the body becomes aroused, subjectively – at the level of the mind and emotions – one does not experience arousal"<sup>623</sup>.

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<sup>617</sup> Garcia-Falgueras, A; Swaab, DF (2010). Sexual hormones and the brain: an essential alliance for sexual identity and sexual orientation. *Endocr Dev. Endocrine Development*. Vol. 17. pp. 22–35. doi:10.1159/000262525. ISBN 978-3-8055-9302-1. PMID 19955753.

<sup>618</sup> Prause, Nicole; Cynthia A. Graham (2007). "Asexuality: Classification and Characterization" (PDF). *Archives of Sexual Behavior*. 36 (3): 341–356. doi:10.1007/s10508-006-9142-3. PMID 17345167. S2CID 12034925.

<sup>619</sup> Brotto, L. A.; Yule, M. (2016). "Asexuality: Sexual Orientation, Paraphilia, Sexual Dysfunction, or None of the Above?". *Archives of Sexual Behavior*. 46 (3): 619–627. doi:10.1007/s10508-016-0802-7. PMID 27542079. S2CID 207092428.

<sup>620</sup> Cranney, Stephen (2016). "The Temporal Stability of Lack of Sexual Attraction across Young Adulthood". *Archives of Sexual Behavior*. 45 (3): 743–749. doi:10.1007/s10508-015-0583-4. PMC 5443108. PMID 26228992.

<sup>621</sup> Cranney, Stephen (2016). "Does Asexuality Meet the Stability Criterion for a Sexual Orientation?". *Archives of Sexual Behavior*. 46 (3): 637–638. doi:10.1007/s10508-016-0887-z. PMID 27815642. S2CID 40119928.

<sup>622</sup> Nancy L. Fischer; Steven Seidman (2016). *Introducing the New Sexuality Studies*. Routledge. p. 183. ISBN 978-1317449188. Archived from the original on July 26, 2020.

<sup>623</sup> Ibid.

The Kinsey Institute sponsored another small survey on the topic in 2007, which found that self-identified asexuals "reported significantly less desire for sex with a partner, lower sexual arousability, and lower sexual excitation but did not differ consistently from non-asexuals in their sexual inhibition scores or their desire to masturbate"<sup>624</sup>.

A 1977 paper titled *Asexual and Autoerotic Women: Two Invisible Groups*, by Myra T. Johnson, is explicitly devoted to asexuality in humans. [59] Johnson defines asexuals as those men and women "who, regardless of physical or emotional condition, actual sexual history, and marital status or ideological orientation, seem to prefer not to engage in sexual activity." She contrasts autoerotic women with asexual women: "The asexual woman ... has no sexual desires at all [but] the autoerotic woman ... recognizes such desires but prefers to satisfy them alone." Johnson's evidence is mostly letters to the editor found in women's magazines written by asexual/autoerotic women. She portrays them as invisible, "oppressed by a consensus that they are non-existent," and left behind by both the sexual revolution and the feminist movement. Johnson argued that society either ignores or denies their existence or insists they must be ascetic for religious reasons, neurotic, or asexual for political reasons<sup>625</sup>.

In a study published in 1979 in volume five of *Advances in the Study of Affect*, as well as in another article using the same data and published in 1980 in the *Journal of Personality and Social Psychology*, Michael D. Storms of the University of Kansas outlined his own reimagining of the Kinsey scale. Whereas Kinsey measured sexual orientation based on a combination of actual sexual behavior and fantasizing and eroticism, Storms used only fantasizing and eroticism. Storms, however, placed hetero-eroticism and homo-eroticism on separate axes rather than at two ends of a single scale; this allows for a distinction between bisexuality (exhibiting both hetero- and homo-eroticism in degrees comparable to hetero- or homosexuals, respectively) and asexuality (exhibiting a level of homo-eroticism comparable to a heterosexual and a level of hetero-eroticism comparable to a homosexual, namely, little to none). This type of scale accounted for asexuality for the first time<sup>626</sup>. Storms conjectured that many researchers following Kinsey's model could be mis-categorizing asexual

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<sup>624</sup> Prause, Nicole; Cynthia A. Graham (2007). "Asexuality: Classification and Characterization" (PDF). *Archives of Sexual Behavior*. 36 (3): 341–356. doi:10.1007/s10508-006-9142-3

<sup>625</sup> "Asexual and Autoerotic Women: Two Invisible Groups" found in ed. Gochros, H. L.; J. S. Gochros (1977). *The Sexually Oppressed*. Associated Press. ISBN 978-0-8096-1915-3

<sup>626</sup> Karli June Cerankowski; Megan Milks (2014). *Asexualities: Feminist and Queer Perspectives*. Routledge. p. 113. ISBN 978-1-134-69253-8. Archived from the original on July 26, 2020.

subjects as bisexual, because both were simply defined by a lack of preference for gender in sexual partners<sup>627</sup>.

In a 1983 study by Paula Nurius, which included 689 subjects (most of whom were students at various universities in the United States taking psychology or sociology classes), the two-dimensional fantasizing and eroticism scale was used to measure sexual orientation. Based on the results, respondents were given a score ranging from 0 to 100 for hetero-eroticism and from 0 to 100 for homo-eroticism. Respondents who scored lower than 10 on both were labeled "asexual". This consisted of 5% of the males and 10% of the females. Results showed that asexuals reported much lower frequency and desired frequency of a variety of sexual activities including having multiple partners, anal sexual activities, having sexual encounters in a variety of locations, and autoerotic activities<sup>628</sup>.

## **Feminist research**

The field of asexuality studies is still emerging as a subset of the broader field of gender and sexuality studies. Notable researchers who have produced significant works in asexuality studies include KJ Cerankowski, Ela Przybylo, and CJ DeLuzio Chasin.

A 2010 paper written by KJ Cerankowski and Megan Milks, titled *New Orientations: Asexuality and Its Implications for Theory and Practice*, suggests that asexuality may be somewhat of a question in itself for the studies of gender and sexuality<sup>629</sup>. Cerankowski and Milks have suggested that asexuality raises many more questions than it resolves, such as how a person could abstain from having sex, which is generally accepted by society to be the most basic of instincts<sup>630</sup>. Their *New Orientations* paper states that society has deemed "[LGBT and] female sexuality as empowered or repressed. The asexual movement challenges that assumption by challenging many of the basic tenets of pro-sex feminism [in which it is] already defined as repressive or anti-sex sexualities." In addition to accepting self-identification as asexual, the Asexual Visibility and Education Network has

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<sup>627</sup> Storms, Michael D. (1980). "Theories of Sexual Orientation" (PDF). *Journal of Personality and Social Psychology*. 38 (5): 783–792. doi:10.1037/0022-3514.38.5.783. Archived (PDF) from the original on September 23, 2019.

<sup>628</sup> Nurius, Paula (1983). "Mental Health Implications of Sexual Orientation". *The Journal of Sex Research*. 19 (2): 119–136. doi:10.1080/00224498309551174.

<sup>629</sup> Aleksandra Hultquist; Elizabeth J. Mathews (2016). *New Perspectives on Delarivier Manley and Eighteenth-Century Literature: Power, Sex, and Text*. Routledge. p. 123. ISBN 978-1317196921. Archived from the original on September 23, 2019.

<sup>630</sup> Karli June Cerankowski; Megan Milks (2014). *Asexualities: Feminist and Queer Perspectives*. Routledge. pp. 1–410. ISBN 978-1-134-69253-8. Archived from the original on July 26, 2020.

formulated asexuality as a biologically determined orientation. This formula, if dissected scientifically and proven, would support researcher Simon LeVay's blind study of the hypothalamus in gay men, women, and straight men, which indicates that there is a biological difference between straight men and gay men<sup>631</sup>.

In 2014, Cerankowski and Milks edited and published *A sexualities: Feminist and Queer Perspectives*, a collection of essays intended to explore the politics of asexuality from a feminist and queer perspective. [65] It is broken into the introduction and then six parts: *Theorizing Asexuality: New Orientations*; *The Politics of Asexuality*; *Visualizing Asexuality in Media Culture*; *Asexuality and Masculinity*; *Health, Disability, and Medicalization*; and *Reading Asexually: Asexual Literary Theory*. Each part contains two to three papers on a given aspect of asexuality research. One such paper is written by Ela Przybylo, another name that is becoming common in asexual scholarly literature. Her article, with regard to the Cerankowski and Milks anthology, focuses on accounts by self-identified male asexuals, with a particular focus on the pressures men experience towards having sex in dominant Western discourse and media. Three men living in Southern Ontario, Canada, were interviewed in 2011, and Przybylo admits that the small sample-size means that her findings cannot be generalized to a greater population in terms of representation, and that they are "exploratory and provisional", especially in a field that is still lacking in theorizations. All three interviewees addressed being affected by the stereotype that men have to enjoy and want sex in order to be "real men"<sup>632</sup>.

Another of Przybylo's works, *Asexuality and the Feminist Politics of "Not Doing It"*, published in 2011, takes a feminist lens to scientific writings on asexuality. Przybylo argues that asexuality is made possible only through the Western context of "sexual, coital, and heterosexual imperatives". She addresses earlier works by Dana Densmore, Valerie Solanas, and Breanne Fahs, who argued for "asexuality and celibacy" as radical feminist political strategies against patriarchy. While Przybylo does make some distinctions between asexuality and celibacy, she considers blurring the lines between the two to be productive for a feminist understanding of the topic<sup>633</sup>. In her 2013 article, "Producing Facts: Empirical Asexuality and the

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<sup>631</sup> Myers, David G. (2010). *Psychology* (9th ed.). New York: Worth Publishers. p. 474. ISBN 978-1-4292-1597-8.

<sup>632</sup> Przybylo, Ela. "Masculine Doubt and Sexual Wonder: Asexually-Identified Men Talk About Their (A)sexualities" from Karli June Cerankowski and Megan Milks, eds., *A sexualities: Feminist and Queer Perspectives* (Routledge, 2014), 225-246.

<sup>633</sup> Przybylo, Ela (2011). *Asexuality and the Feminist Politics of 'Not Doing It'* (MA thesis). Edmonton, Alberta: University of Alberta. doi:10.7939/R3RB04.

Scientific Study of Sex", Przybylo distinguishes between two different stages of asexual research: that of the late 1970s to the early 1990s, which often included a very limited understanding of asexuality, and the more recent revisiting of the subject which she says began with Bogaert's 2004 study and has popularized the subject and made it more "culturally visible". In this article, Przybylo once again asserts the understanding of asexuality as a cultural phenomenon, and continues to be critical of its scientific study<sup>634</sup>. Przybylo published a book, *Asexual Erotics*, in 2019. In this book, she argued that asexuality poses a "paradox" in that is a sexual orientation that is defined by the absence of sexual activity entirely. She distinguishes between a sociological understanding of asexuality and a cultural understanding, which she said could include "the open mesh of possibilities, gaps, overlaps, dissonances and resonances"<sup>635</sup>.

CJ DeLuzio Chasin states in *Reconsidering Asexuality and Its Radical Potential* that academic research on asexuality "has positioned asexuality in line with essentialist discourses of sexual orientation" which is troublesome as it creates a binary between asexuals and persons who have been subjected to psychiatric intervention for disorders such as Hypoactive Sexual Desire Disorder<sup>636</sup>. Chasin says that this binary implies that all asexuals experience a lifelong (hence, enduring) lack of sexual attraction, that all non-asexuals who experience a lack of sexual desire experience distress over it, and that it pathologizes asexuals who do experience such distress<sup>637</sup>. As Chasin says such diagnoses as HSDD act to medicalize and govern women's sexuality, the article aims to "unpack" problematic definitions of asexuality that are harmful to both asexuals and women alike. Chasin states that asexuality has the power to challenge commonplace discourse of the naturalness of sexuality, but that the unquestioned acceptance of its current definition does not allow for this. Chasin also argues there and elsewhere in *Making Sense in and of the Asexual Community: Navigating Relationships and Identities in a Context of Resistance* that it is important to interrogate why someone might be distressed about low sexual desire. Chasin further argues that clinicians have an ethical obligation to avoid treating low sexual

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<sup>634</sup> Przybylo, Ela (2013). "Producing Facts: Empirical Asexuality and the Scientific Study of Sex". *Feminism & Psychology*. 23 (2): 224–242. doi:10.1177/0959353512443668. S2CID 144394132.

<sup>635</sup> Przybylo, Ela (2019). *Asexual erotic's: intimate readings of compulsory sexuality*. Columbus: Ohio State University. pp. 1–32. ISBN 978-0-8142-1404-6. OCLC 1096288008.

<sup>636</sup> Chasin, CJ DeLuzio (2013). "Reconsidering Asexuality and Its Radical Potential" (PDF). *Feminist Studies*. 39 (2): 405. doi:10.1353/fem.2013.0054. S2CID 147025548. Archived (PDF) from the original on March 3, 2014.

<sup>637</sup> Ibid.

desire per se as pathological, and to discuss asexuality as a viable possibility (where relevant) with clients presenting clinically with low sexual desire<sup>638</sup>.

## **Intersections with race and disability**

Scholar Ianna Hawkins Owen writes, "Studies of race have revealed the deployment of asexuality in the dominant discourse as an ideal sexual behavior to justify both the empowerment of whites and the subordination of blacks to uphold a racialized social and political system."<sup>639</sup> This is partly due to the simultaneous sexualization and de-sexualization of black women in the Mammy archetype, as well as by how society de-sexualizes certain racial minorities, as part of a bid to claim superiority by Whites. This is co-existent with the sexualization of black female bodies in the Jezebel archetype, both utilized to justify slavery and enable further control. Owen also criticizes the "...investment in constructing asexuality upon a white racial rubric (who else can claim access to being just like everyone else?)<sup>640</sup>".

Eunjung Kim comments on the intersections between disability or Crip theory and asexuality, saying disabled people are more frequently de-sexualized<sup>641</sup>. Kim compares the idea of frigid women to asexuality and analyzes its history from a queer, Crip, and feminist angle. Scholar Karen Cuthbert comments on "providing the first empirically grounded discussion of this intersection of asexuality and disability (and to a lesser extent gender and 'race')." <sup>642</sup>

## **Bogaert's psychological work and theories**

Bogaert argues that understanding asexuality is of key importance to understanding sexuality in general. For his work, Bogaert defines asexuality as "a lack of lustful inclinations/feelings directed toward others," a definition that he argues is relatively new in light of recent theory and empirical work on sexual orientation. This definition of asexuality also makes clear this distinction between behavior and

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<sup>638</sup> Chasin, CJ DeLuzio (2015). "Making Sense in and of the Asexual Community: Navigating Relationships and Identities in a Context of Resistance". *Journal of Community & Applied Social Psychology*. 25 (2): 167–180. doi:10.1002/casp.2203. ISSN 1099-1298.

<sup>639</sup> Hawkins Owen, Ianna (2014). *A sexuality: feminist and queer perspectives*. Cerankowski, Karli June., Milks, Megan. New York. ISBN 978-0-415-71442-6. OCLC 863044056.

<sup>640</sup> Owen, Ianna Hawkins (November 2018). "Still, nothing: Mammy and black asexual possibility". *Feminist Review*. 120 (1): 70–84. doi:10.1057/s41305-018-0140-9. ISSN 0141-7789. S2CID 149999756.

<sup>641</sup> Kim, Eunjung (2014). *A sexualities: feminist and queer perspectives*. Cerankowski, Karli June., Milks, Megan. New York. ISBN 978-0-415-71442-6. OCLC 863044056.

<sup>642</sup> Cuthbert, Karen (2017). "You Have to be Normal to be Abnormal: An Empirically Grounded Exploration of the Intersection of Asexuality and Disability". *Sociology*. 51 (2): 241–257. doi:10.1177/0038038515587639. ISSN 0038-0385. S2CID 141976966. Archived from the original on March 7, 2022. Retrieved March 7, 2022 – via SAGE Publications.

desire, for both asexuality and celibacy, although Bogaert also notes that there is some evidence of reduced sexual activity for those who fit this definition. He further distinguishes between desire for others and desire for sexual stimulation, the latter of which is not always absent for those who identify as asexual, although he acknowledges that other theorists define asexuality differently and that further research needs to be done on the "complex relationship between attraction and desire"<sup>643</sup>. Another distinction is made between romantic and sexual attraction, and he draws on work from developmental psychology, which suggests that romantic systems derive from attachment theory while sexual systems "primarily reside in different brain structures"<sup>644</sup>.

Concurrent with Bogaert's suggestion that understanding asexuality will lead to a better understanding of sexuality overall, he discusses the topic of asexual masturbation to theorize on asexuals and "'target-oriented' paraphilia, in which there is an inversion, reversal, or disconnection between the self and the typical target/object of sexual interest/attraction" (such as attraction to oneself, labelled "automonosexualism")<sup>645</sup>.

In an earlier 2006 article, Bogaert acknowledges that a distinction between behavior and attraction has been accepted into recent conceptualizations of sexual orientation, which aids in positioning asexuality as such.[76] He adds that, by this framework, "(subjective) sexual attraction is the psychological core of sexual orientation", and also addresses that there may be "some skepticism in [both] the academic and clinical communities" about classifying asexuality as a sexual orientation, and that it raises two objections to such a classification: First, he suggests that there could be an issue with self-reporting (i.e., "a 'perceived' or 'reported' lack of attraction", particularly for definitions of sexual orientation that consider physical arousal over subjective attraction), and, second, he raises the issue of overlap between absent and very low sexual desire, as those with an extremely low desire may still have an "underlying sexual orientation" despite potentially identifying as asexual<sup>646</sup>.

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<sup>643</sup> Bogaert, A. F. (2015). "Asexuality: What It Is and Why It Matters". *Journal of Sex Research*. 52 (4): 362–379. doi:10.1080/00224499.2015.1015713. PMID 25897566. S2CID 23720993.

<sup>644</sup> Ibid.

<sup>645</sup> Bogaert, A. F. (2015). "Asexuality: What It Is and Why It Matters". *Journal of Sex Research*. 52 (4): 362–379. doi:10.1080/00224499.2015.1015713. PMID 25897566. S2CID 23720993.

<sup>646</sup> Ibid.

## Community

The history of the asexual community is presently undocumented in academic work<sup>647</sup>. Although several private websites for those who fall under the modern definition of asexuality existed online in the 1990s<sup>648</sup>, scholars believe that it was not until the early 21st century when a community of self-identified asexuals began to form, aided by the popularity of online communities<sup>649</sup>. Several small communities existed online, such as the "Leather Spinsters", "Nonolibidoism Society", and "Haven for the Human Amoeba", documented by Volkmar Saguache<sup>650</sup>. In 2001, activist David Jay founded the Asexual Visibility and Education Network (AVEN), whose stated goals are "creating public acceptance and discussion of asexuality and facilitating the growth of an asexual community".<sup>651</sup>

Some asexual believe that participation in an asexual community is an important resource, as they often report feeling ostracized in broader society<sup>652</sup>. Communities such as AVEN can be beneficial to those in search of answers when questioning their sexual orientation, such as providing support if one feels their lack of sexual attraction constitutes a disease. Online asexual communities can also serve to inform others about asexuality<sup>653</sup>.

However, affiliating with online communities among asexual people vary. Some question the purpose of online communities, while others heavily depend on them for support. According to Elizabeth Abbott, asexuality has always been present in society, though asexual people kept a lower profile. She further stated that while the failure to consummate marriage was seen as an insult to the sacrament of marriage in medieval times, and has been sometimes used as grounds to terminate a marriage, though asexuality has never been illegal, unlike homosexuality. However, the recent

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<sup>647</sup> Carrigan, Mark; Gupta, Kristina; Morrison, Todd G. (2015). *Asexuality and Sexual Normativity: An Anthology*. Routledge. ISBN 978-0-415-73132-4. Archived from the original on July 26, 2020.

<sup>648</sup> Volkmar Sigusch. "Sexualitäten: Eine kritische Theorie in 99 Fragmenten". 2013. Campus Verlag [de].

<sup>649</sup> Abbie E. Goldberg (2016). *The SAGE Encyclopedia of LGBTQ Studies*. SAGE Publications. p. 92. ISBN 978-1483371290. Archived from the original on July 26, 2020. Retrieved October 5, 2017. "[...] The sociological literature has stressed the novelty of asexuality as a distinctive form of social identification that emerged in the early 21st century."

<sup>650</sup> *Ibid.*

<sup>651</sup> Swash, Rosie (February 25, 2012). "Among the asexuals". *The Guardian*. Archived from the original on February 11, 2021.

<sup>652</sup> MacNeela, Pádraig; Murphy, Aisling (December 30, 2014). "Freedom, Invisibility, and Community: A Qualitative Study of Self-Identification with Asexuality". *Archives of Sexual Behavior*. 44 (3): 799–812. doi:10.1007/s10508-014-0458-0. ISSN 0004-0002. PMID 25548065. S2CID 23757013.

<sup>653</sup> Carrigan, Mark (2011). "There's more to life than sex? Differences and commonality within the asexual community". *Sexualities*. 14 (4): 462–478. doi:10.1177/1363460711406462. S2CID 146445274.

growth of online communication and social networking as facilitated the growth of a community built upon a common asexual identity<sup>654</sup>.

## **Symbols**

The asexual pride flag features four horizontal stripes: black, gray, white, and purple, from top to bottom

A black ring may be worn on one's right middle finger to indicate asexuality

In 2009, AVEN members participated in the first asexual entry into an American pride parade at the San Francisco Pride Parade<sup>655</sup>. In 2010, after a period of debate surrounding the existence of a pride flag to represent asexuality, as well as a system to create one, the asexual pride flag was formally announced. The final design was a popular design, and received the most votes in an online open-access poll<sup>656</sup>. The flag's colors—four horizontal stripes of black, gray, white, and purple from top to bottom—represent asexuality, gray-asexuality, all sexuality, and community, respectively<sup>657</sup>. They have also since been used as a representation of asexuality as a whole. [83] Some members of the asexual community additionally opt to wear a black ring on their right middle finger, colloquially known as an "ace ring", as a form of identification<sup>658</sup>. Some asexual use ace playing card suits as identities of their romantic orientation, such as the ace of spades for romanticism and the ace of hearts for non-romanticism<sup>659</sup>.

## **Asexuality Events**

On June 29, 2014, AVEN organized the second International Asexuality Conference, as an affiliate World Pride event in Toronto. The first was held at the 2012 World Pride in London<sup>660</sup>. The second such event, which was attended by

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<sup>654</sup> Duenwald, Mary (July 9, 2005). "For Them, Just Saying No Is Easy". *The New York Times*. Archived from the original on October 20, 2014.

<sup>655</sup> Anneli, Rufus (June 22, 2009). "Stuck. Asexuals at the Pride Parade". *Psychology Today*. Archived from the original on March 9, 2022.

<sup>656</sup> "Asexuality – Redefining Love and Sexuality". *recultured*. January 9, 2012. Archived from the original on June 17, 2018.

<sup>657</sup> "Asexual". *UCLA Lesbian Gay Bisexual Transgender Resource center*. Archived from the original on September 4, 2017.

<sup>658</sup> Chasin, CJ DeLuzio (2013). "Reconsidering Asexuality and Its Radical Potential". *Feminist Studies*. 39 (2): 405–426. doi:10.1353/fem.2013.0054. S2CID 147025548.

<sup>659</sup> Decker, Julie S. (2015). *The Invisible Orientation: An Introduction to Asexuality*. Simon and Schuster. ISBN 9781510700642. Archived from the original on April 12, 2021.

<sup>660</sup> Shira Tarrant (June 19, 2015). *Gender, Sex, and Politics: In the Streets and Between the Sheets in the 21st Century*. Taylor & Francis. pp. 278–. ISBN 978-1-317-81475-7. Archived from the original on February 13, 2021.

around 250 people, was the largest gathering of asexuals to date<sup>661</sup>. The conference included presentations, discussions, and workshops on topics such as research on asexuality, asexual relationships, and intersecting identities.

Ace Week (formerly Asexual Awareness Week) occurs on the last full week in October. It is an awareness period that was created to celebrate and bring awareness to asexuality (including grey asexuality)<sup>662</sup>. It was founded by Sara Beth Brooks in 2010<sup>663</sup>.

International Asexuality Day (IAD) is an annual celebration of the asexuality community that takes place on 6 April<sup>664</sup>. The intention for the day is "to place a special emphasis on the international community, going beyond the anglophone and Western sphere that has so far had the most coverage"<sup>665</sup>. An international committee spent a little under a year preparing the event, as well as publishing a website and press materials<sup>666</sup>. This committee settled on the date of 6 April to avoid clashing with as many significant dates around the world as possible, although this date is subject to review and may change in future years<sup>667</sup>. The first International Asexuality Day was celebrated in 2021 and involved asexuality organizations from at least 26 countries<sup>668</sup>. Activities included virtual meetups, advocacy programs both online and offline, and the sharing of stories in various art-forms<sup>669</sup>.

## **Asexuality and Religion**

Studies have found no significant statistical correlation between religion and asexuality, with asexuality occurring with equal prevalence in both religious and irreligious individuals<sup>670</sup>. Asexuality is more common among celibate clergy, as

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<sup>661</sup> "World Pride Toronto: Asexuals march in biggest numbers yet". Toronto Star. June 23, 2014. Archived from the original on November 18, 2021.

<sup>662</sup> "AAW – About Us". asexualawarenessweek.com. Archived from the original on January 7, 2016.

<sup>663</sup> "About [prerelease]". asexualawarenessweek.com. Archived from the original on September 4, 2017.

<sup>664</sup> "International Asexuality Day". International Asexuality Day (IAD).

<sup>665</sup> "FAQ". International Asexuality Day (IAD). Archived from the original on March 7, 2021.

<sup>666</sup> "Redefining Perceptions of Asexuality with Yasmin Benoit". noctismag.com. Archived from the original on April 6, 2021. Retrieved April 8, 2021.

<sup>667</sup> Flood, Rebecca (April 6, 2021). "Asexual Meaning as First International Asexuality Day Celebrated Around the World". Newsweek. Archived from the original on April 6, 2021.

<sup>668</sup> O'Dell, Liam (April 6, 2021). "What is International Asexuality Day?". The Independent. Archived from the original on April 6, 2021.

<sup>669</sup> "In Nepal's growing queer movement, here's how asexuals are trying to amplify their voice". kathmandupost.com. Archived from the original on April 9, 2021.

<sup>670</sup> Aicken, Catherine R. H.; Mercer, Catherine H.; Cassell, Jackie A. (September 7, 2015). "Who reports absence of sexual attraction in Britain? Evidence from national probability surveys". In Carrigan, Mark; Gupta, Kristina;

non-asexual are more likely to be discouraged by vows of chastity.<sup>671</sup> According to Aicken et al., a higher proportion of Muslim respondents reported that they did not experience any form of sexual attraction compared to Christian respondents<sup>672</sup>.

In **Matthew 19:11–12**, Jesus mentions "For there are eunuchs who were born that way, and there are eunuchs who have been made eunuchs by others<sup>673</sup> – and there are those who choose to live like eunuchs to the sake of the kingdom of heaven<sup>674</sup>." Some biblical exegetes have interpreted the "eunuchs who were born that way" as including asexual. While Christianity has not directly mentioned asexuality, it has revered celibacy; the apostle Paul, writing as a celibate, has been described by some writers as asexual<sup>675</sup>. He writes in **1 Corinthians 7:6–9**,

I wish that all men were as I am. But each man has his own gift from God; one has this gift, another has that. Now to the unmarried and the widows I say: It is good for them to stay unmarried, as I am. But if they cannot control themselves, they should marry, for it is better to marry than to burn with passion.

## **Discrimination and legal protections**

A 2012 study published in *Group Processes & Intergroup Relations* reported that asexual are evaluated more negatively in terms of prejudice, dehumanization and discrimination than other sexual minorities, such as gay men, lesbians and bisexuals. Both homosexual and heterosexual people thought of asexual as not only cold, but also animalistic and unrestrained<sup>676</sup>. A different study, however, found little

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Morrison, Todd G. (eds.). *Asexuality and Sexual Normativity: An Anthology*. New York City, New York and London, England: Routledge. pp. 22–27. ISBN 978-0-415-73132-4. Archived from the original on July 26, 2020. Retrieved January 10, 2018.

<sup>671</sup> Bogaert, Anthony (2012). *Understanding Asexuality*. Lanham, Maryland: Rowman and Littlefield Publishers, Inc. pp. 36–39. ISBN 978-1-4422-0099-9. Archived from the original on July 26, 2020. Retrieved January 10, 2018.

<sup>672</sup> Aicken, Catherine R. H.; Mercer, Catherine H.; Cassell, Jackie A. (September 7, 2015). "Who reports absence of sexual attraction in Britain? Evidence from national probability surveys". In Carrigan, Mark; Gupta, Kristina; Morrison, Todd G. (eds.). *Asexuality and Sexual Normativity: An Anthology*. New York City, New York and London, England: Routledge. pp. 22–27. ISBN 978-0-415-73132-4. Archived from the original on July 26, 2020. Retrieved January 10, 2018.

<sup>673</sup> Cole, William Graham (2015) [1955]. *Sex in Christianity and Psychoanalysis*. Routledge Library Editions: Psychoanalysis. New York City, New York and London, England: Routledge. p. 177. ISBN 978-1138951792. Archived from the original on September 23, 2019.

<sup>674</sup> Kaoma, Kapya (2018). *Christianity, Globalization, and Protective Homophobia: Democratic Contestation of Sexuality in Sub-Saharan Africa*. Boston, Massachusetts: Palgrave Macmillan. pp. 159–160. ISBN 978-3-319-66341-8.

<sup>675</sup> Zuckerman, Phil (2003). *An Invitation to Sociology of Religion*. New York City, New York and London, England: Routledge. p. 111. ISBN 978-0-415-94125-9. Archived from the original on September 23, 2019.

<sup>676</sup> MacInnis, Cara C.; Hodson, Gordon (2012). "Intergroup bias toward 'Group X': Evidence of prejudice, dehumanization, avoidance, and discrimination against asexual". *Group Processes & Intergroup Relations*. 15 (6): 725–743. doi:10.1177/1368430212442419. S2CID 3056711.

evidence of serious discrimination against asexual because of their asexuality<sup>677</sup>. Asexual activist, author, and blogger Julie Decker has observed that sexual harassment and violence, such as corrective rape, commonly victimizes the asexual community. Sociologist Mark Carrigan sees a middle ground, arguing that while asexual do often experience discrimination, it is not of a phobic nature but "more about marginalization because people genuinely don't understand asexuality<sup>678</sup>."

Asexuals also face prejudice from the LGBT community. Many LGBT people assume that anyone who is not homosexual or bisexual must be straight and frequently exclude asexual from their definitions of queer. Although many well-known organizations devoted to aiding LGBTQ communities exist, these organizations generally do not reach out to asexual and do not provide library materials about asexuality<sup>679</sup>. Upon coming out as asexual, activist Sara Beth Brooks was told by many LGBT people that asexual are mistaken in their self-identification and seek undeserved attention within the social justice movement<sup>680</sup>. Other LGBT organizations, such as The Trevor Project and the National LGBTQ Task Force, explicitly include asexual because they are non-heterosexual and can therefore be included in the definition of queer<sup>681</sup>. Some organizations now add an A to the LGBTQ acronym to include asexual; however, this is still a controversial topic in some queer organizations<sup>682</sup>.

In some jurisdictions, asexual have legal protections. While Brazil bans since 1999 whatever pantheonization or attempted treatment of sexual orientation by mental health professionals through the national ethical code<sup>683</sup>, the U.S. state of New York has labeled asexual as a protected class<sup>684</sup>. However, asexuality does not typically attract the attention of the public or major scrutiny; therefore, it has not been the subject of legislation as much as other sexual orientations have.

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<sup>677</sup> Gazzola, Stephanie B, and Melanie A. Morrison. "Asexuality: An emergent sexual orientation". *Sexual Minority Research in the New Millennium*.

<sup>678</sup> Wallis, Lucy (January 17, 2012). "What is it like to be asexual?". BBC News.

<sup>679</sup> Decker, Julie Sondra (2015). *The Invisible Orientation: An Introduction to Asexuality*. New York City, New York: Skyhorse Publishing. ISBN 978-1-5107-0064-2. Archived from the original on July 26, 2020.

<sup>680</sup> Mosbergen, Dominique (June 20, 2013). "Battling Asexual Discrimination, Sexual Violence, and Corrective Rape". HuffPost. Archived from the original on August 18, 2013.

<sup>681</sup> The Trevor Project - FAQ about asexuality Archived April 6, 2021, at the Way back Machine, The Trevor Project website.

<sup>682</sup> Mosbergen, Dominique (June 21, 2013). "LGBT, Asexual Communities Clash over Ace Inclusion". HuffPost. Archived from the original on March 5, 2018.

<sup>683</sup> Psychiatrist Jairo Bouer talks about the "collateral effects" of "gay cure" bill Archived January 15, 2014, at the Wayback Machine (in Portuguese)

<sup>684</sup> The Sexual Orientation Non-Discrimination Act ("SONDA") (State of New York, Office of the Attorney General, Civil Rights Bureau)

## **In media**

Sir Arthur Conan Doyle intentionally portrayed his character Sherlock Holmes as what would today be classified as asexual<sup>685</sup>.

Asexual representation in media is limited and rarely openly acknowledged or confirmed by creators or authors<sup>686</sup>. In works composed prior to the beginning of the twenty-first century, characters are generally automatically assumed to be sexual and the existence of a character's sexuality is usually never questioned<sup>687</sup>. Sir Arthur Conan Doyle portrayed his character Sherlock Holmes as what would today be classified as asexual, with the intention to characterize him as solely driven by intellect and immune to the desires of the flesh<sup>688</sup>. The Archie Comics character Jughead Jones was likely intended by his creators as an asexual foil to Archie's excessive heterosexuality, but, over the years, this portrayal shifted, with various iterations and reboots of the series implying that he is either gay or heterosexual. In 2016, he was confirmed to be asexual in the New Riverdale Jughead comics<sup>689</sup>. The writers of the 2017 television show *Riverdale*, based on the Archie comics, chose to depict Jughead as a heterosexual despite pleas from both fans and Jughead actor Cole Sprouse to retain Jughead's asexuality and allow the asexual community to be represented alongside the gay and bisexual communities, both represented in the show<sup>690</sup>. This decision sparked conversations about deliberate asexual erasure in the media and its consequences, especially on younger viewers<sup>691</sup>.

Anthony Bogaert has classified Gilligan, the eponymous character of the 1960s television series *Gilligan's Island*, as asexual. [102] Bogaert suggests that the producers of the show likely portrayed him in this way to make him more relatable to young male viewers of the show who had not yet reached puberty and had therefore presumably not yet experienced sexual desire. Gilligan's asexual nature also allowed the producers to orchestrate intentionally comedic situations in which Gilligan spurns the advances of attractive females. Films and television shows

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<sup>685</sup> Bogaert, Anthony (2012). *Understanding Asexuality*. Lanham, Maryland: Rowman and Littlefield Publishers, Inc. pp. 36–39. ISBN 978-1-4422-0099-9. Archived from the original on July 26, 2020.

<sup>686</sup> Zuckerman, Phil (2003). *An Invitation to Sociology of Religion*. New York City, New York and London, England: Routledge. p. 111. ISBN 978-0-415-94125-9. Archived from the original on September 23, 2019.

<sup>687</sup> Jackson, Stevi, and Sue Scott. *Theorizing Sexuality*. Maidenhead: Open UP, 2010. Web. May 2, 2016.

<sup>688</sup> Bogaert, Anthony (2012). *Understanding Asexuality*. Lanham, Maryland: Rowman and Littlefield Publishers, Inc. pp. 36–39. ISBN 978-1-4422-0099-9.

<sup>689</sup> "Archie Comic Reveals Jughead Is Asexual". *Vulture*. February 8, 2016.

<sup>690</sup> "Cole Sprouse Is Bummed That RIVERDALE's Jughead Isn't Asexual | Nerdist". *Nerdist*. January 27, 2017. Archived from the original on June 26, 2018.

<sup>691</sup> Revanche, Jonno. "Riverdale's' Asexual Erasure Can Be More Harmful Than You Think". *Teen Vogue*. Archived from the original on March 4, 2021.

frequently feature attractive, but seemingly asexual, female characters who are "converted" to heterosexuality by the male protagonist by the end of the production. These unrealistic portrayals reflect a heterosexual male belief that all asexual women secretly desire men<sup>692</sup>.

Asexuality as a sexual identity, rather than as a biological entity, became more widely discussed in the media in the beginning of the twenty-first century<sup>693</sup>. The Fox Network series *House* represented an "asexual" couple in the episode "Better Half" (2012). However, this representation has been questioned by <sup>694</sup>members of the asexual community, as the episode concluded that the man simply had a pituitary tumor that reduced his sex drive and the woman was only pretending to be asexual to please him, leading to controversy over the representation and a change.org petition for Fox Network to reconsider how it represents asexual characters in the future, stating it "represented asexuality very poorly by attributing it to both medical illness and deception<sup>695</sup>." Other fictional asexual characters include SpongeBob and his best friend Patrick from *SpongeBob SquarePants* and Todd Chavez from *BoJack Horseman* (generally well-accepted by the asexual community as positive representation)<sup>696</sup>.

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<sup>692</sup> Bogaert, Anthony (2012). *Understanding Asexuality*. Lanham, Maryland: Rowman and Littlefield Publishers, Inc. pp. 36–39. ISBN 978-1-4422-0099-9. Archived from the original on July 26, 2020.

<sup>693</sup> Kelemen, Erick. "Asexuality". *Encyclopedia of Sex and Gender*. Ed. Fedwa Malti-Douglas. Vol. 1. Detroit: Macmillan Reference USA, 2007. 103. Gale Virtual Reference Library. Web. May 2, 2016.

<sup>694</sup> "SpongeBob is asexual, says creator". *Asexual Visibility and Education Network*. Archived from the original on July 26, 2020.

<sup>695</sup> Clark-Flory, Tracy (January 31, 2012). "'House' gets asexuality wrong". *Salon*. Archived from the original on September 21, 2017.

<sup>696</sup> Kliegman, Julie. "Todd's Asexuality on 'BoJack' Isn't a Perfect Depiction, But It's Made Me Feel Understood". *Bustle*. Archived from the original on February 26, 2021.



## CHAPTER THIRTY-NINE

### PHYSICAL INTEGRITY AND BODILY AUTONOMY

Intersex people face stigmatisation and discrimination from birth. In some countries, particularly in Africa and Asia, this may include infanticide, abandonment and the stigmatization of families. Mothers in east Africa may be accused of witchcraft, and the birth of an intersex child may be described as a curse. Abandonments and infanticides have been reported in Uganda<sup>697</sup>, Kenya, south Asia, and China.

In 2015, it was reported that an intersex Kenyan adolescent, Muhadh Ishmael, was mutilated and later died. He had previously been described as a curse on his family<sup>698</sup>.

Non-consensual medical interventions to modify the sex characteristics of intersex people take place in all countries where the human rights of intersex people have been explored<sup>699</sup>. Such interventions have been criticized by the World Health Organization, other UN bodies such as the Office of the High Commissioner for Human Rights, and an increasing number of regional and national institutions. In low and middle-income countries, the cost of healthcare may limit access to necessary medical treatment at the same time that other individuals experience coercive medical interventions<sup>700</sup>.

Several rights have been stated as affected by stigmatization and coercive medical interventions on minors and these include, the right to life, the right to privacy, including a right to personal autonomy or self-determination regarding medical treatment, prohibitions against torture and other cruel<sup>701</sup>, inhuman and degrading

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<sup>697</sup> Civil Society Coalition on Human Rights and Constitutional Law; Human Rights Awareness and Promotion Forum; Rainbow Health Foundation; Sexual Minorities Uganda; Support Initiative for Persons with Congenital Disorders (2014). "Uganda Report of Violations based on Sex Determination, Gender Identity, and Sexual Orientation".

<sup>698</sup> Odero, Joseph (December 23, 2015). "Intersex in Kenya: Held captive, beaten, hacked. Dead". 76 CRIMES. Archived from the original on 2016-04-25. Retrieved 2016-10-01.

<sup>699</sup> Ghattas, Dan Christian; Heinrich Böll Foundation (September 2013). "Human Rights Between the Sexes" (PDF).

<sup>700</sup> Beyond the Boundary - Knowing and Concerns Intersex (October 2015). "Intersex report from Hong Kong China, and for the UN Committee Against Torture: The Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment".

<sup>701</sup> "Malta passes law outlawing forced surgical intervention on intersex minors". Star Observer. 2 April 2015.

treatment, a right to physical integrity and/or bodily autonomy additionally, it's the best interests of the child may not be served by surgeries aimed at familial and social integration<sup>702</sup>.

## **HUMAN RIGHTS REPORTS**

In recent years, Intersex rights have been the subject of reports by several national and international institutions. These include the Swiss National Advisory Commission on Biomedical Ethics (2012)<sup>703</sup>, the UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (2013)<sup>704</sup>, and the Australian Senate (2013)<sup>705</sup>. In 2015 the Council of Europe, the United Nations Office of the United Nations High Commissioner for Human Rights and the World Health Organization also addressed the issue. In April 2015, Malta became the first country to outlaw coercive medical interventions<sup>706</sup>. In the same year, the Council of Europe became the first institution to state that intersex people have the right not to undergo sex affirmation interventions<sup>707</sup>.

For Intersex Awareness Day, October 26, UN experts including the Committee against Torture, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, along with the Council of Europe Commissioner for Human Rights, the Inter-American Commission on Human Rights and United Nations Special Rapporteurs called for an urgent end to human rights violations against intersex persons, including in medical settings. The experts also called for the investigation of alleged human rights abuses, the ability to file claims for compensation, and the implementation of anti-discrimination measures<sup>708</sup>.

In countries around the world, intersex infants, children and adolescents are subjected to medically unnecessary surgeries, hormonal treatments and other procedures in an attempt to forcibly change their appearance to be in line with

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<sup>702</sup> Swiss National Advisory Commission on Biomedical Ethics NEK-CNE (November 2012). On the management of Differences of Sex Development. Ethical issues relating to "Intersexuality". Opinion No. 20/2012 (PDF). 2012. Berne.

<sup>703</sup> *ibid.*

<sup>704</sup> "Report of the UN Special Rapporteur on Torture" (PDF). Office of the UN High Commissioner for Human Rights. February 2013. Archived (PDF) from the original on 2016-08-24.

<sup>705</sup> Australian Senate Community Affairs Committee (October 2013). "Involuntary or coerced sterilisation of intersex people in Australia".

<sup>706</sup> "Surgery and Sterilization Scrapped in Malta's Benchmark LGBTI Law". The New York Times. Reuters. 1 April 2015.

<sup>707</sup> Council of Europe; Commissioner for Human Rights (April 2015), Human rights and intersex people.

<sup>708</sup> Office of the High Commissioner for Human Rights (October 24, 2016), End violence and harmful medical practices on intersex children and adults, UN and regional experts urge, archived from the original on November 21, 2016, retrieved July 28, 2017.

societal expectations about female and male bodies. When, as is frequently the case, these procedures are performed without the full, free and informed consent of the person concerned, they amount to violations of fundamental human rights... States must, as a matter of urgency, prohibit medically unnecessary surgery and procedures on intersex children. They must uphold the autonomy of intersex adults and children and their rights to health, to physical and mental integrity, to live free from violence and harmful practices and to be free from torture and ill-treatment. Intersex children and their parents should be provided with support and counselling, including from peers.<sup>709</sup>

In 2017, the human rights non-governmental organizations Amnesty International and Human Rights Watch published major reports on the rights of children with intersex conditions.<sup>710</sup>

## **INTERSEX AND DISABILITY**

Multiple authors and civil society organizations highlight intersectionalities between intersex people and disability, due to issues of medicalization, and the use of preimplantation genetic diagnosis<sup>711</sup>. In an analysis of the use of preimplantation genetic diagnosis to eliminate intersex traits, Behrmann and Ravitsky stated that: "Parental choice against intersex may ... conceal biases against same-sex attractedness and gender nonconformity."

A 2006 clinical reframing of intersex conditions as disorders of sex development made associations between intersex and disability explicit<sup>712</sup>, but the rhetorical shift remains deeply contentious<sup>713</sup>. Sociological research in Australia, published in 2016, found that 3% of respondents used the term "disorders of sex development" or "DSD" to define their sex characteristics, while 21% use the term when accessing medical services. In contrast, 60% used the term "intersex" in some form to self-describe their sex characteristics.

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<sup>709</sup> Office of the High Commissioner for Human Rights (October 24, 2016), End violence and harmful medical practices on intersex children and adults, UN and regional experts urge, archived from the original on November 21, 2016.

<sup>710</sup> Human Rights Watch; interACT (July 2017). *I Want to Be Like Nature Made Me*. ISBN 978-1-62313-502-7. Archived from the original on 2017-10-05.

<sup>711</sup> Holmes, M. Morgan (June 2008). "Mind the Gaps: Intersex and (Re-productive) Spaces in Disability Studies and Bioethics". *Journal of Bioethical Inquiry*. 5 (2–3): 169–181.

<sup>712</sup> Koyama, Emi (February 2006). "From "Intersex" to "DSD": Toward a Queer Disability Politics of Gender". University of Vermont.

<sup>713</sup> Davis, Georgiann (11 September 2015). *Contesting Intersex: The Dubious Diagnosis*. New York University Press. pp. 87–89. ISBN 978-1479887040.

In the United States, intersex persons are protected by the Americans with Disabilities Act<sup>714</sup>. In 2013, the Australian Senate published a report on the Involuntary or coerced sterilisation of intersex people in Australia as part of a broader inquiry into the involuntary or coercive sterilization of people with disabilities<sup>715</sup>. In Europe, OII Europe has identified multiple articles of the UN Convention on the Rights of Persons with Disabilities, including on equality and non-discrimination, and freedom from torture, and protecting the integrity of the person. Nevertheless, the organization expressed concern that framings of intersex as disability can reinforce medicalization and lack of human rights, and do not match self-identification<sup>716</sup>.

## **PEDOPHILIA**

According to Asklepios Fachklinikum Göttingen, pedophilia is a category of sexual deviation characterized by a sexual interest toward children under 13 years according to DSM-IV-TR or children under 14 years as determined by the law. Pedophilia is a distinguished form of child sexual abuse as a legal category<sup>717</sup>.

The National Library for Medicine classifies it as a mental disorder that originates from the disorder of emotional, cognitive, sexual development as well as some social factors which have also a significant role in this area, especially virtual social networks and the media. The combination of miscellaneous factors makes the social reintegration of patients in treatment very difficult and results in a high risk for relapse, this is demonstrated by the high frequency of mental disorders among the victims<sup>718</sup>.

The word pedophilia comes from the Greek word *paîs*, *paidós* meaning child and *phíliá*: friendly love or friendship.

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<sup>714</sup> Menon, Yamuna (May 2011). "The Intersex Community and the Americans with Disabilities Act". Connecticut Law Review. 43 (4): 1221–1251.

<sup>715</sup> Senate of Australia; Community Affairs References Committee (2013). Involuntary or coerced sterilisation of intersex people in Australia. Australian Senate. Canberra. ISBN 978-1-74229-917-4.

<sup>716</sup> OII Europe (April 2015). Statement of OII Europe on Intersex, Disability and the UN Convention on the Rights of People with Disabilities (PDF).

<sup>717</sup> Farkas M. Pedofília [Pedophilia]. *Psychiatr Hung.* 2013;28(2):180-8. Hungarian. PMID: 23880515.

<sup>718</sup> *Ibid.*



## **CHAPTER FORTY**

### **MEDICAL PERSPECTIVE**

There is a distinction made based on the age range of the victim, for instance Pedophilia as a psychiatric disorder is where an adult or older adolescent of at least 5 years older than the victim, experiences a primary or exclusive sexual attraction to prepubescent children. On the other hand, Infantophilia is a sub-type of pedophilia used to refer to a sexual preference for children under the age of 5 especially infants and toddlers and the other sub-type being the hebephilia sexual interest for children between 11-14 despite the term being accepted by DSM specialists.<sup>719</sup>

According to Paul Fedoroff a psychiatrist at the University of Ottawa, pedophilia is not a sexual orientation and he characterizes it as a form of „sexual interest” or something that a person happens to want to have sex with. In his opinion, sexual interest is something we gain through education, experience and observation and, as such, „can change throughout life” He argues that every person can educate the same way they educate their eating preferences - however, he does not claim that one can change the own sexual orientation.

Most clinicians and researchers believe that paraphilic sexual disorder cannot be treated or altered, but that the therapy (both psychotherapeutic and pharmacological) can reduce the person’s discomfort with their paraphilia and limit any criminal behavior, if present. Sociological perspective It is known that a pedophile most often chooses his careers that put him in direct contact with children, being often a respectable person, a teacher, a coach, etc.

However, despite his jovial and friendly character he is or becomes aware that his sexual attitude, once discovered by others, can attract the oppression and anger of the society and a stigma for the rest of his life. To mask their vice, pedophiles often marry, to create the appearance of a normal state. In the overwhelming majority of cases, pedophiles are recruited among men.

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<sup>719</sup> International Journal of Advanced Studies in Sexology © Sexology Institute of Romania Vol. 1(1), 2019, 10-14.

Although the onset of pedophilia can be at any age, most pedophiles consulted by physicians are middle-aged men. Pedophilia, however, in rare and less scandalous cases, also manifests itself among women.

## **JURIDICAL PERSPECTIVE**

Contrary to public perception, child sex offending and pedophilia are not the same. The Romanian Criminal Code only sanctions acts against minors whom the law considers abusive, but not mere sexual inclinations.

As long as a deviant sexual inclination remains only at the level of ideas, feeling, emotion, it does not fall under the influence of the criminal law. From a statistical point of view only half of all cases of child sex abuses are motivated by pedophilic preference<sup>720</sup>.

According to a recent newspaper article shows statistical grounds that some Judges in Romania solved cases of child sexual abuse that considered the acts to be consensual if the victim did not disclose the fact to a close relative. One decision of the Appeal Court of Alba county stated:” Based on these testimonies and the fact that the victim did not tell her parents about the alleged abuse, the court concluded that the sexual acts were always initiated by the applicant and rejected the theory that the victim was unable to express the will”

## **PEDOPHILIA AS SEXUAL CHILD ABUSE.**

### **UGANDAN PERSPECTIVE TOWARDS PEDOPHILIA**

The Ugandan perspective towards pedophilia is quite different and more vigorous compared to other countries, for instance the age bracket of pedophile victims in other countries is below 14, On the other hand, According to Article 257 of The Ugandan Constitution establishes that a child is one below 18yrs. This is covered by The Penal Code Act which sanctions sex with minors as a crime, Section 129 is to the effect that sexual intercourse with a person below 18yrs amounts to defilement. It further makes provision for aggravated defilement where the minor is below 14yrs,

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<sup>720</sup>Iuliu Hațiegan University of Medicine and Pharmacy, Cluj-Napoca, Romania Sexology Institute of Romania, Cluj-Napoca, Romania Sexual Deviation Considerations regarding pedophilia - Myth and reality

the offender being HIV+, or person of responsibility over the victim or a serial offender.

A case in point is;

The above is with effect that sexual interactions with minors in the presence of penetration amounts to defilement, in the absence of penetration, the argument of pedophilia can be maintained.

According to a News Article Monitor a 53yr old male Turkish teacher named Emin Baro believed to be a repeat pedophile proudly and publicly displayed his pictures of some of the girls alleged to be his victims<sup>721</sup>.

“I use all the strategies to get away from one woman to another, quickly tired, traveling from one country to another, often disappointed, shaping my way of life so that it never freezes in a strong interior. I have succeeded so well that I do not know who I am,” he wrote.

His other musings range from: “I hope the inspector doesn’t come around while I have my life in such a mess” to “Love ceases to be a pleasure when it ceases to be a secret.”

## **UNDER THE RADAR**

Police say Mr Baro has kept his secret for years, and suspect more than 50 young girls paid the price. Moving between Masaka – where he met his current 19-year-old wife – Kampala and Jinja districts, they say he would pay between Shs2,000 and Shs5,000 to have sex with girls as young as 10 years old. He’s been doing it in Uganda alone for at least six years – exploiting various tourist visas, passports, and lax border controls.

Members of his most recent neighbourhood of Bugumba, Iganga were shocked at revelations about Mr Baro. Vincent Nsubuga, the area chairman lived across from him for three months, and described Mr Baro as reserved, quiet and one who kept to himself.

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<sup>721</sup> Hosting a pedophile: Uganda’s dirty secret Friday, March 30, 2012 — updated on January 05, 2021

Throughout the day, he says he either sat at a spot outside his house or slept. “Apart from very rare times that he went to town after jogging early morning every day with his wife he came back,” Mr Nsubuga said.

Tourist visas can be extended from their normal maximum of three months to up to one year. Eunice Kisembo, spokesperson for the immigration directorate, says they should not be valid for any longer than that, but acknowledged that oversights can happen. Ms Kisembo says the immigration office was by press time carrying out investigations to verify the status of Mr Baro’s immigration.

## **LACK OF EVIDENCE**

Police say they didn’t have enough evidence before they were forced to arrest Mr Baro, on a tip off that he would be leaving his home in Iganga soon. “If I had that evidence we would have charged him with defilement,” said Special Investigations Unit (SIU) commandant Beata Chelimo.

Police had originally seen the pornographic images on Mr Baro’s Facebook page – it was how they caught onto his activities, according to Ms Chelimo. But they didn’t have the testimonies to back it up.

So, the Grade One Magistrate court in Nakawa didn’t need to look at the evidence – video footage of Mr Baro having sex with children. Instead, the magistrate thanked him for his guilty plea having saved the court’s time, and sentenced him to two years in prison or a Shs6m fine. Though child pornography under section 23 of the Computer Misuse Act 2011 could have landed him in jail for up to 15 years, Mr Baro spent the night and paid the fine the next day.

Police originally said they would arrest Mr Baro on Thursday, but due to delayed paperwork from Luzira prison where he was held after his sentencing, they have now said they will rearrest him today and bring him to Masaka to gather evidence from suspected victims there. With strong testimonies from victims and witnesses, they say they are confident they can begin building a defilement case against him.

Mr Baro is not a first-time offender. Interpol director Asan Kasingye says according to court documents, he was charged with the defilement of a 15-year-old girl in 2009 in Malindi, and is suspected to have done the same in Tanzania as well.

Mr Kasingye says Uganda should have known he was here – regional authorities are supposed to let each other know when a charged sex offender is crossing borders. But he said he suspects that Mr Baro jumped bail and made it past the region’s

notoriously lax border security – a theory he’s still waiting for confirmation on from Kenya.

Local NGO African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) said on Wednesday that weak prosecution could ultimately turn Uganda into a child sex tourism destination. In fact, they say Jinja is a known hot spot for such activities already. In 2007, the penal code was amended to punish aggravated defilement (the defilement of a child below 14 years old) with a death sentence or life imprisonment.

Kampala, Uganda -- When Patricia was picked up by police at the age of 11, she felt relieved.

Sold by an uncle to her teacher, she was raped and abandoned in Kalangala, a district of islands on Lake Victoria, in Uganda.

Patricia thought her luck had changed when police officers from a local station told her there was a man nearby who helped survivors of sexual abuse like her.

"A big, fat, old muzungu [foreigner or white person] came for me. They said he is taking care of girls in your situation," Patricia, who is identified using a pseudonym, told CNN.

"They said Bery is a good person and he will take you. I was a bit afraid, but I said OK since there are other girls there too."

Bernhard "Bery" Glaser, a German national who describes himself as a "retired health professional," founded Bery's Place, a children's home in Kalangala, with his wife in 2006. According to his website, Glaser has provided a home for dozens of girls, some of whom have survived "physical, sexual, emotional or psychological abuse and violence," or been "trafficked, abandoned -- or rejected -- by their legal guardians."

"For my kids, I'm the mommy, I'm the daddy, I'm everything," Glaser says in a promotional video.

An undated photo of Bernhard & quot; Bery&quot; Glaser.

An undated photo of Bernhard "Bery" Glaser.

But five women in their late teens and early twenties interviewed by CNN, including Patricia, allege that Glaser sexually and emotionally abused them at Bery's Place. Survivors names have been changed to protect their identities.

The young women say that Glaser subjected them to repeated "vaginal examinations" involving sexual touching and forced them to sleep in his bed, where he allegedly sexually assaulted them. When the girls objected, they say Glaser would threaten to cast them out on the streets. Survivors say this kept many of the girls -- some of whom had previously been abused, or suffered other traumatic experiences -- from speaking out.

Bery's Place is one of hundreds of homes for vulnerable children purported to be operating illegally in Uganda -- children's homes must be registered with the Ministry of Gender, Labour and Social Development under Ugandan law. In 2018, the Ugandan government announced plans to close over 500 unregistered homes in the country. A lack of government oversight combined with an open-door policy for foreign investors and volunteers has left girls like Patricia vulnerable to abuse.

After more than a decade running Bery's Place, Glaser was detained last February, when he turned himself in, then formally charged and arrested in April with 19 counts of human trafficking, seven counts of aggravated defilement, one count of indecent assault and one count of operating an unauthorized children's home. Thirteen girls were found at Bery's Place when police raided the home in February, while others were reportedly at school, according to lawyers supporting the prosecution.

Almost a year on, Glaser's trial has been postponed at least eight times because of requests made by his legal team, including claims he is unfit to stand trial due to an ongoing cancer battle.

Glaser is currently at the Uganda Cancer Institute, awaiting a hearing on his bail application.

In a statement sent by WhatsApp to CNN, a lawyer representing Glaser denied that he had committed the alleged crimes, and emphasized the seriousness of his deteriorating health.

"Mr. Glaser maintains that he has never defiled or trafficked any one and shall prove his innocence in the Court of law in Uganda and has more than enough evidence and witnesses to disprove all the false allegations against him," his lawyer, Kaganzi Lester, said.

'Medical exams' and 'sleeping timetables'

Young women and girls who stayed at Bery's Place told CNN that they went through a so-called "medical examination" upon arrival and frequent "vaginal exams" during their time living there.

Girls as young as five were told to strip naked so that Glaser could examine them and insert candida medicine -- used to treat yeast infections -- into their vaginas, survivors allege, adding that the "exams" often took place in a shower.

Some survivors say Glaser introduced himself as a doctor, but lawyers supporting the prosecution told CNN that he is a physiotherapist -- not a qualified physician.

"I said to him after a few times I can do it myself," said Patricia, now a 20-year-old university student, adding that he continued to insert medicine and a douche into her vagina after her complaints.

"He said I had a small STI, but I don't believe I had any infection," she said, explaining that the police had given Glaser the results of her STI tests when she was placed in his care.

In a 2017 email CNN has seen that sought to explain the controversy to supporters of Bery's Place, Glaser said that the testing was in line with "professional standards."

"The only time I touch(ed) my girls in an intimate way, is when I apply medicine, and this in an appropriate way to professional standards, with their personal approval, part of the sexual health services we provide often in cooperation with professional third parties, doctors, nurses, midwives," he wrote.

The first time I slept in his room he started massaging me in the middle of the night, touching my breasts, kissing my lips.

But some survivors say these "medical examinations" were just a precursor to more abusive patterns of behavior.

"One time I walked into Bery's room and found some younger children massaging him while he was half naked," remembers Sharon, now 17, who was 12 when she was taken to Bery's Place. She says that Glaser asked her to join in, claiming that he needed to be massaged because of his cancer and diabetes.

Sharon, and several other survivors, said that Glaser asked them to create a "sleeping timetable" for the girls to spend the night in his bed on a rotating schedule. "He told us not to put that timetable in the living room, because visitors might come and start asking what it's for," Sharon said.

"The first time I slept in his room he started massaging me in the middle of the night, touching my breasts, kissing my lips," Sharon said. Other girls interviewed by CNN described Glaser penetrating them with his fingers and forcing them to perform oral sex on him, saying it was "normal in his culture."

The age of consent is 18 in Uganda and, according to the country's Children Act Amendment of 2016, "every child has a right to be protected against all forms of violence including sexual abuse."

Sharon said that when she threatened to report Glaser, he told her she could "go back to the bush where you came from." After that, she was fearful to speak out. With nowhere else to turn, she says she stayed at Bery's Place for five years, sleeping in Glaser's room once a week.

Survivors who spoke with CNN said the threat of instability -- being left homeless, without money for food or school fees -- was what kept them quiet for so long and even resulted in some of them defending Glaser when he was first arrested in 2013.

## **A SYSTEM THAT PERPETUATES ABUSE**

To cover up the alleged abuse, Glaser bribed local officials and used his network of allies in Kalangala to threaten those who spoke out against him, according to survivors and a police officer formerly based in the district, who spoke with CNN.

Glaser's lawyer said he denied the bribery allegations.

Child advocates and social workers say that it's not difficult for men like Glaser to abuse Ugandan girls with impunity, given the power dynamics that perpetuate the country's unregulated and lucrative orphanage industry.

"When you see a white person here you think they're coming with the biggest opportunities, so people like Bery Glaser are able to use their privilege to oppress and exploit our people," says Olivia Alaso, co-founder of No White Saviors, which has helped provide safe accommodation and psychosocial support for girls who lived at Bery's Place.

"The government should be doing thorough and proper checks on their backgrounds at home [before granting visas], and also the work these people are doing in our communities."

Alaso added that the red flags in this case were glaring: "How can a man live in a shelter with all these girls at a minor age and no one does a thing?"

While regulation of the orphanage industry by Uganda's government has improved over the past five years, only certain parts of the country have seen a change.

When you see a white person here you think they're coming with the biggest opportunities, so people like Bery Glaser are able to use their privilege to oppress and exploit our people Olivia Alaso, No White Saviors co-founder

Caroline Bankusha, a child protection expert and former probation officer, says that part of the issue is a lack of alternative care options in Uganda. "In Bery's case, was it really necessary for the parents to hand over their girls to the care of a stranger? If they had to be separated from their parents, was Bery's orphanage the most suitable for the care of the girls, or were there other options?"

Lawyers supporting the prosecution told CNN that they understood Glaser used "legal guardianship orders" to gain custody of some of the girls -- a now banned loophole which, until 2016, was often used by foreign nationals to adopt Ugandan children quickly and easily, without fostering them in-country for the then three years required by law.

Glaser's lawyer would not comment on the use of legal guardianship orders, saying it was "one of the issues to be resolved in court."

Another obstacle is a culture where sexual abuse often goes unreported -- by survivors and others -- despite policies and structures in place, Bankusha says. According to the Uganda Violence Against Children Survey 2018, one in three girls ages 18 to 24 reported experiencing sexual violence during childhood, including 11% of girls experiencing pressured or forced sex.

Andy Wilkes, a British builder who spent a month volunteering at Bery's Place in 2017, told CNN that he had suspected abuse was taking place after seeing young girls sleeping in Glaser's bed, but was not sure who to report it to. Wilkes says a young woman later confirmed his suspicions, alleging to Wilkes that Glaser had abused her using "toys, vibrators, fingers, masturbation, blow jobs," since she was 12.

Wilkes contacted a local Ugandan social worker with connections to Bery's Place, Asia Namusoke Mbajja, who went on to report Glaser to the child protection unit of Kampala Police in 2018.

Since Glaser's arrest last year, Mbajja has received a barrage of intimidating calls, texts and messages on social media so virulent that she opened a case of offensive communication and threatening violence with police.

According to a preliminary police report, seen by CNN, one of the five phone numbers used to threaten to "injure or harm" Mbajja is registered in the name of Glaser's wife, Ingrid Dilen. Dilen was arrested for questioning by police last February during a police raid at Bery's Place, and later released. She is now in Belgium.

## **CNN HAS REACHED OUT TO DILEN FOR COMMENT.**

Survivors who have spoken out against Glaser, and their relatives, say they have also been subjected to intimidation, as well as a smear campaign, coordinated on a Facebook page titled Justice for Bery.

Patricia said that her mother received what she says was a threatening call from one of Glaser's friends, demanding that she stop her daughter from standing as a witness. According to Patricia, he warned her mother that she, and the rest of her family, could die "as a result of [her] stupidity."

Waiting for justice

It is not the first time that girls in Glaser's care have been dragged through this ordeal.

A spokesperson for Uganda Police, Charles Mansio Twiine, told CNN that in 2013 the police received reports that Glaser was running an illegal children's home in Kalangala and allegedly abusing the children, the majority of which were between 8- and 11-years-old at the time. Twiine said the girls were interviewed and found to have contraceptive implants: "Can you imagine from the age of 8, 9, 10, to be having an implant?"

Twiine said Glaser told police at the time he had given the girls implants to prevent them from getting pregnant by local boys. The Director of Public Prosecutions continued to gather evidence and ultimately launched a case against Glaser, but when the time came for the girls and their parents to testify, they did not appear in court.

"It devastated us," Twiine said, adding that the judge had to dismiss the case as a result. "We were worried and disappointed but at the time there wasn't anything we could do."

While Glaser was detained, police took Patricia back to the same uncle who had trafficked her when she was 11 years old. With nowhere else to go, she returned to Bery's Place after Glaser's release, where she said "things got even worse." When she warned Glaser, he would get arrested again, she says he replied: "Who has the proof?"

Still, she is determined to testify in court, saying that she hopes to get justice for herself and the other girls who say they suffered for years at Bery's Place.

Each time Glaser's court date has been rescheduled, Patricia, Sharon and other witnesses have traveled to Masaka High Court, missing school and preparing to give painful testimonies, only to be told proceedings would not happen that day.

Glaser's legal team have used a range of tactics to try to ensure his release, including applying for a plea bargain deal, which would have seen Glaser deported back to Belgium, lawyers supporting the prosecution and a police source told CNN.

The sources allege that Glaser's defense have also sought to prevent, or delay, his hearing by demanding proceedings be conducted in Flemish, despite Glaser's demonstrated English proficiency, and suggesting that he was unfit to stand trial due to a battle with cancer. The head of the Uganda Cancer Institute, who previously declared that Glaser's condition was manageable in Uganda, recently signed a letter recommending he urgently travel abroad for treatment.

Glaser's lawyer told CNN that the "lies being peddled about the plea bargain are a crude attempt at circumventing the burden to prove Mr. Glaser's guilt in court," and denied that demands for a Flemish translator were attempts to delay the proceedings.

If granted bail, CNN understands that Glaser will travel to Belgium for treatment, but lawyers supporting the prosecution say it is unclear whether he would return to stand trial. In an email sent in error to CNN, German Ambassador to Uganda Albrecht Conze said he had been personally involved in trying to accelerate court proceedings over the past nine months, with the implied aim of ensuring Glaser's travel to Belgium.

In a subsequent statement to CNN, Conze said the German Embassy had "never taken a stance on the substance of the case" and that "whether or not he [Glaser] is guilty of the charges he is accused of is for the Ugandan judiciary to determine."

Glaser previously traveled to Belgium for cancer treatment while on bail in connection with the 2013 case, according to the Germany Embassy and his legal team, who say this demonstrates his willingness to return to Uganda to face the court. "Glaser has always been and still is very determined to and shall prove his innocence in the court of law in Uganda," his lawyer, Kaganzi Lester, said in a statement to CNN.

Equality Now, an NGO fighting to protect the human rights of women and girls globally, told CNN that it was following the developments in Glaser's case closely, along with its NGO partners in Uganda, including Joy for Children, Raising Teenagers Uganda, and PINA Uganda, "to ensure that there is accountability for the crimes committed and that the victims are able to access justice."

"There is a developing trend regarding the sexual exploitation of children in Africa where pedophiles, especially from Western countries, take advantage of under-resourced child protection systems, and weaknesses in law enforcement and judicial systems. The Glaser case is just one example of this deeply concerning phenomenon," Anita Nyanjong, a lawyer and programme officer in Equality Now's End Sex Trafficking team, said<sup>722</sup>.

"The Ugandan government now has a significant opportunity to send a message to would-be perpetrators of child sexual exploitation and child trafficking that they cannot exploit with impunity and will be held fully accountable for their crimes."

In the meantime, Patricia and other girls wait to hear what will become of Glaser. But for now, at least, they say they're beginning to enjoy their lives outside of Bery's Place.

"The first time I spoke about it was when I was called to the police station in 2019. After I made the statement I went to the washroom, cried and dried my eyes," remembers Patricia.

"I felt like something heavy had been put off my head."

"I felt free."

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<sup>722</sup> They were sent to a shelter for safety. Instead, these women say they were sexually abused By Alice McCool, for CNN.



## CHAPTER FORTY-ONE

### OBJECTOPHILIA

Objectum-sexuality (OS) is a sexual orientation which has received little attention in the academic literature. Individuals who identify as OS experience emotional, romantic and/or sexual feelings towards inanimate objects.

OS is also known as objectophilia, OS individuals describe experiencing emotional, romantic and/or sexual feelings towards inanimate objects or structures. For instance, Eija-Riitta Berliner-Mauer has described her romantic attraction towards the Berlin Wall<sup>1</sup> and others have written similarly about their feelings towards a range of objects (e.g., a bridge, a fence, a statue, an electronic soundboard<sup>723</sup>

Object sexuality or objectophilia is a group of paraphilias characterized by sexual or romantic attraction focused on particular inanimate objects. Individuals with this attraction may have strong feelings of love and commitment to certain items or structures of their fixation. For some, sexual or close emotional relationships with humans are incomprehensible. Some object-sexual individuals also often believe in animism, and sense reciprocation based on the belief that objects have souls, intelligence, and feelings, and are able to communicate. Questions of its legality or ethical provenance have not arisen, given that inanimate objects are inert and are not 'harmed' through this specific paraphilia. Public sexual consummation of object sexual desires may be dealt with through public nudity or anti-exhibitionism legislation.

The first known case of Objectophilia was in 1979 where Eija-Riitta who had seen the Berlin Wall on television at the age of seven and, struck by its long, parallel lines, fell in love. She tied the knot on their sixth visit together, marrying the Berlin Wall and taking it as her last name—Berliner-Mauer. She regarded the tearing down of the wall as a catastrophe and slept with a 1:20 scale model until her death in 2015<sup>724</sup>.

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<sup>723</sup> Eiffel, E. Objectum-sexuality Internationale. (2015). Available at: <http://www.objectum-sexuality.org/>, (Accessed: 25th May 2018).

<sup>724</sup> Objectophilia: On the People Who Fall in Love with Inanimate Things “People love objects because they reflect what we value in ourselves.” By Genki Ferguson

In 2018, Akihiko Kondo spent two million yen to marry an animated pop-idol Hatsune Miku. Miku, a “vocaloid,” which was developed in 2007 by Crypton Future Media. She serves as a mascot for a voicebank software, in which users can compose their own songs for the virtual character to sing and dance to. Miku stands 158 cm tall, sports teal pigtails, and has a suggested vocal range of A3–E5, B2–B3. She has appeared as a hologram at concerts, and as a doll at Kondo’s wedding.<sup>725</sup>

According to Genki Ferguson, these individuals are classified as objectophiliacs; those who hold sexual or romantic attraction towards inanimate object. He expands on objectophilia a little bit, on that idea of love as well. Perhaps even argue that, ridiculous though they may seem, these cases are just the natural conclusion to the relationships the rest of us already hold.

In 2009 Amy Marsh, a clinical sexologist, surveyed the twenty-one English-speaking members of Erika Eiffel's 40-strong OS Internationale about their experiences. About half reported autism spectrum disorders: six had been diagnosed, four were affected but not diagnosed, and three of the remaining nine reported having "some traits." According to Marsh, "The emotions and experiences reported by OS people correspond to general definitions of sexual orientation," such as that in an APA article "on sexual orientation and homosexuality ... [which] refers to sexual orientation as involving 'feelings and self-concept.'

## **REASONS WHY PEOPLE ENGAGE IN OBJECTOPHILLA**

In his research, Genki Ferguson asked Dasha Yildirim, a Vancouver-based ceramicist, how she felt about object-worship and love, Yildirim creates what are called Ball-Jointed Dolls—highly tuned porcelain figures with complex articulated joints, custom sewn outfits.

Yildirim maintains, however, that Ball-Jointed Dolls shouldn’t be viewed as too different from toys, and for that matter fine art. True, their patrons are usually wealthier, but unlike a Rothko or a Mondrian, they are meant to be handled, doted over.

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<sup>725</sup> *ibid.*

She states that “People love dolls for two reasons ie; “On one level it’s an aesthetic love—they love these dolls because they’re beautiful, poseable, and customizable.” In essence, a value-based love.

“On the other hand, people love dolls because they feel real,” she said. “You feel less lonely for owning them. The dolls feel sad when you’re sad, happy when you’re happy. This combines with the aesthetic level, though. People can project a perfect version of themselves onto the doll, and have their own emotions reflected back to them.”

When asked about how she felt, Yildirim took out one of her own dolls—an early model that she’s never sold. A short, cherub-like figure with red hair named Maple and said “Of course. Maple holds a part of my soul.”

She argues that People love objects because they reflect what we value in ourselves. Yildirim isn’t the first to come to this conclusion, however. While some of her clients may be collectors, for others, ball-jointed dolls are a return to childhood.

There’s a fair bit of scholarship on the concept of comfort objects, the toys children latch onto and the adults who never threw them away. A popular working theory, introduced by paediatrician Donald Woods Winnicott, is that of the transitional object.

Is it so surprising, then, that these cases of objectophilia seem to have become increasingly prevalent in the modern age? This argument highlights that childhood comfort objects to an end lays a basis for future objectophilia.

There is a terrible shock that awaits young children as they grow out of infancy. Namely, that they and their mother are separate people. In the early stages of development, the child sees their mother as an extension of themselves—when the child wishes something, the mother provides, creating what Winnicott calls a subjective omnipotence. With time, however, the realization that the child is actually separate, and therefore dependant, on the mother creates shock, stress, and frustration.

Winnicott maintains that it is here that the child creates a dependence on the transitional object—often a toy or a blanket. The transitional object is the first separate item that truly belongs to the child. Something to project this new, scared sense of self onto.

Is it so surprising, then, that these cases of objectophilia seem to have become increasingly prevalent in the modern age? A time when our true distances from each other, our inability to ever truly understand, have become all the more apparent?

Based on this, Ferguson expanded on the idea of love. That although, Erika Eiffel spoke freely about having sex with the Eiffel Tower, in truth, romantic and sexual relationships made up only a fraction of the connections held.

The working definition of objectophilia, mentioned above, mentions only sexual or romantic love, if this is a false distinction, one all too prevalent in western culture. A rather limiting expression, one which bars any possibility of platonic, aesthetic, familial, or religious love. Yes, religious.

According to Shintoism, one of the oldest sustained animist religions still practiced today. With deep roots throughout Japan, it predates even the arrival of Buddhism on those shores. It is a religion that maintains that all things, living or otherwise, contain kami, something halfway between a spirit and a god. Trees, mountains, boulders—kami are traditionally viewed as existing within nature, but by some definitions include manmade objects, including cars, cellphones, or the Berlin Wall. If this is sounding familiar, perhaps Marie Kondo's philosophies are coming to mind.

Ferguson notes how Japan's obsession with mascots perhaps mirrors their own polytheistic, animist backings. The same nation which now produces hologram Hatsune Mikus has a deep-rooted belief in the spirit of the inanimate. It's also why, to mirror Anna's own journey with the satellite, Satellite Love also follows the overlapping tale of Soki Tachibana, a young Shinto boy who finds himself doubting his belief in the kami in a crisis of faith. As one character gets drawn into a modern definition of object-worship, so too does another find himself pulling away.

"Unlike with people, we can't put expectations on inanimate things," says Yildirim. "Unlike people, they can't disappoint." We don't love objects despite them not being human. We love them precisely because they aren't human.

In his view, Ferguson wonders if object sexuality is a balm for lonely times. He continues by questioning that where connection with one another feels so difficult, could we instead look around, deeper into the materials that surround us? Perhaps emerge with a newfound appreciation for the little things that make up a life: the small values, desires, and personalities our objects reflect. Some might call this a regression; He argues that instead, it is a process that allows us to come to a

complete, deliberate understanding of the self. And perhaps, by turning that appreciation outwards, of each other too.

## **OBJECT SEXUALITY AWARENESS AND ADVOCACY**

In 2009, Erika Eiffel appeared on Good Morning America and The Tyra Banks Show with Amy Marsh to discuss her "marriage" to the Eiffel Tower and how her object love helped her become a world champion archer. Marsh shared the results of her survey and her belief that OS could be a genuine sexual orientation, and reasoned that if childhood trauma were a factor, that there would be more OS individuals. Eiffel, who had adopted her surname after a 2007 "marriage" to the Eiffel Tower, [3] founded OS Internationale, an educational website and international online community for those identifying or researching the condition to love objects.

## **LITERATURE**

Marsh sees OS-like behavior in classic literature. In Victor Hugo's *The Hunchback of Notre Dame*:

Quasimodo loved [the bells], caressed them, talked to them, understood them. From the carillon in the steeple of the transept to the great bell over the doorway, they all shared his love. Claude Frolo had made him the bell ringer of Notre-Dame, and to give the great bell in marriage to Quasimodo was to give Juliet to Romeo.

## **IN POPULAR CULTURE**

This section appears to contain trivial, minor, or unrelated references to popular culture. Please reorganize this content to explain the subject's impact on popular culture, providing citations to reliable, secondary sources, rather than simply listing appearances. Unsourced material may be challenged and removed. (May 2019)

## **REAL LIFE**

In 1979 a Swedish woman married the Berlin Wall.

In 2007 Erika Eiffel married the Eiffel Tower

In 2010 *Woman's Day* magazine listed ten romances between people and things, including the Berlin Wall, a fairground ride, a body pillow, a Nintendo video game character, a Volkswagen Beetle, the World Trade Center, a steam locomotive, an iBook and a metal processing system. [7]

A March 2012 segment of TLC's *My Strange Addiction* featured Nathaniel, a man emotionally and sexually attracted to his car. Nathaniel told Anderson Cooper that he was also attracted to jet skis and airplanes.

In 2013 an Australian woman, Jodi Rose, married the Le Pont du Diable Bridge in France.

In 2016 an American man was refused permission to marry his computer.

In 2020, a Russian woman, Rain Gordon, married a briefcase.

## **Music**

Big Boi's 2012 solo album, *Vicious Lies and Dangerous Rumors*, includes a song called "Objectum Sexuality."

Keys N Krates's video for the song "Save Me," featuring Katy B, focuses on this particular sexuality.

## **CINEMA**

*Jumbo* (2020) tells the story of a cleaner (played by Noémie Merlant) at an amusement park who falls in love with a fairground ride. Zoé Wittcock, the director, took her inspiration from the experience of Erika Eiffel (above).

*Titane* tells the story of a female serial killer (played by Agathe Rousselle) who somehow becomes pregnant after rubbing herself into a car.

## **TELEVISION**

Australian Netflix series *Lunatics* (2019) features a character named Keith Dick (played by Chris Lilley), a fashion designer who falls for "Karen", a Sharp XE-A203 cash register, as well as an old-fashioned vacuum cleaner.

In the series *SpongeBob SquarePants*, Plankton is in love with Karen, a computer.

## **TERMS IN OBJECT SEXUALITY**

Agalmatophilia, sexual attraction towards dolls, statues, mannequins or other objects which mimic the appearance of humans

Animism, the belief that all things, both animate and inanimate, possess a spiritual essence

Doll fetish

List of paraphilias

## **CLASH OF LGBTQ WITH DIFFERENT CULTURES**

The concept of homosexuality has clashed with different cultures that have resisted and advocated against it which has resulted into a culture war/ cultural conflict between social groups and the struggle for dominance of their value beliefs, and practices and societal values.

Contemporary wedge issues in the United States include abortion, homosexuality, transgender rights, pornography, multiculturalism racism and other cultural conflicts based on values, morality, and lifestyle which are described as the major cause of cultural wars. The term culture war is a loan translation (calque) of the German *Kulturkampf* ('culture struggle'). In German, *Kulturkampf*, a term coined by Rudolf Virchow, refers to the clash between cultural and religious groups in the campaign from 1871 to 1878 under Chancellor Otto von Bismarck of the German Empire against the influence of the Catholic Church.

In American usage, "culture war" may imply a conflict between those values considered traditionalist or conservative and those considered progressive or liberal. This usage originated in the 1920s when urban and rural American values came into closer conflict.<sup>[7]</sup> This followed several decades of immigration to the States by people who earlier European immigrants considered 'alien'. It was also a result of the cultural shifts and modernizing trends of the Roaring '20s.



## CHAPTER FORTY-TWO

### HOMOSEXUALITY V POLYGAMY.

According to the Merriam-Webster's Dictionary, Polygamy is marriage in which a spouse of either sex may have more than one mate at the same time. On the other hand, Homosexuality is the romantic attraction to others of one's same sex: the quality or state of being gay.

The relationship between Homosexuality and Polygamy is an intricate and complex as one is legally accepted and the other denied, which acceptance/ denial varies based where the question of legality arises: The Western perception and The Ugandan perception vary as discussed below.

### WESTERN PERCEPTION OF HOMOSEXUALITY & POLYGAMY.

After the landmark case of **Lawrence v. Texas**<sup>726</sup> decision striking down anti-sodomy laws, two Utah polygamists filed suit in state court, asking that their relationships with multiple wives be validated by the government. They argued that laws against polygamy are unconstitutional<sup>727</sup>.

“Everyone should be free unless there's a compelling state interest that you shouldn't be,” John Bucher, one of the lawyers, told The Salt Lake Tribune. “The state is not able to show that there's such an evil to polygamy that it should be prohibited.”

As the nation continued to debate same-sex “marriage,” some begun examining the logical extension of its legalization. If the legal benefits of marriage are awarded to homosexual men, then why aren't they also given to, say, three polygamists?

Maggie Gallagher an outspoken supporter of a federal marriage revealed in an interview with Baptist Press that “There isn't a single argument in favor of same-sex

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<sup>726</sup> Lawrence v Texas, 539 U.S. (2003)

<sup>727</sup> NASHVILLE, Tenn. (BP.

marriage that isn't also an argument in favor of polygamy — people have a right to marry who they love; these relationships already exist ... we have no right to deny the children of their protection'

Jennifer Marshall, director of domestic policy studies at The Heritage Foundation, said she sees no “logical stopping point” if same-sex “marriage” is legalized.

“This is the dissolution of the parameters around marriage,” she said. “You’d be hard-pressed to say, ‘Why not any other kind of arrangement?’”

Conservatives and traditionalists say the debate over same-sex “marriage” is the result of marriage being separated from its religious roots and from procreation. If marriage is not tied to childbearing, traditionalists warn it literally could mean anything.

In its landmark ruling on same-sex “marriage” last year, the Massachusetts high court ruled that marriage’s purpose is not procreation, but instead the commitment of two people to one another for life.

That argument troubles Gallagher, who asserts that government benefits are awarded to married couples because they, in turn, benefit society by raising the next generation of adults.

“If marriage is only about private love, why is the government involved?” she asked, rhetorically. “Why does the government care? Why is the [government] involved if you have this view of marriage that’s just kind of a private, emotional lover’s vow? But for some reason, you record it in law and it changes your tax status.”

The issue of polygamy has been one that has frequently stumped supporters of same-sex “marriage.” During a January debate, University of Louisville law professor Sam Marcossion, a supporter of homosexual “marriage,” called the polygamy argument a “red herring.” Candice Gingrich, a homosexual activist, made the same assertion during an appearance on Sean Hannity’s radio program.

Last November on ABC’s “This Week,” conservative columnist George Will asked two homosexual men — Rep. Barney Frank and columnist Andrew Sullivan — to give him a “principle” as to why polygamy should be banned in light of the Lawrence and Massachusetts decisions.

“Some distinctions are hard to draw,” Frank answered. “But the difference between two people and three people is almost always clear. It is responsible for a society to say, ‘Look, you can do what you want personally. If three people want to have sex

together, that's not against the law. But when it comes to being married and institutionalizing these legal relationships with regards to the ownership of property and children, then we believe a three-way operation is likely to cause difficulty, friction with the children.”

Sullivan responded: “I don't want the right to marry anyone. I just want the right to marry someone.”

Sociologist Glenn Stanton of Focus on the Family said one reason same-sex “marriage” has made advances is because marriage itself is viewed as a means of receiving legal benefits.

“If we have to honor the relationship that two guys have, then we have to honor the relationship that a guy and his three wives have,” Stanton said. “We have to honor the relationship that two heterosexual single moms have. If we are going to offer health benefits and government benefits to other configurations, why keep anybody from joining together and saying, ‘Our relationship is significant, too,’ regardless of what that relationship is?”

Gallagher said there is “no logical reason” for not awarding benefits to polygamists if they are given to same-sex couples.

The irony of the current debate is that polygamy is rooted far deeper in human history — and is accepted in far more cultures today — than is same-sex “marriage.” Polygamy once dominated the Mormon church, and Utah was not given statehood until it outlawed the practice. The church officially disavows it now, although estimates say that up to 100,000 people in the West still practice it. Worldwide, polygamy is legal in some countries and is common among Muslims. Islam's founder, Muhammad, had multiple wives.

The United Nations allows employees to divide their benefits among multiple wives, as long as they come from a country where polygamy is practiced, The Washington Post reported.

Seeing the logical extension from same-sex “marriage,” some in America have begun to argue for the legalization of polygamy, too. Anthropologist Robert Myers wrote in a USA Today editorial March 14 that the United States has a “narrow view” of marriage.

“[W]e will allow marriage to any number of partners, as long as it is to only one at a time,” he wrote.

Gallagher said she believes that polygamy is less of a departure from traditional marriage than is same-sex “marriage.” After all, she said, it involves procreation.

Of course, Gallagher and other traditionalists aren’t arguing for polygamy’s legalization. They’re showing the logical inconsistency of same-sex “marriage.”

“The argument in the 19th century that Congress made is that polygamy is associated with despotic forms of government, because basically the most powerful men start hogging all the women,” Gallagher said. “There is something to be said for that. I think it’s also associated with less investment by fathers in their children. Some children get subordinated in polygamous marriage systems. The attention of the father and the family tends to focus on the t heir.”

Other arguments against polygamy include an increase in child and spousal abuse, welfare fraud and forced marriages.

From the Christian perspective, Scripture has an answer for both polygamy and homosexual “marriage” According to the gospel of Matthew<sup>728</sup>, Christ points to Old Testament law as limiting marriage to one man, one woman. When questioned about a man divorcing his wife, Jesus replied “Haven’t you read,” he replied, “that at the beginning the Creator ‘made them male and female,’ and said, ‘For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh’<sup>729</sup>

This was the same position by Lord Penzance in the case of **Hyde v Hyde**<sup>730</sup> where the common law position of marriage was established His Lordship pronounced:

“I conceive that marriage as understood in Christendom, may for this purpose be defined as the voluntary union for life of one man and woman, to the exclusion of others”

This definition influenced a lot of cases such as *Wilkinson v Kitzinger*<sup>731</sup> where two same sex British university professors, legally married in British Columbia, Canada but their marriage not recognised under British law on return. Under the subsequent Civil Partnership Act, it was converted into a civil partnership. The couple sued for recognition of their marriage, arguing that it was legal in the country in which it was executed and met the requirements for recognition of overseas marriages and should

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<sup>728</sup> The book of Matthew 19:4.

<sup>729</sup> Ibid.

<sup>730</sup> Courts of Probate and Divorce, *Hyde v Hyde Woodmansee* [L.R.] 1 P. & D.130.

<sup>731</sup> [2006] EWHC 2002 (Fam0).

thus be treated in the same way as one between opposite-sex couples. They rejected the conversion of their marriage into a civil partnership believing it to be both practically and symbolically a lesser substitute. They were represented by civil rights group Liberty. The group's legal director James Welch argued that it was a matter of fairness and equality for the couple's marriage to be recognised and that they "shouldn't have to settle for the second-best option of a civil partnership".

The High Court announced its judgement on 31 July 2006, ruling that their union would not be granted marriage status and would continue to be recognised in England and Wales as a civil partnership. The president of the Family Division, Sir Mark Potter, gave as his reason that "abiding single sex relationships are in no way inferior, nor does English Law suggest that they are by according them recognition under the name of civil partnership", and that marriage was an "age-old institution" which, he suggested, was by "longstanding definition and acceptance" a relationship between a man and a woman. He agreed with the couple's claim that they were being discriminated against by the Civil Partnership Act 2004, but considered that "To the extent that by reason of that distinction it discriminates against same-sex partners, such discrimination has a legitimate aim, is reasonable and proportionate, and falls within the margin of appreciation accorded to Convention States." Attorney General Peter Goldsmith, as second respondent, sought £25,000 in legal costs from the couple, which the High Court ordered them to pay.

**Wilkinson and Kitzinger** said they were "deeply disappointed" with the judgement, not just for themselves, but for "lesbian and gay families across the nation". They said that "denying our marriage does nothing to protect heterosexual marriage, it simply upholds discrimination and inequality" and also said that the ruling insulted LGBT people and treats their relationships as inferior to heterosexual ones; not worthy of marriage but only of an "expressly different, and entirely separate institution". They said, however, that they believed the judgement "won't stand the test of time" and that they looked forward to the day when "there is full equality in marriage". They had originally announced their intention to appeal the decision but later abandoned it due to lack of funds.

The decision didn't seat right with the LGBTQIA+ community as Gay rights campaigner Peter Tatchell said that the establishment's aggressive opposition to same-sex marriage and the successful demand of £25,000 from the couple damaged the government's "gay-friendly credentials". He also claimed that the demand in

legal costs was designed to damage the couple financially so they would not be able to appeal. He said he was "angry but not downcast" about the ruling and that this was only a temporary setback in the "long struggle for marriage equality"<sup>732</sup>.

However, Same sex marriages have since 2014 owing to the Marriage (Same Sex Couples) Act<sup>733</sup> been recognized legally.

Marshall, of The Heritage Foundation, said the onus must be placed on same-sex "marriage" supporters as to why marriage should not include polygamy and other forms of relationships. The polygamy question is not a "red herring," she said.

"It seems to me," she said, "that those who are trying to argue for the redefinition of marriage should have to answer the question, 'What is the logical stopping point after this?' It seems to me that that question should be turned around, and the ones who are answering it should be the ones who are proposing the redefinition of marriage

## **THE UGANDAN PERSPECTIVE TOWARDS POLYGAMY AND HOMOSEXUALITY.**

### **Polygamy**

According to The Customary Marriage's and Registrations Act<sup>734</sup> and The Marriage and Divorce of Mohammedands Act<sup>735</sup> Polygamy is legal as a man can marry more than one wife and up to four based on their custom or religion of Islam respectively.

The above is with implication that Polygamy which is tied to cultural practices and still overtly a part of Muslim life in Uganda, is a neuralgic issue in Uganda as "traditional marriage" in Uganda includes polygamy, which is not illegal. However Christian marriage would mean something different. From a Catholic perspective, a Christian man can only marry one woman, and the Catholic churches appeared to work hard to guard that boundary<sup>736</sup>.

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<sup>732</sup> Tatchell, Peter (2 August 2006). "Equality is still a dream". The Guardian. Archived from the original on 7 March 2016. Retrieved 30 October 2009.

<sup>733</sup> 2013.

<sup>734</sup> Cap 248.

<sup>735</sup> Cap 252.

<sup>736</sup> In Uganda, polygamy is legal, homosexuality is not By By: Thomas M. Landy.

According to Pew research surveys, 31% of Ugandan Christian men claim to have more than one wife. Ugandan interviewees often seemed to characterize it as a tendency built into men's nature, but forbidden by the Church. It was most firmly condemned if a man has children whom he fails to care for, but beyond that seems to elicit disappointment more than condemnation when it is discovered a man practices it. That disappointment is especially deep if it was by a man who had a public role in the Church. One Ugandan man who asked about polygamy's prevalence in the West was amused to learn that it is actually illegal there. A member of Marriage Encounter said they work hard "to help couples understand the sacramental and holy nature of marriage better," but that they were also a relatively small group.



## **CHAPTER FORTY-THREE**

### **HOMOSEXUALITY.**

Ugandans have a deep aversion to homosexuality. In recent years there have been efforts to impose the harshest legal penalties possible on homosexuals. 6 Catholics interviewed for this project found it incomprehensible that a society could allow it to exist, citing tradition, the Bible, “the laws of God,” and a threat to the continuance of the human race. The story of the Ugandan martyrs, which is quite central to Catholic identity, reinforces the sense that homosexuality is anathema. Accounts of their death repeat that some of the martyrs were killed for their refusal, as Christians, to commit sodomy for the king, or to condone his practice of it.

Its therefore noteworthy that the Western perception of Homosexuality & polygamy is different from the Ugandan understanding, for instance In America, Homosexuality is legal given the recognition of same sex marriages but Polygamy isn't allowed, On the other hand, In Uganda, Polygamy is legal but homoseuaxlity is illegal as highlighted above.

### **LGBTQIA+ CLASH WITH AFRICAN CULTURE.**

According to political scientist Constance G. Anthony, American culture war perspectives on human sexuality were exported to Africa as a form of neocolonialism. In his view, this began during the AIDS epidemic in Africa, with the United States government first tying HIV/AIDS assistance money to evangelical leadership and the Christian right during the Bush administration then to LGBTQ tolerance during the administration of Barack Obama. This stoked a culture war that resulted in (among others) the *Uganda Anti-Homosexuality Act* of 2014<sup>737</sup>.

Zambian scholar Kapyia Kaoma highlights that due to shift of “the demographic center of Christianity from the global North to the global South” There is a worldwide African increase in influence of Christianity. She argues that American

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<sup>737</sup> Anthony, Constance G. (November 2018). "Schizophrenic Neocolonialism: Exporting the American Culture War on Sexuality to Africa". *International Studies Perspectives*. 19 (4): 289–304. doi:10.1093/isp/eky004.

conservatives export their culture wars to Africa, particularly when they realize they may be losing the battle back home. As such US Christians have framed their anti-LGBTQIA+ initiatives in Africa as standing in opposition to a "Western gay agenda", a framing which Kaoma finds ironic<sup>738</sup>.

This has witnessed a widespread of North American and European conspiracy theories in West Africa via social media, according to 2021 survey by First Draft News. COVID-19 misinformation, New World Order conspiracy thinking, QAnon and other conspiracy theories associated with culture war topics are spread by American, Pro-Russian, French-language, and local disinformation websites and social media accounts, including prominent politicians in Nigeria. This has contributed to vaccine hesitancy in West Africa, with 60 percent of survey respondents saying they were unlikely to try to get vaccinated, and an erosion of trust in institutions in the region<sup>739</sup>.

According to Constance G Anthony, The US foreign policy on AIDS assistance in Africa has gone through many shifts in resource investment and focus which has reflected the politics of the culture war in the United States. Because AIDS cannot be addressed without consideration of sexuality, these shifts have resulted in very different sets of recommendations in African countries on sexual behavior and values given the dependence on the United States for material and technological resources, African countries have been incorporated into this cultural debate as a form of sexual and cultural neocolonialism<sup>740</sup>.

There has been a Christian-inspired homophobia in Africa through Christian counter mobilizations that seek to affirm the human rights of lesbian, gay, bisexual, and transgender (LGBTQIA+) people in Africa man powered by different organizations such an African American organization known as The Fellowship of Affirming Ministries (TFAM) geared at building a Pan-African LGBTQIA+-affirming Christian movement<sup>741</sup>.

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<sup>738</sup>van Klinken, Adriaan (2017). "Culture Wars, Race, and Sexuality: A Nascent Pan-African LGBT-Affirming Christian Movement and the Future of Christianity". *Journal of Africana Religions*. 5 (2): 217–238. doi:10.5325/jafireli.5.2.0217. JSTOR 10.5325/jafireli.5.2.0217. Archived from the original on August 10, 2021. Retrieved May 4, 2021.

<sup>739</sup>Dotto, Carlotta; Cubbon, Seb (June 23, 2021). *Disinformation exports: How foreign anti-vaccine narratives reached West African communities online (Report)*. First Draft News. Retrieved June 23, 2021.

<sup>740</sup>Schizophrenic Neocolonialism: Exporting the American Culture War on Sexuality to Africa.

<sup>741</sup>Adriaan Van Klinken; Culture Wars, Race, and Sexuality: A Nascent Pan-African LGBT-Affirming Christian Movement and the Future of Christianity. *Journal of Africana Religions* 15 July 2017; 5 (2): 217–238. doi: <https://doi.org/10.5325/jafireli.5.2.0217>.

TFAM presents its work as a response to the involvement of American white conservative evangelicals in the spread of homophobia in Africa. Where the latter has been framed as the export of American culture wars through its different works as an attempt to counterbalance the culture wars and to define the future of African Christianity in progressive ways.

TFAM in its endeavors and activities has established an LGBTQIA+ church in Nairobi, Kenya,

TFAM was founded by Bishop Rev. Dr. Yvette A. Flunder, Founder and Senior Pastor, City of Refuge United Church of Christ Presiding Bishop who is the leader of The Fellowship of Affirming Ministries

The Fellowship Global is positioned to be a catalyst for a pan-African faith movement, connecting the radically inclusive Christian movement led by African Americans and our allies to communities in Africa and throughout the diaspora. We provide pastoral care for LGBTI people and support pioneering efforts to establish an open an affirming African Christian movement. Additionally, The Fellowship Global supports the missions, ministries, and faith alliances of The Fellowship of Affirming Ministries outside of the United States.

The Fellowship Global has established partnerships and social justice groups in Kenya, Uganda, Rwanda, Zimbabwe, Cote d'Ivoire, Mexico, the Caribbean, and Asia. It is at the cutting edge of the fight for social justice where you will find The Fellowship Global working collaboratively with networks “on the ground.”

As heirs of the civil rights movement, African spirituality, Christian traditions, and prophetic witness we have a vision for a radically inclusive revival to usher in a new era of social justice.

In providing services and resources, The Fellowship Global has institutional partners in government bodies, human rights groups, political advocates, economic development efforts and the academy<sup>742</sup>.

Recently at a public forum, someone asked me if “same-sex relations in Africa [are] un-African?” While answering the question, another interjected, “all these foreign White man’s practices [are] forced on us,” evidently alluding to the fact that same-sex relations is inherently a “western import,” foisted on Africans by European colonizers.

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<sup>742</sup> [www.radicallyinclusive.org](http://www.radicallyinclusive.org) 8400 Enterprise WayOakland, CA 94621tfamannual@gmail.com

Indeed, few issues are as difficult to grapple with as the fact that precolonial Africa practiced same sex relations with the practice itself being hotly contested in Africa for centuries. In nearly all African countries today, same-sex relations are considered a taboo. Many allege that European colonizers brought with them the “ungodly gift of homosexuality,” despite the range of available historical evidence to the contrary. Even some historians and Africanist scholars have either denied or ignored African same-sex patterns while others have claimed that such patterns were outright colonial importations. This piece argues to the contrary and contends that homophobia was a colonial imposition.

The myth that same-sex relations were absent in precolonial Africa is one of the most enduring. Digging through history and drawing from African-derived examples, it becomes clear that traditional Africa was tolerant of different sexualities, orientations and gender relations. Thus, it is disservice to history to say that same-sex relations in Africa was introduced by Europeans.

In my review of **Nwando Achebe’s** *Female Monarchs and Merchant Queens in Africa*, I highlighted the African phenomenon of “gendered males” and “gendered females” which refers to the way that the interconnected universe allows males to transform themselves into females and females to transform themselves into males. As Achebe argued, “these transformations are encouraged by a milieu that recognizes that . . . sex and gender do not coincide; that gender is a social construct and is flexible and fluid, allowing . . . women to become gendered men, and . . . men, gendered women.”

So, to understand same-sex relations in traditional Africa, one must understand African cosmology. There is a close relationship between spirituality and sexuality in African cosmology as well as with the different types of spiritual power associated with each sex. This worldview not only gave rise to male and female gendered spiritual forces but also allowed for the practice of same-sex relations.

Several instances in oral histories, critical texts, folklore, and ethnographic reports confirm that traditional Africa recognized same-sex relations. Thousands of years ago, evidence from rock paintings show the prevalence of anal sex between San men in present-day Zimbabwe. In *Tommy Boys, Lesbian Men*, the authors identified several same sex practices in ancient and contemporary Africa while in Egypt, as far back as 2400 BCE, excavated bodies of two men, Niankhkhnum and Khnumhotep, showed them apparently cuddled to each other as lovers. Also, in some traditional

African societies, certain magic rituals and rites of passage from boyhood to adulthood often involved same-sex activities.

In precolonial northern Congo, Azande warrior-men routinely married boys who operated as temporary wives. According to *Boy Wives and Female Husbands*, the practice was institutionalized to the extent that the warriors paid bride price to the parents of the boys. When these boys became warrior-men, they too married “boy-wives.”

The Portuguese, among the first Europeans to explore the African continent, noted in their ethnographic reports a range of male-to-male sexual relations among the Congo people which they referred to as “unnatural damnation.” Writing about the Imbangala people present-day Angola, Andrew Battell confirmed there were “men in women’s apparel, with whom they kept amongst their wives” while Jean Baptiste Labat reported about a caste of cross-dressing male diviners known as *chibados* whose leader “dresses ordinarily as a woman and makes an honor of being called Grandmother.”

Additionally, female husbandry demonstrates the fluidity of gender relations and queerness in traditional Africa. For example, Queen Njinga Mbanda, ruler of the Mbundu people in present-day Angola, who rose to power in 1624 and strongly resisted Portuguese dominion, assumed multiple sexual and gender roles and/or identities. She often dressed as a man, married “female wives” and had a harem of men whom she had to dress as women. As a “female husband,” she undoubtedly transgressed gender binaries and even answered to the title of “King” during battles.

In ancient Buganda (present-day Uganda), King Mwanga II, who strongly opposed colonialism and Christianity, was an openly gay monarch. The practice of same-sex relations was rife among the Siwa people of Egypt, Benin people of Nigeria, Nzima people of Ghana, San people of Zimbabwe and Pangwe people of present-day Gabon and Cameroon.

Another noteworthy point is that some precolonial African societies did not have a binary of genders. Among the Igbo and Yoruba of Nigeria, gender was not assigned to babies at birth until later life. Paulla Ebron writes that “[i]n many places in West Africa, gender is not something that newborns are fully equipped with. The making of women and men is formally performed through age-grade systems that usher children into women and men.”

Findings on gender relations in precolonial Igbo culture demonstrate that gender and sex did not coincide. Instead, gender was flexible and fluid, allowing women to become men and vice versa. It was a culture in which gender was re-constructed and performed according to social need. In contemporary Igboland, female-husband practices are still allowed with the understanding that the “wives” in the relationship will render any male children they bear to the female-husband in order to provide a male heir.

Regarding gender and spirituality, African metaphors for God do not necessarily reflect the ways in which theologians and religious historians of Africa write about God. African names for God are gender-neutral or genderless and in some societies, the Creator God is female. In ancient African societies, many deities were portrayed as having both male and female characteristics and being neither distinguishably masculine nor feminine. More so, goddesses such as Mut (the goddess of Mother[hood]) and Sekmeht (goddess of war) in ancient Egypt were often depicted as women with erect penises.

Additionally, the fact that these relations were sometimes identified with specific terms and lingo in precolonial times demonstrate their prevalence. Among the Hausa of Nigeria, *yan dauda* is a term used to describe effeminate men and male wives. Among the Khoikhoi of South Africa, *koetsire* is a term used to refer to men who are sexually receptive to other men. Among the Yoruba, *adofuro* is an euphemism used to describe someone or an intersex person who has anal sex. Although these terms are used derogatorily today, they are not new, rather, they are as old as the cultures where they are used.

One reason lies with the religious repercussions of colonization and the popularity of fundamental Christianity which have been used to argue that same-sex relations are un-African. Missionary activity, evangelization and subsequent colonial conquest led to the criminalization and demonization of same-sex relations in Africa. Using the Bible and Christianity as the credo of African morality, Western heteronormativity displaced notions of traditional African sexual fluidity. British archival reports show how European Penal Codes, enacted in colonial Africa, criminalized gay relations. For instance, the 1860 Indian Penal Code of 1860 and the 1899 Queensland Criminal Code forbade same sex practices in African colonies. Hence, same-sex relations, though commonly practiced, and maybe even accepted, throughout traditional Africa, were seen in bad taste, and seldom publicly recognized in colonial Africa.

Such a rigid perception of human sexuality is problematic. Claude Summers argued that because “human sexuality, human behaviour and emotions, are fluid and various rather than static or exclusive . . . the terms homosexual and heterosexual should more properly be used as adjectives rather than nouns, referring to acts and emotions but not to people.” Unquestionably, homophobia was deeply rooted both in European racial perception of the “Other” and colonial rule.

Observations of same-sex relations in many African cultures were considered by European colonizers as further proof of African inferiority. Unquestionably, early African scholarship was also influenced by experiences of colonial rule while contemporary America’s conservative evangelicals have also wielded an uncanny influence on Africa’s sexual politics.

These examples, and many others not mentioned, confirm the historicity and visibility of same-sex relations in precolonial Africa. Bright argues that Same-sex relations in Africa are not un-African. While the practice may not have been accepted in all cultures at all times, it certainly predated the European colonial conquest of Africa. If anything, Europeans brought homophobia to Africa; they were intolerant of same-sex relations and established systems of surveillance and regulation for expressing it. In the end, the main challenge is for academics, civil society, media and activists to reckon with history and [re]tell it in a way that recognizes the multiple facets of gender and human sexuality in both traditional and contemporary Africa and the Black world. At the same time, he maintains this is a clarion call for a change of attitude, inclusivity, mutual respect, and tolerance for all regardless of their sexualities.

Roundtable Activism African Diaspora archives art black feminism black intellectual history black internationalism black lives matter black nationalism black politics Black Power black protest Black radicalism black radical tradition Black women capitalism carceral state Caribbean civil rights Civil Rights Movement Donald Trump education Gender Haiti Jim Crow literature mass incarceration music Pan-Africanism police brutality police violence Politics race Racial Violence racism religion Resistance sexuality slavery slave trade South teaching W.E.B. Du Bois white supremacy

LGBT activists out the Milimani High Court after the court declined to abolish colonial era laws decriminalizing gay sex at Nairobi, Kenya on May 24, 2019 (Shutterstock)

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The myth that same-sex relations were absent in precolonial Africa is one of the most enduring. Digging through history and drawing from African-derived examples, it becomes clear that traditional Africa was tolerant of different sexualities, orientations and gender relations. Thus, it is disservice to history to say that same-sex relations in Africa was introduced by Europeans.

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of women and men is formally performed through age-grade systems that usher children into women and men.”

Findings on gender relations in precolonial Igbo culture demonstrate that gender and sex did not coincide. Instead, gender was flexible and fluid, allowing women to become men and vice versa. It was a culture in which gender was re-constructed and performed according to social need. In contemporary Igboland, female-husband practices are still allowed with the understanding that the “wives” in the relationship will render any male children they bear to the female-husband in order to provide a male heir.

Regarding gender and spirituality, African metaphors for God do not necessarily reflect the ways in which theologians and religious historians of Africa write about God. African names for God are gender-neutral or genderless and in some societies, the Creator God is female. In ancient African societies, many deities were portrayed as having both male and female characteristics and being neither distinguishably masculine nor feminine. More so, goddesses such as Mut (the goddess of Mother[hood]) and Sekmeht (goddess of war) in ancient Egypt were often depicted as women with erect penises.

Additionally, the fact that these relations were sometimes identified with specific terms and lingo in precolonial times demonstrate their prevalence. Among the Hausa of Nigeria, *yan dauda* is a term used to describe effeminate men and male wives. Among the Khoikhoi of South Africa, *koetsire* is a term used to refer to men who are sexually receptive to other men. Among the Yoruba, *adofuro* is an euphemism used to describe someone or an intersex person who has anal sex. Although these terms are used derogatorily today, they are not new, rather, they are as old as the cultures where they are used.

One reason lies with the religious repercussions of colonization and the popularity of fundamental Christianity which have been used to argue that same-sex relations are un-African. Missionary activity, evangelization and subsequent colonial conquest led to the criminalization and demonization of same-sex relations in Africa. Using the Bible and Christianity as the credo of African morality, Western heteronormativity displaced notions of traditional African sexual fluidity. British archival reports show how European Penal Codes, enacted in colonial Africa, criminalized gay relations. For instance, the 1860 Indian Penal Code of 1860 and the 1899 Queensland Criminal Code forbade same sex practices in African colonies. Hence, same-sex relations, though commonly practiced, and maybe even accepted,

throughout traditional Africa, were seen in bad taste, and seldom publicly recognized in colonial Africa.

Such a rigid perception of human sexuality is problematic. Claude Summers argued that because “human sexuality, human behaviour and emotions, are fluid and various rather than static or exclusive . . . the terms homosexual and heterosexual should more properly be used as adjectives rather than nouns, referring to acts and emotions but not to people.” Unquestionably, homophobia was deeply rooted both in European racial perception of the “Other” and colonial rule. Observations of same-sex relations in many African cultures were considered by European colonizers as further proof of African inferiority. Unquestionably, early African scholarship was also influenced by experiences of colonial rule while contemporary America’s conservative evangelicals have also wielded an uncanny influence on Africa’s sexual politics.

These examples, and many others not mentioned, confirm the historicity and visibility of same-sex relations in precolonial Africa. Same-sex relations in Africa are not un-African. While the practice may not have been accepted in all cultures at all times, it certainly predated the European colonial conquest of Africa. If anything, Europeans brought homophobia to Africa; they were intolerant of same-sex relations and established systems of surveillance and regulation for expressing it. In the end, the main challenge is for academics, civil society, media and activists to reckon with history and [re]tell it in a way that recognizes the multiple facets of gender and human sexuality in both traditional and contemporary Africa and the Black world. At the same time, this is a clarion call for a change of attitude, inclusivity, mutual respect, and tolerance for all regardless of their sexualities.

It is widely believed that lesbianism and homosexuality are foreign concepts and colonial imports to Sub-Saharan Africa. This popular view is not unconnected with hegemonic heterosexual orientation of the society. The pitfall of heterosexual orientation, which hinges on politics of sexual representation, is worth an academic investigation. Therefore, this study seeks to close the analytical gap by examining Yorùbá oral literature, which is regarded as the repertoire of their traditional and cultural beliefs and nuances, to unravel the subject of lesbianism and homosexuality from a sociological approach. Drawing on interviews and oral literature, this article examines the vital ideas of lesbianism and gay culture among the Yorùbá people of

southwestern Nigeria. This article argues that the preconceived obscenity of lesbianism and homosexuality among the Yorùbá hinges on the culture of silence within the cultural milieu of the people. The study concludes that the representation of lesbianism and gay in diverse oral literature, as the repertoire of people's experiences and worldview, rubberstamped its presence and practices in the Yorùbá society.

During his visit to Africa this summer, the US president, Barack Obama, addressed legal discrimination against LGBT individuals. Meeting the Kenyan president, Uhuru Kenyatta, Obama said: “When you start treating people differently not because of any harm they are doing to anybody, but because they are different, that’s the path whereby freedoms begin to erode.”

Unfortunately, the response from Kenyatta was that “there are some things that we must admit we don’t share [with the US]. Our culture, our societies don’t accept.”. Simply put, HE was against homosexuality in Kenya.

As I dug deep, I realised that African culture is no stranger to homosexual behaviours and acts

This is the same argument that Robert Mugabe used to suppress the human rights of LGBT people in Zimbabwe; that the former president of Nigeria, Goodluck Jonathan, used when he signed the most dangerous law against LGBT people in the modern world; and that President Yoweri Museveni used in a ceremonial signing of the anti-gay bill in Uganda. This year Gambia’s president Yahya Jammeh called for gay people’s throats to be slit.

When I was appointed by Berlin’s Humboldt University this year to teach the course “Pre- and post-colonial sexual orientation and sexual identity in Africa”, I knew I had a huge task before me. I had to teach students about a history that is mostly unwritten.

In digging up facts I found that, while many Africans say that homosexuality is un-African, African culture is no stranger to homosexual behaviours and acts.

For example, in my local language (Yoruba), the word for “homosexual” is adofuro, a colloquialism for someone who has anal sex. It might sound insulting and derogatory; however, the point is there is a word for the behaviour. Moreover, this is not a new word; it is as old as the Yoruba culture itself.

In the northern part of Nigeria, *yan daudu* is a Hausa term to describe effeminate men who are considered to be wives to men. While the Yoruba word might be more about behaviour than identity, this Hausa term is more about identity. You have to look and act like a *yan daudu* to be called one. It is not an identity you can just carry. These words are neutral; they are not infused with hate or disgust.

In the Buganda Kingdom, part of modern-day Uganda, King Mwanga II was openly gay and faced no hate from his subjects until white men brought the Christian church and its condemnation. Though King Mwanga is the most prominent African recorded as being openly gay, he was not alone.

In *Boy-Wives and Female Husbands*, a book examining homosexuality and feminism in Africa, the researchers found “explicit” Bushman artwork that depicts men engaging in same-sex sexual activity. There have been other indicators that the transition from boyhood to adulthood within many African ethnic groups involved same-sex sexual activities. So what accounts for the current dismissal of homosexuality on the continent?

One factor is the increased popularity of fundamental Christianity, by way of American televangelists, since the 1980s. While Africans argued that homosexuality was a western import, they in turn used a western religion as the basis for their argument. When I have challenged people who are anti-gay, many have said that it is not our culture. However, when you probe further, they argue that homosexuality is not in the Bible. But the Bible is not our historical culture. This shows there is real confusion about Africa’s past.

Reinforcing this is the fact that populist homophobia has kept many politicians in power. Across Africa, if you hate gay people, you get votes.

As a Nigerian gay man, these myths about homosexuality create a dark cloud over my head. They leave me trying to navigate my way through self-denial, rejection, love and the burden of guilt. While to many people the assertion “homosexuality is un-African” might just be words, to all African LGBT people it puts our lives in imminent danger. It is used in South Africa to rape lesbians. It is used to pass laws and to jail, threaten or kill gay rights activists. It is used to dehumanise LGBT people across Africa and legitimise the hate that we face. It is the reason I receive death threats, which ultimately drove me into exile from my home in Nigeria.

As long as the notion that homosexuality is un-African persists, Kenyatta will receive applause, Mugabe will win elections, and parliaments across the continent will reintroduce harmful laws.

To stop all this, we need to start by re-telling our history and remembering our true African culture, one that celebrates diversity, promotes equality and acceptance, and recognises the contribution of everyone, whatever their sexuality.

With Zambia imprisoning two men to 15 years for gay sex and Uganda detaining LGBTQ+ activists, the African continent is a difficult place for homosexuals. Why is that?

Zambia sentenced two men to 15 years in prison last week for having consensual sex in the privacy of their hotel room.

In late November, Ugandan police rounded up 125 people in a gay-friendly bar in the capital, Kampala, dozens of whom now face charges.

In Nigeria last week, 47 men pleaded innocent to charges of public displays of affection with the same-sex. They had been detained during a police raid on a Lagos hotel in 2018.

Such cases are triggering heated debates around gay rights on the African continent where homosexuality has become a decisive issue.

So why is Africa such a difficult place for the LGBTQ+ community?

There are many reasons, but colonial laws, religious morality, and the idea that homosexuality is imported by the West are among the most influential, scholars say.



## **CHAPTER FORTY-FOUR**

### **COLONIAL-ERA ANTI-SODOMY LAWS**

Of the 72 countries worldwide that criminalize homosexuality, 32 of them are in Africa, where punishments range from imprisonment to the death penalty in countries such as Mauritania and Sudan.

More than half of these are former British colonies where colonial administrators introduced laws prohibiting "unnatural acts".

A man and a woman hug each other in court

Activists celebrate in court in May 2019 after Botswana overturned its British-era law criminalizing same-sex relations  
Image: picture alliance/AP Photo

The degree to which the laws are enforced varies greatly. Uganda has seen a flurry of recent anti-gay arrests while The Gambia hasn't prosecuted anyone under its anti-sodomy laws since the change of government in 2017.

Even when not enforced, such laws prolong the stigma attached to homosexuality and provide a "justification" for homophobic behavior, Alan Msosa, a Malawian researcher for the University of Bergen in Norway, told DW.

"They give people the chance to say: 'We don't like [homosexuals] because they are criminals.'"

Africans among the world's most religious people

Around 93% of sub-Saharan Africans are either Christian (63%) or Muslim (30%), making the continent one of the most religious in the world.

These beliefs influence many facets of people's lives, including their attitudes to LGBTQ+ communities.

"Most religious texts say that homosexuality is problematic," writes Amy Adamczyk, an American sociologist, in an article for *The Conversation*.

"More religious people are more likely to take these religious precepts seriously. When a large proportion of people are highly dedicated to their religion, everyone within the country tends to develop more conservative views."

Muslim and Christian leaders are often vocally opposed to gay sex, and studies show that African media often quote a religious official when discussing homosexuality — much more so than in countries such as the United States.



## **CHAPTER FORTY-FIVE**

### **HOMOSEXUALITY PROMOTED AS 'UN-AFRICAN'**

Africa's elites, which include political, religious and community leaders, often claim that homosexual practices are an imported Western evil.

Long-term Zimbabwean leader Robert Mugabe called homosexuality "un-African" and a "white disease". Ugandan President Yoweri Museveni has said it's a "western import."

In the aftermath of the recent sentencing of the two Zambian gay men (which saw the US Ambassador to Zambia saying he was "horrified" by 15-year jail term), a Zambian bishop called for fellow citizens to protect their own values and culture from outside influences.



## **CHAPTER FORTY-SIX**

### **PRE-COLONIAL AFRICANS HAD GAY SEX**

But homosexuality existed in Africa long before the continent was colonized. Extensive evidence collected by anthropologists and other scholars shows that same-sex practices and diverse sexualities can be found all over the continent and predate colonization.

Ancient San rock paintings near Guruve in Zimbabwe dating back 2,000 years show explicit scenes between copulating males.

A man with a sticker on his face reading: 'Some Ugandans are gay. Get over it.'

Same-sex relationships exist in Uganda now, and were also part of many Ugandan communities before and during colonial timesImage: picture-alliance/AP Photo/R. Vassie

"It was an open secret" that Mwanga II, the 19th century King of Buganda in what is now Uganda, was gay, writes Ugandan scholar Sylvia Tamale in an article entitled *Homosexuality is not un-African*.

He wasn't alone. In northern Uganda, effeminate males among the Langi people were treated as women and could marry men during pre-colonial times whereas in Zambia, records show youths and adult men had sexual contact during the circumcision rites of the Ndembu.

It also wasn't just men that were involved in homosexual relationships.

"Women to women marriage in which one woman pays brideprice to acquire a husband's rights to another woman has been documented in more than thirty African populations," finds the seminal book on homosexuality in Africa, *Boy-Wives and Female Husbands*.



## CHAPTER FORTY-SEVEN

# EMPLOYING HOMOPHOBIA IN THE FIGHT FOR POWER

By calling on their citizens to guard against westernization and protect their own culture, homophobia has become a rallying cry that serves to mobilize and unite the masses.

"Political and religious leaders have exploited the issue to generate support," Alan Msosa told DW. It's telling that those politicians who are often most vocal in their anti-gay sentiments, such as in Zambia and Uganda, lead countries where democracy is on the decline.

"The mobilization of latent homophobia is a strategy ... to divert attention when a regime's fate is at stake — in elections, due to public opposition, or internal power struggles," find Norwegian academics Siri Gloppen and Lise Rakner in a paper on backlashes against sexual minorities.

Choosing love over hate: What it's like being a lesbian in Kenya

With the expansion of LGBTQ+ rights often tied to international development aid, African leaders can also gain points with voters by appearing to defy the West with a strong stance against homosexuality, points out Malawian researcher Msosa.

Attitudes to homosexuality more nuanced than thought

He sees homophobia as "an elite project" that doesn't always reflect the reality of how people are engaging with LGBTQ+ communities on the ground.

In a just-released study on attitudes to homosexuality in Malawi, Msosa found 80% of respondents believed homosexual sex is wrong, but 33% still believe God loves people in same-sex relationships.

The idea of human rights for homosexuals is also sometimes misunderstood as promoting the rights of gay men to have sex with boys which can lead to less support for LGBTQ+ rights.

But "when we unpacked certain words using local languages, such as using 'justice, fairness and inclusion' over 'human rights' we found that [Malawians] were more tolerant in their views," Msosa said.



## CHAPTER FORTY-EIGHT

### Imported stigma

Before colonization, traditional African societies didn't seem to stigmatize homosexual practices.

"There are no examples of traditional African belief systems that singled out same-sex relations as sinful or linked them to concepts of disease or mental health — except where Christianity and Islam have been adopted," according to *Boy-Wives and Female Husbands*. *Boy-Wives and Female Husbands: Studies of African Homosexualities* (review)

Murray, Stephen, and Will Roscoe. 1998. *Boy-Wives and Female Husbands: Studies in African Homosexualities*. New York: St. Martin's Press. 358 pp. \$29.95 (cloth).

Recent years have seen African nations begin to confront the issue of homosexuality. While the 1994 South African constitution included sexual orientation among protected civil rights, others have decried and attacked homosexuality. Robert Mugabe of Zimbabwe ordered the harassment of Gays and Lesbians of Zimbabwe (GALZ) in 1994 and two years later destroyed the political influence of ex-President Canaan Banana with a conviction on sodomy charges. Presidents Daniel arap Moi of Kenya (1999), Sam Nujoma of Namibia (1996), and Yoweri Museveni of Uganda (1999) [End Page 153] have denounced same-sex behavior and insisted on strict enforcement of anti-gay legislation. In response, gay men (and a few women) have begun recounting their life stories in the press.

At the 1998 Lambeth Conference, bringing together bishops of the Anglican Communion from around the world, a condemnation of homosexuality passed over the rigorous protests of American and European bishops, but with strong support from African prelates. The Anglican Church debate served to confirm for some the

conventional wisdom that homosexuality is a western phenomenon. Its presence in Africa is explained as a legacy of colonialism and/or an evil introduced by Arabs. As the underground existence of same-sex relationships emerges, this book demonstrates the inaccuracy of the myth that there are no homosexuals in Africa.

Sociologist Stephen Murray (Director, El Instituto Obregon) and anthropologist Will Roscoe (Institute of Research on Women and Gender, Stanford University) have pioneered in comparative studies of homosexuality. These include: *Oceanic Homosexualities* (1992), *Latin American Male Homosexualities* (1995), and *American Gay* (1996). This work culminated in Murray's *Homosexualities* (1999) which brings together his theoretical insights. Roscoe has studied Native Americans, especially the berdache tradition in Zuni Man-Woman (1991). The two collaborated on *Islamic Homosexualities* (1997); this includes North Africa, which is excluded from their African study. This body of work represents the most extensive cross-cultural scholarship on homosexuality.

The present book is a wide-ranging collection of materials which include academic articles, translations from early colonial memoirs, and contemporary accounts. Unlike the other works cited above, no theoretical framework is given, since the editors argue that there are "multiple Africas and diverse patterns of same-sex sexuality" (p. xviii). The continent is divided into four regions, with North Africa excluded. Each section is introduced with an overview and three to five articles. There is a balance of gay male and lesbian articles.

Materials from 1732 to the present effectively demolish the myth of the foreign origins of homosexuality in Africa. There are, however, special patterns. African societies vary considerably in their tolerance of same-sex behavior, although none could be called gay-positive. Most homosexuals fulfill their social duties of marriage and begetting children, and their same-sex activity parallels a conventional family life. Gay/Lesbian identity and social networks are rare (South Africa being a notable exception), and a gay infrastructure of bars and meeting places is largely invisible. That it exists at all, quite outside any western influence, is amply illustrated in the participant-observer accounts in Murray and Roscoe's book. Approximately one-third of the book was written by Murray and Roscoe.

Boy-Wives and Female Husbands opens up a topic that has as often been denied among Africanist scholars as it is among the political and social elites in Africa. A great deal remains to be done. While this book contains some fine scholarly articles, such as Deborah Amory's "Mashoga, [End Page 154] Mabasha and Magai: Homosexuality on the East African Coast," the mix is quite uneven. The editors make some suggestions for further research, and one hopes that this book will spur focused scholarly studies. To this reviewer, what immediately came to mind is situational homosexuality in work camps and schools; the impact of urbanization; in traditional societies, the presence and meaning of same-sex behavior in age-sets and secret...

According to Professor Siliva Tamale, Abrahamic religions (particularly Christianity and Islam) that often accompany the argument that homosexuality is un-African is unacceptable. She argues that African traditional religions were (and still are) integrated into the people's holistic and everyday existence inclusive of sexuality.

She asserts that many sexual practices that were acceptable in precolonial, pre-Islamic and pre-Christian Africa were encoded with tags of "deviant," "illegitimate" and "criminal" through the process of proselytization and acculturation of Western Religions. That it is ironic that an African dictator wearing a three-piece suit, caressing an iPhone, speaking in English and liberally quoting the Bible can dare indict anything for being un-African.

The struggle to win full citizenship for lesbian, gay, bisexual, transgender and intersex groups is global. Even in countries where homosexuality has been decriminalized, the consciousness of the majority has yet to catch up with reformed laws. In order to completely dispel homophobia from Africa as such, new methods of advocacy that resonate with African philosophies such as Ubuntu have to be employed. This concept encompasses many values — humaneness, solidarity, interdependence, compassion, respect and dignity. It rejects selfish, paternalistic and restrictive regulations issued by rulers riding high moral horses in complete disregard of the interests of their neighbors, their community and their fellow human beings.

The late Nelson Mandela described this philosophy as "the profound sense that we are human only through the humanity of others, that if we are to accomplish anything in this world, it will in equal measure be due to the work and achievements of others."

That homosexuality-is-un-African negates everything that African history and tradition has transmitted to posterity. A tenet of African philosophy holds that “I am because you are.” In short, it matters little about the differences that each one of us displays but much about the essence of humanity that binds us together, she argues that What really matters is the respect for human dignity and diversity<sup>743</sup>.

## **RWANDAN POSTION.**

### **KINGDOM OF RWANDA**

In the old Kingdom of Rwanda, male homosexual relations were common among young Hutus and Tutsis. In 1986, a 19-year-old Tutsi man was recorded as saying that "traditionally, in his tribe, there was an extended period during which boys lived apart from the rest of the village while they are training to be warriors, during which very emotional, and often sexual, relationships were struck up... Sometimes these relationships lasted beyond adolescence into adulthood.

Watusi still have a reputation for bisexuality in the cities of East Africa." Tutsi boys' training at court would often be made sexually available to guests. Homosexuals were referred to as umuswezi or umukonotsi, which literally translate to "sodomite". Several terms exist for male homosexuality: kuswerana nk'imbwa, kunonoka, kwitomba, kuranana inyuma and ku'nyo. In addition, there were traditions of "cross-dressing priests", known as ikihindu or ikimaze, first described by the colonialists as "hermaphrodites", who would play the role of shamans and healers. Sexual relations are believed to have included mutual masturbation, intercrural sex and anal intercourse<sup>744</sup>.

On 16 December 2009, the Parliament of Rwanda debated whether to make homosexuality a criminal offense, with a punishment of 5–10 years imprisonment<sup>745</sup>. This legislation was similar to the controversial anti-homosexuality bill in the neighboring country of Uganda<sup>746</sup>. However, The Rwandan Minister of Justice condemned and refuted reports that the government intended to criminalize homosexual acts, saying that sexual orientation is a private matter, not a state business<sup>747</sup>.

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<sup>743</sup> Al Jazeera America's editorial policy.

<sup>744</sup> "The idea that African homosexuality was a colonial import is a myth". The Guardian. 8 March 2014.

<sup>745</sup> "Anti-gay bill in Uganda challenges Catholics to take a stand". National Catholic Reporter. 27 November 2009.

<sup>746</sup> "Anti-gay bill in Uganda challenges Catholics to take a stand". National Catholic Reporter. 27 November 2009.

<sup>747</sup> Govt Cannot Criminalise Homosexuality; The Minister of Justice Tharcisse Karugarama. 19 December 2009.

## **SOCIETAL ACCEPTANCE QUICKLY DISAPPEARED AFTER THE ARRIVAL OF THE EUROPEAN COLONIALISTS AND CHRISTIANITY.**

President Paul Kagame assured the Rwandan Diaspora and friends that Rwanda is a peaceful country where everyone is supportive of each other.

The Rwandan head of state was speaking at Rwanda Cultural Day convened in San Francisco, California, commended for championing gender equality, the president was inquired about the possibility of living in Rwanda as LGBT (Lesbian, Gay, Bisexual and Transgender).

For President Kagame who first took a minute-long pause, said, "it hasn't been our problem. And we don't intend to make it our problem."

According to **Article 26 of Rwanda's constitution**, "Only civil monogamous marriage between a man and a woman is recognized. No person may be married without his or her free consent. Parties to a marriage have equal rights and duties upon and during the subsistence of a marriage and at the time of divorce. The law determines conditions, forms and effect of marriage." However, sexual orientation is a private matter, not a state business.

The Age of Consent in Rwanda is 18 years old. The age of consent is the minimum age at which an individual is considered legally old enough to consent to participation in sexual activity. Individuals aged 17 or younger in Rwanda are not legally able to consent to sexual activity, and such activity may result in prosecution for statutory rape or the equivalent local law.

Rwanda statutory rape law is violated when an individual has consensual sexual contact with a person under age 18, regardless of gender or sexual orientation<sup>748</sup>.

Rwanda is considered a leader in the progress on human rights for LGBT persons in East Africa.

In 2010 Rwanda eliminated the criminalisation provision from its draft code and recently signed two UN resolutions on sexual orientation and gender identity, as the only African nation to do so, Rwanda is a signatory of the United Nations joint statement condemning violence against LGBTQIA+ people

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<sup>748</sup> <https://www.ageofconsent.net/world/rwanda>.

In September 2019, Albert Naronibo, a well-known gospel singer, came out as gay in an interview with a Christian YouTube channel. The Associated Press reported that his coming out had caused "shock" in a country "where such a public assertion of homosexuality is unheard of". Despite "horrible" reactions from family and friends, Olivier Nduhungirehe, the Minister of State for East African Community Affairs, expressed support for Naronibo, saying, "All Rwandans are born and remain equal in rights and freedoms." Naronibo himself stated that "there is no going back, because I have to live my real life."<sup>749</sup>

## **WHY AFRICAN CULTURE WILL NEVER SUPPORT LGBTQ.**

### **Ugandan Case study.**

President Yoweri Museveni has condemned western countries for allegedly attacking African culture, accusing them of attempting to give orders to African leaders. Museveni made the comments at the National Thanksgiving prayers by the Inter-religious Council to celebrate the passing into law the Anti-Homosexuality bill<sup>750</sup>.

According to different cases such, LBGTQIA+ in Uganda is illegal and prohibited by law, A case study of the different versions of the case of Nabageresa Jacqueline depicts Ugandans harsh position towards homosexuality regardless of Courts ruling that discrimination and inhumane treatment of LBGTQIA+ people was un constitutional, their activities are against the law as their rights are only exercisable in as far as they conform to public interest and policy. The two different versions however pose a controversy in terms of protecting and condemning as are elaborately discussed below.

### **Kasha Jacqueline, David Kato Kisule and Onziema Patience v. Rolling Stone Ltd and Giles Muhame<sup>751</sup>.**

The applicants filed a complaint to the High Court alleging that the publication of an article by the respondents violated their constitutional rights. As relief, they requested compensation for the pain and anguish caused as well as an injunction

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<sup>749</sup> Ssuuna, Ignatius (16 September 2019). "Rwandan gospel singer comes out as gay, to country's shock". The Associated Press. Kigali.

<sup>750</sup> NTV Uganda, April 1 2014.

<sup>751</sup> High Court of Uganda at Kampala (30 December 2010)

restraining the respondents from publishing further injurious information about them.

### **Facts**

The respondents were the publishers of a newspaper called “Rolling Stone”. On 2 October 2010, an article with the title “100 Pictures of Uganda’s top homos leak” was published in the newspaper. The article accused the gay community of trying to recruit “very young kids” and “brainwash them towards bisexual orientation”. It called on the government to take a bold step against this threat by hanging dozens of homosexuals.

The article published the names and pictures of several members of the Ugandan LGBT community and provided information about them and, in some cases, their home addresses. With regard to the first applicant, the article accused her of hosting at her house gatherings of the gay community, sometimes ending in orgies. The article also accused the third applicant of planning to recruit children at schools. The second applicant’s name and address were published in the article and his picture appeared on the cover.

### **Issue**

Whether the applicants’ rights to human dignity and protection from inhuman treatment and to privacy of person and home had been violated

### **Courts finding.**

The applicants first argued that the article had exposed them to possible violence, ridicule, hatred and “mob justice”, amounting to a threat of violation of their right to human dignity and protection from inhuman treatment.

Moreover, the call for homosexuals to be hanged, coupled with the threat of violence and mob justice, amounted to a threat of death without due process. It was therefore a threat of violation of the applicants’ right to life.

Third, the applicants argued that the article threatened their rights to liberty and to freedom of movement. They also submitted that the article violated their right to privacy of the person and home.

The respondents argued that the applicants were not entitled to the relief sought for several reasons. They had already exposed themselves as homosexuals on the internet and had also voluntarily appeared in public as homosexual activists.

According to the respondents, they could not invoke a violation or a threat of violation of their right to privacy. Furthermore, the applicants had presented no evidence to show that the article had exposed them to any danger with regard to their lives or incited any public violence; their claim that their rights to life and freedom of movement had been violated was therefore ill-founded. Finally, the respondents noted that homosexuality was a criminal offence under the Penal Code Act. Since the applicants admitted being homosexuals, they “had not come to court with clean hands” and should therefore be denied relief.

In determination of the matter, Court restricted itself to two rights only: the right to human dignity and protection from inhuman treatment, and the right to privacy of the person and home.

The Court first stressed that the motion under consideration did not concern homosexuality as such, but rather the alleged infringement or threat of infringement of fundamental rights and freedoms. Next, the Court affirmed that its jurisdiction covered infringed rights but also threats to fundamental rights and freedoms. The fact that the applicants had provided no evidence of actual violence against their persons or their homes was not relevant.

With regard to the applicants’ right to human dignity and protection from inhuman treatment, the issue was whether the article threatened or tended to threaten the human dignity of gay persons in general and, in particular, the applicants.

The Court found that the publication of the applicants’ identities and addresses, coupled with the explicit call to hang gays by the dozen, tended to “tremendously threaten” their right to human dignity.

As for the applicants’ right to privacy of the person and home, the Court affirmed they had “no doubt” that this right had been threatened by the exposure of the applicants’ identities and addresses in the article.

Lastly, the Court addressed the criminalisation of homosexual acts and noted that, under **section 145 of the Penal Code Act**, a person was not considered a criminal for the sole fact of being gay. In order to be regarded as a criminal, one had to commit an act prohibited under that provision. The Court thus distinguished between the being gay and sexual conduct.

The Court held that Rolling Stone threatened the applicants’ rights to human dignity and protection from inhuman treatment, as well as their right to privacy of the person and home. The Court issued the injunction sought by the applicants, restraining the

respondents from publishing more information about the identities and addresses of Ugandan gays and lesbians.

**Jacqueline Kasha Nabagesera & Ors v AG & Anor**<sup>752</sup>

The case was filed at the High Court before Justice Stephen Musota, the facts were that Jacqueline Kasha Nabagesera and a group called Freedom and Roam Uganda organized this workshop with the purpose of training LGBTQIA+ activists in project planning, advocacy, and human rights. The Minister of Ethics and Integrity intervened and ordered the close of the workshop. He alleged that the workshop was an illegal gathering of homosexuals prohibited by **Section 145** of the **Ugandan Penal Code**.

Nabagesera submitted that neither hosting nor attending the workshop constituted a criminal offense under the terms of **Section 145**, which solely criminalizes homosexual acts. She and Freedom and Roam Uganda challenged the actions of the Minister for closing the workshop, submitting that the closure of the workshop constituted a violation of their rights to freedom of expression, political participation, freedom of association, assembly, and equality before the law.

The action of the second respondent to order the closing of the workshop constituted an infringement of the applicants and other participants' right to participate in peaceful activities to influence policies of government through civil organizations guaranteed under **Art 38** to order the closing of the workshop while no other workshop taking place at the same time, at the same venue was arbitrary and unjustified and constituted an infringement of the applicants' and other participants' rights to equal treatment before the law under **Article 21** of the Constitution.

The second respondent in his official capacity as Minister for Ethics and Integrity appeared at the workshop venue on 14th February 2012 and on allegation that the workshop was an illegal gathering of Homosexuals ordered the workshop closed and immediate dispersal of the applicants and other participants.

No other workshop taking place at Imperial Resort beach Hotel Entebbe on 14th February 2012 was ordered closed. That the closure of the workshop and the dispersal of the applicants and other participants was unjustified and constituted an infringement of their fundamental rights on freedoms.

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<sup>752</sup> Miscellaneous Cause 33 of 2012 (2014) UGHCCD 85.

## **The Agreed Issues for Resolution Were as Follows:**

Whether by organizing and attending the workshop at Imperial Resort Beach Hotel, the applicants were engaging in illegal and unlawful activities.

Whether the applicants' Constitutional rights were unlawfully infringed when the second respondent closed down their workshop?

Whether the second respondent can be sued in his individual capacity?

Whether the applicants are entitled to the remedies prayed for?

### **Issue 1: Whether by organizing and attending the workshop at Imperial Resort Beach Hotel, the applicants were engaging in illegal or unlawful activities.**

In his submissions, Mr. Onyango learned counsel for the applicants argued that S. 148 of the Penal Code Act only prohibits homosexual sex acts. That there are no related offences which are committed by aspersion, suggestion, innuendo or apparent association. Learned counsel argued that the affidavit of the Minister and Mr. Abola don't show that the workshop participants committed any criminal offence as described under **S. 145 of the Penal Code Act**. Further that since the participants were not found engaging in homosexual acts per se nor did they show intent to commit the acts, there was no crime committed under **S. 145 of the Penal Code Act** and therefore the closure of the workshop could not be construed as a legitimate attempt to prevent the commission of a criminal offence.

Ms Patricia Mutesi, learned counsel for the respondent submitted to the contrary that the Minister's affidavit states that he established that the workshop which was attended by homosexuals aimed to encourage participants to engage in and promote same sex practices. Further that it aimed to equip them with individual and organizational knowledge and skills to further their objective of promoting same sex practices. That the Minister closed the workshop on the ground that the applicants were using it to promote and encourage homosexual practices which was unacceptable and unjustifiable in a country whose laws prohibit such practices.

Court observed that it is a principle of criminal law that in addition to the substantive offence, it is also prohibited to directly or indirectly encourage or assist the commission of the offence or to conspire with others to commit it regardless of whether the offence is actually committed or not. In the laws of Uganda, S. 145 of the Penal Code Act prohibits homosexual acts. It provides that: -

“145. Un natural offences

Any person who-

- a) has carnal knowledge of any person against the order of nature;
- b) has carnal knowledge of an animal; or
- c) permits a male person to have carnal knowledge of him or her against the order of nature commits an offence and is liable to imprisonment for life.”

Further to this, **S.21** prohibits incitement where a person incites another person to commit an offence whether or not the offence is committed. It provides that such an offence is punishable by imprisonment for ten years. In the same vein, **S. 390 and 391 of the Penal Code Act Laws of Uganda** prohibit conspiracy where a person conspires with another to commit an offence. **S. 392 (f)** prohibits conspiracy to affect any unlawful purpose e.g promotion of an illegality.

With the above provisions of the law which are still in force, Justice Musota agreed with the submission by counsel for the respondent that the applicants’ promotion of prohibited homosexual acts in the impugned workshop would thus amount to incitement to commit homosexual acts and conspiracy to affect an unlawful purpose which is unlawful.

The applicants relied on the finding of the court in **Kasha Jacqueline Vs Rolling Stone Limited & another**<sup>753</sup>:-

**“the scope of S. 145 of the Penal Code Act is narrower than gaysim generally. That one has to commit an act under S. 145 to be regarded as a criminal”.**

The case was however distinguished based on the fact it involved determining whether the publication of a news Article identifying persons perceived to be homosexuals and calling for them to be hanged, violated their rights, as such, its interpretation in relation to the scope of **S. 145 of the Penal Code Act** was limited to whether in the absence of evidence of homosexual acts, persons “perceived” as homosexuals had committed any offence which would warrant such treatment by the Newspaper. In fact, the above case did not involve any allegation of promotion of homosexual practices. As such, the trial judge in that case was never called upon to consider other sections of the Penal Code Act relating to promotion or incitement of any offence.

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<sup>753</sup> Misc. Cause 163 of 2010.

Court relied on affidavit evidence on record and found ample proof that the first, second and third applicants were members of the lesbian, gay, bisexual, transgender and intersex LGBTQIA+ community in Uganda which encourages same sex practices among homosexuals. This proof can be found in the affidavit of the Minister, the second respondent. The Minister's affidavit was not rebutted by any of the applicants thus leaving the following averments intact that:

The first, second and third applicants' organizations (FARUG and SMUG) have previously organized workshops targeting homosexuals which were organized with LGBT organizations which encourage homosexuals and support or fund their projects. (see paragraph 5 of the affidavit).

In these workshops, homosexual participants were taught 'Human Rights' and Advocacy that it is a human right for persons to practice sex with members of the same sex and encouraged to develop self-esteem and confidence about the practices. They were encouraged to train other homosexuals and to conceal the objectives of training activities from the public and law enforcement officers because the practices are prohibited by the law. (see para 6 of the record)

Further to this, the Minister deponed that participants in the workshops were trained to become more adept in same sex practices by distribution of same sex practice literature and information, and training on same sex among homosexuals. In paragraph 7, the Minister reveals that the participants were trained to similarly train other homosexuals and strengthen their LGBT organizations to achieve the objective of encouraging and supporting homosexuals. According to paragraph 8, participants were also encouraged to train other homosexuals in 'Human Rights and Advocacy training', 'project planning', 'Advocacy and leadership' with the aim to equipping homosexuals with the confidence, knowledge and skills to conduct and promote their same sex practice.

The evidence adduced by the second respondent was minutely corroborated by that of George Oundo, a former associate of the applicant. This evidence was equally not rebutted by the applicants. He avers that the first, second and third applicants are admitted homosexuals and head or belong to LGBT organizations that is FARUG and SMUG which conduct activities aimed at encouraging, supporting and promoting same sex practices among homosexuals in Uganda. This revelation is contained in Oundo's affidavit.

Further evidence revealed that the applicants' organizations and a Swedish LGBT organization (RFSL) participated in project activities which encouraged

homosexuals to accept, continue and improve their same sex practices including distributing homosexual literature/videos, illustrating same sex techniques; training homosexual youths to safely engage in the same sex practices by distributing condoms and literature on safe gay sex which would effectively help them implement the project activities. (see para 20) According to Mr. Oundo in paragraph 21, workshops' participants were encouraged to share experiences of their homosexual practices.

Although the first applicant swore an affidavit in rejoinder, it only had general denials and was restricted to FARUG. There was no rebuttal of Mr. Oundo's detailed evidence that FARUG's project activities encouraged same sex and conducted training in project planning, advocacy and leadership with the aim of equipping homosexuals and members of LGBT organizations to effectively carry out such activities. All these activities amount to direct or indirect promotion of same sex practices.

Available evidence shows that the applicants' closed workshop was aimed at encouraging persons to engage in and or promote same sex practices in future. The organizers and participants were not willing to open their workshop activities to scrutiny. According to the affidavit of the Minister and Mr. Abola, unlike other workshops, the applicants' workshop was not displayed at the hotel. The first applicant refused Mr. Abola a government official to observe the workshop proceedings and by the time the Minister arrived to observe the proceedings, they had been halted and the participants were having a break. In view of the law cited above, it was reasonable and justified for the Minister to conclude that this workshop was engaging in direct and indirect promotion of same sex practices which is prohibited by **S. 145 and 21 of the Penal Code Act.**

Court observed that the Minister acted in public interest of Uganda to protect public moral standards which fall under his docket and as such, the applicants activities were found to be unlawful.

**Issue 2: whether the applicants' Constitutional rights were unlawfully infringed when the second respondent closed the workshop.**

The applicants alleged that the Minister's actions violated their rights to freedom of expression, political participation, freedom of association, assembly and equality under the Constitution.

On the other hand, the Minister justified the closure on the basis that it was aimed at encouraging and promoting homosexual practices which was unacceptable and unjustifiable in a country whose laws prohibit such practices and that his action was undertaken in public interest.

Counsel for the Respondent referred to **Article 43** of the Constitution which permits limitations of derogable human rights in the public interest. Under the Constitution, these rights are guaranteed to all persons. However, they don't fall within the category of non-derogable rights under **Article 44**. Therefore, the exercise of such rights can be limited in certain instances.

**Article 43** of the Constitution states that:

“1. In the enjoyment of the rights and freedoms prescribed in this chapter, no person shall prejudice the..... rights and freedom of others or public interest.

2. Public interest under this Article shall not permit

a) Political persecution

b) Detention without trial

c) any limitation..... that is beyond what is acceptable and demonstrably justifiable in a free/ democratic society, or what is provided in this Constitution.”

His Lordship observed that **Article 43** recognizes that the exercise of individual rights can be validly restricted in the interest of the wider public as long as the restriction does not amount to political persecution and is justifiable, acceptable in a free democratic society.

In reference to the facts, the applicants despite exercising their rights of expression, association, assembly among others as granted under the Constitution were promoting prohibited acts which amounted to action prejudicial to public interest. Promotion of morals is widely recognized as a legitimate aspect of public interest which can justify restrictions.

International Human Rights Instruments reflect this aspect. For example, Article 27 of the African Charter of Human and Peoples' Rights (ACHPR) states that: -

“The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

ACHPR also recognizes that: -

**Article 17(3);** The promotion and protection of morals and traditional values recognized by the community shall be the duty of the state.

**Article 29(7)** ..... every individual has a duty to preserve and strengthen positive African cultural values and to contribute to the moral well being of society”.

Court observed that under Ugandan law, the heading to Chapter XIV of the Penal Code Act is “Offences Against Morality” where several acts including homosexual acts are prohibited because they are contrary to Ugandan moral values.

His Lordship agreed with Counsel for the Respondent that criminal law by its very nature is concerned with public interest and aims at safeguarding it. Indeed, crime is recognized as an unlawful act against the public which is punished by the state for being contrary to order, peace and the well-being of society. Because criminal law forbids and aims at prevention of conduct which threatens or inflicts substantial harm to the individuals or public interest, it can also create valid restrictions on the exercise of rights. Thus, in order to maintain the well being of society, criminal law can restrict unlawful exercise of human rights which is justified under **Article 43** which provides for restrictions on derogable rights in public interest.

In relation to the complaints by the applicants herein, their promotion of prohibited acts by the workshop organizers was unlawful, since such promotion in itself is prohibited by law as amounting to incitement and conspiracy to effect unlawful purposes. Since the applicants in the exercise of their rights acted in a manner prohibited by law, it was not a valid exercise of these rights and was also prejudicial to public interest.

In trying to show that the applicants’ rights were violated, learned counsel for the applicant cited the provisions of international Human Rights Instruments to elaborate the scope of those rights. The applicants complained that the Minister’s actions violated their right to freedom of expression. Freedom of expression is guaranteed under Article 29 (1)(a) of the Constitution.

Courts response was that under **Article 43** this right is restricted in public interest. It is trite law that any rights must be exercised within or according to the existing law. The exercise of rights may be restricted by law itself. Therefore, any expression is restricted in as far as it must be exercised according to the law. This is recognized under **Article 9 (2) of the African Charter on Human and Peoples rights (ACHPR)** which states that: Individuals have the right to express and disseminate opinion within the law

In order to prove that the applicants' freedom of expression was violated, learned counsel for the applicants referred to the case of **Law office Ghazi Suleiman Vs Sudan II**<sup>754</sup> in which Mr. Ghazi was restricted from gathering to discuss (and promote) human rights. The state of Sudan claimed that it had restricted his speech because it was a threat to national security and public order and thus prejudicial to the public interest.

The African Commission on Human Rights held that under **Article 9** of the **ACPHR**, expression has to be exercised within the law although learned counsel for the applicants omitted to state this. It found that there was no evidence that Mr. Ghazi had acted outside the law since, his speech always advocated for peaceful action and had never caused any unrest. In other words, Mr. Ghazi in exercising his speech and discussing human rights had acted within the law.

His Lordship however rejected the applicants argued on that Ghazi's case and distinguished it, as Mr. Ghazi did not exercise his freedom of expression to promote any illegal acts. Court noted that the applicants on the contrary were using the pretext of training in human rights advocacy to promote homosexual acts which are prohibited by the Ugandan laws.

The applicants argued that the workshop was intended to train participants on how to advocate their human rights, build leadership and project planning skill as well as share experiences. Evidence on record by affidavits of the Minister and George Oundo however showed that the training actually aimed at equipping participants to lead organizations which support homosexual acts and plan and implement projects which promote homosexual acts. His Lordship found on a balance of probabilities that the closing of the workshop stopped participants from discussing human rights and developmental topics thus violating their right to freedom of expression.

The case of Charles **Onyango Obbo v AG**<sup>755</sup> was cited and relied on by the applicants to highlight that even if the Minister's assertion that the applicants were gathered to promote homosexuality was correct, such a proposition would not justify any infringement on the right to freely express one's opinion that a person's expression is not excluded from Constitutional protection simply because it is thought by others to be erroneous, controversial or unpleasant.

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<sup>754</sup> (2003) AHRLR (ACHPR 2003)

<sup>755</sup> Constitutional Appeal 2004 UGSC 81.

Court observed that protection of ‘unpleasant’ or controversial, false or wrong speech does not extend to protecting the expression that promotes illegal acts which in itself is prohibited and in fact amounts to the offence of incitement or conspiracy.

Regarding the right to political participation, learned counsel for the applicants relied on **Article 38(2)** of the Constitution which guarantees persons the right to participate in peaceful activities to influence the policies of government through civic organizations, court however found that exercise of such a right necessitates a conduct in accordance with the law. If the exercise of this right is contrary to the law then it becomes prejudicial to the public interest and there can be a valid restriction on the exercise of the right under **Article 43**.

Counsel for the applicants further cited **Article 7** of the **UN Declaration on Protect of Human Rights** which guarantees everyone the right individually and in association with others to develop and discuss new human rights ideas and to advocate their acceptance. The same declaration however recognizes that people can be restricted in these activities in accordance with the law. Court considered **Article 3** thereof and relied upon by the respondents to bring out exception clearly out. It states that: - “domestic law is the framework within which human rights are enjoyed and in which human rights promotion activities should be conducted.” This in effect was an exception to **Article 7** given that the Domestic law is supreme and all acts should be within and conform to it.

On the applicant’s freedom of association and assembly, Article 29 (1)(d) and (e) of the Constitution which guarantees these rights was cited by the applicants Counsel but Court considered the respondents submission that these rights come handy with the corresponding duty and requirement that persons exercising them must act in accordance with the law. This is equally provided for under **Article 10** of the **ACHPR** relied upon by both learned counsel.

The applicants cited the case of **Civil Liberties Organizations Vs Nigeria**<sup>756</sup>, in which the commission considered whether the composition and powers of a new governing body for the Nigerian Bar Association violated inter alia Nigerian Lawyers’ right to freedom of association under Article 10 of the African Charter. The case related to Government interference with the formation of associations and restrictions on the capacity of citizens to join associations. The African Commission held that that the requirement that the majority of the membership of the Nigerian Bar Association be nominated by the Nigerian Government instead of the lawyers

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<sup>756</sup> 101/93 [8th Annual Activity Report 1994 – 1995.

themselves was an interference with the right to free association of the Bar Association.

Court however held that "the instant case was distinguishable from the cited authority by learned counsel for the applicants. In the case under consideration, the Minister's action was based on the agenda and activities of LGBT organizations in promoting homosexual acts. There was no interference in the formation of these organizations, their existence or membership. Their activities were only restricted when it was established that they were using the workshop to promote prohibited and illegal acts".

The implication of Courts ruling on this poses a controversial issue as it establishes that registration of LBGQTQIA+ organizations isn't illegal but rather using them to promote illegal prohibited acts is what's illegal and against public interest. This is ironic in the sense that providing a forum for a wrong and then condemning the wrong later on undermines the very intention of the law against wrong and criminal acts.

Learned counsel for the applicant cited **Article 1** of the **UN General Assembly declaration on promotion of Human Rights** which states that persons shall have the right individually or in association with others to discuss and advocate for new human rights ideas and principles. But as I have already noted in this ruling, **Article 3** of the same declaration provides that domestic law is the framework within which human rights are enjoyed and all activities shall be conducted.

Regarding freedom of assembly, learned counsel for the applicant cited a case of **Baczowski & ors versus Poland**<sup>757</sup>. He supplied a summary of the courts decision but he made a lengthy quotation of the court decision which I could not readily verify. However, the European court of Human Rights held that refusal to allow pro-homosexuals group to assemble and promote their homosexual lifestyle was a violation of right of assembly.

Court noted that at the time of the said decision, Poland had no law which prohibited homosexual acts since 1932 when they were recognized by the law. The cited case was therefore distinguishable from the instant because by the time of determining that case, homosexuals were legally entitled to promote their practices and there was no illegality arising from the exercise of their right to assemble. Court relied on the Respondents' Document 1 on LGBT Rights in Poland.

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<sup>757</sup> Application No. 1543 of 06.

The European court of Human Rights correctly held that the refusal to grant them a permit to assemble could not be justified in the public interest and amounted to an unlawful restriction of their right to assemble.

Learned counsel for the applicant argued that the approach taken by the European Court on Human Rights is analogous and is a compelling basis for interpreting Article 29 of the Uganda Constitution, this was however rejected by Court, Justice Musota noted that that court's approach should be viewed in the context that there is no member country of the European community which prohibits homosexual acts which reflects the moral standards of Europe not African standards.

Court hailed that the respondent's submissions that Ugandan circumstances are different because homosexual acts are offences against morality and culture and their promotion is prohibited by law making it prejudicial to public interest. Uganda and Europe have different laws and moral values and accordingly define their public interests differently. As rightly put by learned counsel for the respondents, Uganda is not signatory to the European Convention on Human Rights. Therefore, its precedents are not binding but must be read in a manner consistent with Ugandan laws and norms. The suggestion by learned counsel for the applicants that the European standard should be applied while considering Uganda's obligation under the African Charter to which it is signatory is misconceived. Article 61 of the Charter states that the African Commission is obliged to take into consideration international conventions which lay down rules expressly recognized by Member States of the OAU. It must also consider African practices consistent with international norms, customs generally accepted as law and principles of law recognized by African states as well as legal precedents and doctrine. As rightly argued by the respondents, international jurisprudence is considered as a legal precedent depending on whether the cited rules and legal principles are expressly recognized by African states and reflect African practices.

The court took note that the recognition of homosexuals as a Minority whose acts are legitimately protected is not a principle of law and norms generally recognized by all African states nor are homosexual acts recognized as an accepted African practice. Its promotion is an unlawful exercise of the right to association and assembly which is prejudicial to Uganda's public interest.

Learned counsel for the applicant also made an on equality under the law saying that the actions of the second respondent treated the applicants differently from other Ugandans who were holding workshops at the same hotel on the same day and thus

violated the right to equal treatment before and under the law. He cited **Article 21 (1)** of the Constitution which provides that: -

“all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.”

The applicants Counsel sought to rely on the case of **Thomas Kwoyelo Vs Attorney General**<sup>758</sup> where the applicant had been denied amnesty yet the same had been granted to 24,066 other people. Court held that the DPP had not given any objective and reasonable explanation why he did not sanction the amnesty application of the applicant which was inconsistent with **Article 21 (1)** of the Constitution.

However, His Lordship held a different view similar to that of the respondent, that the ordinary meaning of persons being equal before and ‘under the law’ in Article is that all persons must always be equal subject to the existing law even when exercising their rights. Where the law prohibits homosexual acts and persons knowingly promote those acts, they are acting contrary to the law. Such persons cannot allege that the actions taken to prevent their breach of the law amount to denial of ‘equal protection’ of the law because the law-abiding people were not equally restricted. There is no evidence adduced by the applicants to show that the other workshops which were not stopped also organized and were attended by homosexuals and members of LGBT organizations or that they had the same agenda.

Since the applicants were engaging in the promotion of acts contrary to the law which law has not yet been declared unconstitutional they could not enjoy the same protection of the law persons who were acting in accordance with the law were enjoying. Had the applicants acted otherwise their workshop would have proceeded like the other workshops. The case of **Thomas Kwoyelo (supra)** was found to be distinguishable because what Thomas sought was provided by the law. The court found that it was discriminatory that Kwoyelo was denied amnesty which had been granted to other rebels for the same acts of rebellion and under the same Act and the DPP had not given any objective explanation for the difference in treatment.

Counsel for the applicants referred in his submissions to permissible limitations of rights sighting **Article 43 of the Constitution**. He submitted that no person shall prejudice the public interest or permit political persecution, detention without trial beyond what is acceptable and demonstrably justifiable in a free and democratic

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<sup>758</sup> Constitutional Reference No. 36 of 2011.

society. He further submitted that **Article 43** reflects what he called the **Siracusa Principles**<sup>759</sup>.

His Lordship reemphasized that the restriction of the applicants' rights was done on the basis that they were promoting illegality in the exercise of their rights. He noted that its trite law that the prevention of promotion of illegal acts is clearly acceptable and justifiable in any free and democratic society because it is based on the law. All democratic countries are founded on the rule of law. This court cannot determine whether the law prohibiting homosexual acts, that is, **S. 145** of the Penal Code Act or their incitement is justifiable or acceptable in democratic countries, because this would necessitate interpretation of the Constitution as to whether the law is consistent with **Article 43** of the Constitution.

It is the Constitutional Court which is mandated to do so. It is therefore irregular for learned counsel for the applicants to raise the issue in an application for enforcement of rights in the High Court. I can only note that limitation or restriction on rights can be acceptable and demonstrably justifiable if it is not so wide as to put the right itself in jeopardy see: **Onyango Obbo Vs Attorney General**<sup>760</sup>.

I am of the considered view that in the circumstances of the case under consideration, the essence of the rights to expression, association, assembly, political participation and equality under the law were not jeopardized and the rights remain available to the applicants. The actions of the second respondent were permissible limitation of the applicants' rights.

In his submission, learned counsel for the applicants acknowledged that under **Article 27 of the African Charter** morality is recognized as a legitimate interest justifying the restriction of rights yet on the other hand he argued that the Minister's attempt to prevent the promotion of homosexuality on the basis of traditions, culture and morality in Uganda is not a permissible restriction on rights. He cited the case of **Re Futyu Hostel, Tokyo HC Civil**<sup>761</sup> but did not supply that authority but the case is indicated in Annexure 12. In the said case, learned counsel submitted that the Japanese Court held that the possibility of same sex activity was not a justifiable reason to deny homosexuals from using a public hostel facility and amounted to undue restriction on their right. However, as rightly argued by learned counsel for the respondent the said case is distinguishable because Japan has not had laws

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<sup>759</sup>UN Doc E/CN.4/1984/4 (1984)

<sup>760</sup> (*supra*)

<sup>761</sup> 4th Division Japan of 1997

prohibiting homosexual acts since the year 1980 as per the respondents' Document No.3 on LGBT Rights in Japan. As such there was no legitimate basis to restrict same sex activity in Japan.

Learned counsel for the applicant also relied on the fact that the UN Human Rights Committee (UNHRC) criticized the use of protection of public morals as a basis for derogating from rights in relation to homosexuality. However, these were views or observations of the UNHRC which are not legally bidding on the UN member states and are unenforceable against the involved state party. In Uganda, the only forum which can determine if protection of public morals is justifiable as a basis for limiting homosexual rights under **Article 43** or if legal restrictions such as **S.145 of the Penal Code Act** is inconsistent with Uganda's obligations under International Law are our National Courts. Decisions from South Africa, Indian and Hong Kong which learned counsel for the applicants relied on reflect what those national courts have determined as to what amounts to public interest of those countries and as such are not bidding on Uganda. Since public interest is defined by a country's fundamental values, it differs between countries.

In as far as there is no legal challenge to the validity of S. 145 of the Penal Code Act, it is still valid and bidding on all courts in Uganda, regardless of whether there are foreign precedents stating that prohibition of homosexual acts as offences against morals is unjustified restriction on rights if the homosexuals.

#### **Issue 4: WHETHER THE APPLICANTS ARE ENTITLED TO THE REMEDIES PRAYED FOR**

Court concluded that while the applicants enjoyed the rights they cited, they had an obligation to exercise them in accordance with the law. I have also concluded that in exercising their rights they participated in promoting homosexual practices which are offences against morality. This perpetuation of illegality was unlawful and prejudicial to public interest. The limitation on the applicants' rights was thus affected in the public interest specifically to protect moral values. The limitation fitted well within the scope of valid restrictions under Article 43 of the Constitution.

Since the applicants did not on a balance of probabilities prove any unlawful infringement of their rights, they are not entitled to any compensation. They cannot benefit from an illegality.

The applicants also prayed for declarations that the actions of the Minister amounted to a breach of their Constitutional rights. From my conclusions, the applicants are not entitled to these declarations. The prayer for an injunction cannot be granted since it was not pleaded in the application. Consequently, this application is hereby dismissed with costs to the respondent.

### **KEY ISSUES FROM COURT'S DECISION.**

Justice Stephen Musota delivered the opinion of the High Court of Uganda at Kampala. He acknowledged that Article 43 of the Constitution of Uganda allows certain constraints to be placed on human rights in favor of the public interest. Furthermore, Justice Musota argued that these restrictions can be made as long as they “do not amount to political persecution and [are] justifiable [and] acceptable in a free democratic society”.

However, Justice Musota determined that, even though the applicants had been exercising their rights to freedom of expression, association, and assembly, they were, in fact, promoting prohibited and illegal acts. According to Musota, the promotion of prohibited acts was prejudicial to the public interest.

He also established that the “promotion of morals is widely recognized as a legitimate aspect of public interest which can justify restrictions”. Musota determined that the Ugandan laws prohibited their acts. For these reasons, he determined that organizing the workshop was not a valid exercise of their rights and constituted an act contrary to the public interest.

His Lordship added that **Article 9 of the African Charter on Human Rights** and Peoples’ Rights states that the expression has to be exercised within the law, which law has to be domestic. According to Justice Musota, the applicants had not exercised their rights within the law because they promoted homosexual acts prohibited by Section 145 of the Ugandan Penal Code. Also, Musota considered that the protection of unpleasant, controversial, false, or wrong speech is not extended to protecting the expression that promotes prohibited and illegal acts. Therefore, he concluded that the closing of the workshop had not violated the applicants’ right to freedom of expression.

The Court's decision also pointed to the doctrine of precedents simply used to establish that The European Court's and other Court's positions on allowing homosexuality can't be binding on Ugandan Courts as their decisions are only persuasive.

Uganda is expected to propose a new anti-gay bill on Wednesday, according to an audio recording of the country's speaker of parliament

The Speaker during a parliamentary session and also on her twitter handle "@AnitaAmong" stated that "We gathered earlier today to dedicate to the Lord, and I pledged to the Country that a Bill will be introduced as soon as possible to deal with Homosexuality and lesbianism. We shall jealously protect our cherished values and culture". This clearly depicts the fight against homosexuality with high chances of new anti-gay laws.

Sexual minorities have traditionally faced widespread persecution in the country, where anti-gay and transphobic views are common. Frank Mugisha, the executive director of leading gay rights organisation, Sexual Minorities Uganda, which was suspended by the authorities last year, said he had already been inundated with calls from LGBTQ people who are fearful about the proposed law. "Homosexual acts are already illegal and a new law would mean more harassment and discrimination against people who are already vulnerable," he said.

But, while homosexual acts are illegal in Uganda, there has not been a conviction for consensual same-sex activity since the country's independence from Britain in 1962. The news of the proposed bill comes as conspiracy theories blaming shadowy international forces for "promoting homosexuality" flood Ugandan social media<sup>762</sup>.

This accusation is routinely directed at Western governments and aid agencies in the country, who repeatedly defend the LGBTQ community from attacks related to their identity.

At the same time, the Ugandan government last month set up a committee to investigate the alleged "promotion" of gay, lesbian, and transgender rights in schools.

The Ugandan Authorities also banned the use of rainbow drawings painted on a building in a children's park after an outcry from parents who said the "satanic" drawing promoted homosexuality in the Christian-dominated country.

A local organisation had painted one of the towers in the Entebbe city park in rainbow colours as part of the beautification of the area.

The Mayor Fabrice Brad Rulinda however noted with regret that for years, children in Uganda only saw the rainbow as a beautiful arc of colours and one that biblically

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<sup>762</sup> <https://www.africanews.com/2023/02/28/uganda-appears-to-be-planning-a-new-anti-gay-law/>

reflects the beauty and majesty of God regretting but some movements decided to use the rainbow to represent certain acts that go against the norms of the Ugandan people<sup>763</sup>.

The Mayor also noted with concern the need to fight against all vices that can corrupt the minds of children and it is in this context that the concerns raised by the public have were addressed and the rainbow paint removed from the children's park.

Emmanuel Mugabe, a member of the National Parents Association, told AFP the rainbow colours on the tower were "satanic" and signaled "an invasion of homosexuality through the manipulation of the minds of children".

On 3<sup>rd</sup> March 2023, Parents and members of the old student's body of PMM Girls School in Jinja stormed the school on Friday to protest over accusations of promoting homosexuality against one of the teachers.

The Independent reported that Rose Kalembe, the chairperson of the old girl's student's body said that the protest was sparked by the school administration's reluctance to handle complaints raised by parents about the conduct of a teacher identified as Lydia Mukoda<sup>764</sup>.

Kalembe explained that dozens of parents approached them with allegations that their children had been sodomized by the same teacher. She added that several meetings have also been held with the school and the teacher, who consistently denied the claims as baseless.

A parent who spoke on condition of anonymity accused Mukoda of sodomizing her daughter, who completed her O'Level at the school last year but developed complications that might affect her ability to continue with school.

Martha Mulondo, another parent said that Madam Mukoda was earlier known for being friendly to the girls until her behaviour started being questioned in different meetings. She however added that the school administration was reluctant to thoroughly investigate the matter.

According to Daily Monitor, thousands of Muslim demonstrators took to the streets of Jinja City a protestation, on Friday 26 Feb 2023 condemning homosexuality<sup>765</sup>. The protesters shouted slogans and held placards with words such as "say no to

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<sup>763</sup> <https://www.africanews.com/2023/02/02/uganda-rainbow-on-building-erased-after-homosexuality-controversy//>

<sup>764</sup> <https://www.independent.co.ug/parents-storm-pmm-girls-over-homosexuality-claims>.

<sup>765</sup> Daily Monitor, Muslims march against homosexuality Sunday, February 26, 2023

LGBTQ”, “homosexuality and lesbianism is sin”, “Gayism is evil”, “homosexuality is not African culture” and “No room for LGBTQ”.

The protestors, who also included children from different primary and secondary schools, and leaders from other religious groups, also organised an anti-LGBT rally at Faisal Mosque at Mvule Crescent in Jinja City on Friday.

The chairperson of the Union of Eastern Muslim Scholars, Mr Shafie Songolo, said that it’s a human principle that our [body] organs are similar in nature but their functions are totally different.

“The mouth and nose are open in nature but their functions are totally different. You cannot breathe through your mouth because God created a nose with hair inside that filters dust. Having different organs does not mean they will help each other in performing a certain task,” he said.

The Jinja City Education Officer, Mr Haruna Mulopa, urged school heads to monitor their students’ characters to avoid cases of homosexuality.

“These LGBT groups target schools, especially poor children, give them money and vehicles. Teachers, you must monitor those rich students at your schools because some of them are funded to spread homosexuality,” he said.

Busoga Bishop Moses Samson Naimanye said they distanced themselves from the Church of England that endorsed same-sex relations.

The national chairperson of Uganda Muslim Supreme Council (UMSC), Prof Muhammad Lubega Kisambira, urged parents to talk about LGBT to their children so that it can be stopped. He noted that “Although we grew up knowing that talking about sex to our children is not right until they are adults, let us talk about homosexuality with our children. Senior female and male teachers, play your role. The funders target children in secondary, tertiary and university,”.

The Jinja District Kadhi, Sheikh Ismail Basoga, urged the government to ban all non-government organisations that are promoting homosexuality in Uganda.



## CHAPTER FORTY-NINE

### KENYAN CASE STUDY

In an interview with President Obama and President Kenyatta, Homosexuality was considered and President Obama argued that to treat people differently because they are different erodes Human rights and was wrong, However President Kenyatta responded by arguing that despite shared views between America and Kenya, Kenyan cultures and tradition values are different and can't condone homosexuality.

The Kenyan Courts in a couple of cases have However recognized Gay rights with dissenting judgments on the same as evident in the case of Eric Gitari v Non-Governmental Organizations Co-ordination Board where The High Court, Constitutional Court and Supreme Court had different views as disused below<sup>766</sup>

**Article 36 of the Kenyan Constitution** guarantees the right to freedom of association for all persons. This includes members of the LGBTI community. By not allowing an NGO focused on protecting the rights of the LGBTI community, the Non-Governmental Organizations Coordination Board (the Board) violated that organization's constitutional right to association. Accordingly, the Board's decision was overturned, and they were directed to allow to the NGO to register.

#### FACTS

Eric Gitari attempted to register a non-governmental organization (NGO) seeking to advance human rights in Kenya. Specifically, the NGO was meant to focus on the violence, discrimination, and other human rights violations regularly perpetrated against the LGBTI community. The Board, the government entity tasked with coordinating and regulating NGO activity in Kenya, rejected the application due to the NGO's name including references to gays and lesbians. In Kenya, gay and lesbian conduct has been criminalized. The Board has the authority to reject an NGO whose name is, "in the opinion of the Director, repugnant to or inconsistent with any law or is otherwise undesirable."

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<sup>766</sup> EG v Non- Governmental Organisations Co-ordination Board & 4 others [2015] eKLR.

After multiple, unsuccessful attempts to revise the name, Gitari filed suit against the Board for declaratory relief, arguing that the failure to recognize the NGO was a violation of his and others' constitutionally guaranteed right to assemble and requesting an order of mandamus to force the Board to register the NGO.

## **HIGH COURTS FINDINGS.**

The High Court of Kenya at Nairobi focused its analysis on two main issues:

- 1) whether gay, lesbian, transgender, bisexual, and intersex individuals have the right to assemble under Kenya's Constitution, and
- 2) if they do have that right, whether the Board's decision to refuse the NGO's application violated that right.

**Article 36 of The Kenyan Constitution** holds that any person has the right to freedom of association, including the right to form, join, or participate in the activities of any association. Further, it provides that any legislation that requires registration of a group must conform to the principal that such denial of a registration must not be unreasonable. The Court initially concluded that the NGO is a person under the Constitution, as organizations are defined as persons elsewhere in the Constitution. Accordingly, the NGO is guaranteed the right to freely assemble.

The Court then addressed the legal effect of laws preventing homosexual acts as they affect the right to assemble. While there are laws prohibiting homosexual activity in Kenya, those laws have no effect on the fundamental right to association. Rather, the right to freely assemble cannot be applied to prejudice any group, regardless of how anyone views their opinions. Only if the NGO had been acting illegally could the Board have prevented its right to form an association. As the NGO was only seeking to promote the equal rights and protection of the LGBTI community, not to actively promote or participate in the illegal activity of homosexual intercourse or marriage, the Board could not block its right to assembly under the illegality exception.

The Board further contended that it had not rejected the NGO's registration entirely, but argued that it rather had an issue with its name. The Board asserted that once a proper name was submitted the NGO would be allowed to register. The Court also rejected this distinction, holding that regardless of the reasoning behind the rejection, rejecting the name in this context was equivalent to rejecting the NGO as a whole, which was on its face a violation of the freedom of association.

The Court, after finding the rejection of the NGO's application to be a limitation on the freedom of association, then turned to the question of whether such a limitation was justifiable. Under **Article 24 of the Kenyan Constitution**, freedoms guaranteed, such as the freedom of association, can only be limited if it is reasonable and justifiable in a "democratic society based on human dignity, equality and freedom." The Board relied on the criminal ban of certain sexual activities to argue that its limitation was reasonable. However, as noted above, the NGO was not actively engaging in any of those illegal activities itself and was therefore not in violation of any law. Additionally, those criminal bans do not speak to the rights of those in the LGBTI community to exist or associate with each other. As such, there is nothing in the law that would allow the Board to be reasonably justified in limiting the freedom of association of the NGO.

Moreover, the Court found the Board had actually relied on moral and religious grounds in deciding not to register the NGO. In the Court's view, that decision was tantamount to the exact discrimination that is banned under **Article 27 of the Constitution**.

Court also noted that the Constitution does not cease to apply just because a particular group may be seen as undesirable or unpopular. Rather, **Article 27** guarantees that all individuals are equal before the law. Not allowing the NGO to register for its views was a violation of the non-discrimination doctrine. Accordingly, the Court held that the Board's ban violated the Constitution and ordered the Board to allow the NGO to register with its chosen name.

Accordingly, Court stated that;

'In the circumstances, we are satisfied that the petition is merited. We therefore allow the same, and grant the following declarations and orders':

- i. We hereby declare that the words "Every person" in Article 36 of the Constitution includes all persons living within the republic of Kenya despite their sexual orientation.
- ii. We hereby declare that the respondents have contravened the provisions of Articles 36 of the constitution in failing to accord just and fair treatment to gay and lesbian persons living in Kenya seeking registration of an association of their choice.
- iii. We declare that the petitioner is entitled to exercise his constitutionally guaranteed freedom to associate by being able to form an association.

iv. We hereby issue an order of Mandamus directing the Board to strictly comply with its constitutional duty under Article 27 and 36 of the Constitution and the relevant provisions of the Non-Governmental Organizations Co-ordination Act.

The High Court decision was with implication that Gay ogarns could be registered and enjoy the different rights under The Kenyan Constitution such as The right to freedom of association, expression and movement in consideration that the NGBO had infringed the applicants rights.

## **COURT OF APPEAL DECISION.**

In a later Court of Appeal case of **Eric Gitari v Attorney General & another**<sup>767</sup>, the petitioner petitioned Court to declare **Sections 162 and 165 of the Kenyan Penal Code**<sup>768</sup>, to be unconstitutional, and accordingly void and invalidate them to the extent that they purport to criminalize private consensual sexual conduct between adult persons of the same sex, (relevant conduct), as mandated by Articles 2 (4), and 23 (3) (d) of the Constitution.

## **MAJORITY DECISION.**

Justice Isaac Lenaola however noted that the huge debate in the public domain with civil society and others arguing that Kenya's laws that discriminate against LGBTIQ persons and their intimate activities based on the grounds of their sexual orientation are unconstitutional and therefore void.

‘The basis of which has been the evolution of thinking around human rights, so that human rights are now considered to include LGBTIQ rights and that human rights cannot be implemented selectively. But others seem to reason that this kind of thinking is based on opportunism by the proponents of human rights for the LGBTIQ community and therefore has no place in law.’

His Lordship further holds that ‘These issues, as I have hereby articulated raise several questions. Although on the subject of delivery of public services I am aware that the Kenyan Government has reiterated that it does not support discrimination against the LGBTIQ community, same sex acts, by virtue of the national law such

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<sup>767</sup> Petition [2016] eKLR.

<sup>768</sup> The Penal Code of Kenya Cap 63.

as the Penal Code, CAP 63 are still considered as offences and as acts that are contrary to culture and the society's morals.'

The court observed that just like everyone else, they have a right to freedom of association which includes the right to form an association of any kind. They further held that the LBGTIQ, just like other citizens, are subject to the law including sections 162, 163 and 165 of the Penal code, and would be subject to sanctions if they were to contravene such law.

Accordingly, the learned Judges observed that the fact that the State does not prosecute people who confess to being lesbians and homosexuals in this country, is a clear manifestation that such sexual orientation is not criminalized.

To that end, the court found that the Penal Code does not criminalize the right to freedom of association of people based on their sexual orientation nor does it contain any provision that limits the freedom of association of persons based on their sexual orientation. The court concluded therefore that the appellant's reliance on the provisions of the Penal Code to limit the 1st respondent's freedom of association was untenable.

The court concluded that by refusing to register the NGO, the 1st respondent was convicted before contravening any law, and that such action was retrogressive. The Court of Appeal, by majority, also found that the only limitation to the right of freedom of association as provided under Article 36 of the Constitution is that the activities of the association must be in accordance with the law. If they are not, then the proposed NGO would not be protected by the Constitution and the law would take its course.

They further observed that it was arbitrary to speculate and categorize LBGTIQ, as persons who have the propensity to destroy society by contravening the provisions of the Constitution or the Penal Code, or as a group bent on ruining the institution of marriage or culture.

## **MINORITY DECISION/ DISSENTING JUDGEMENT.**

On the other hand, the minority; **Nambuye JJA** and **Musinga JJA** held that the appellant's action of rejecting the proposed names did not discriminate against the LBGTIQ. They observed that the right to freedom of association as guaranteed under

**Article 36** of the Constitution was not absolute, and as such subject to the limitation in terms of **Article 24(1)** of the Constitution

Further, the learned Judges found that **Article 27 (4)** prohibits discrimination on the basis of a person's sex (gender) and not sexual orientation, this reasoning elaborates that The National Board rejection was not based on gender nor sex discrimination but rather sexual orientation which if registered, the organ would push for which amounts to homosexuality.

Accordingly, the dissenting Judges observed that the law, as it currently stands, does not permit homosexual and lesbian sexual practices, and the freedom of association of gays and lesbians in Kenya may lawfully be limited by rejecting registration of a proposed NGO, if the country's laws do not permit their sexual practices. Dissatisfied with the Court of Appeal's decision, the appellant filed an appeal before us presumably under Article 163(4) (a) of the Constitution.

The implication of the Court of Appeals majority decision is that it maintains the High Court decision that recognized LGBTQIA rights to freedom of association and expression with a stand against their discrimination but also establishes that maintains the constitutionality of the penal code **sections 162** and **165** that criminalize homosexuality and unnatural sex between men respectively.

Its argued that the dissenting judgment reinforces the core African values and culture based on morality, which cultures are clearly sought to be protected by The Penal Code given the criminal provisions under **section 162** and **165** against homosexuality.

Unlike the majority decision, the dissenting position doesn't pose issues of controversy, suffice to note, the majority position recognizes registration of LGBTQIA organs but at the same time maintains that homosexuality is illegal. What's then the essence of providing breeding grounds and condemn the outcomes, clearly LGBTQIA organs when registered advocate for sexual deviations and sexual orientations which acts the law criminalizes.

### **SUPREME COURT DECISION.**

The Kenyan Supreme Court recently on 24<sup>th</sup> Feb 2023 ruled that its unconstitutional to limit the right to associate, through denial of registration of an association, purely on the basis of the sexual orientation of the applicants, It however mainted that homosexuality is illegal under Section 162 of the Kenyan Penal Code.

Dissatisfied with the Court of Appeal's decision, the appellant filed an appeal before The Supreme Court<sup>769</sup> seeking orders that the appeal be allowed with costs, that Judgment and Decree of the Court of Appeal disallowing the appeal be reversed and set it side.

The appellant contended that the Court of Appeal through its decision erred in law in dismissing the appellant's appeal against the decision of the High Court on the following grounds:

- a. That the learned Judges erred by failing to recognize that the actions of the Executive Director under the NGO Regulations were made under the delegated authority of the Board whose decision was subject to appeal to the Minister
- b. That the learned Judges erred in law in failing to recognize the limits of the right to freedom of association as provided for under Article 36 of the Constitution of and the fact that the freedom is enjoyed by persons and not based on any attribute, they may determine for themselves.
- c. That the learned Judges erred in law in conflating the freedom of association under Article 36 of the Constitution with-(a) An absolute right to associate any desired label or name. (b) An unfettered right to pursue any particular activity, objective or policy.
- d. That the learned Judges erred in law in finding that the freedom of association provided for under Article 36 of the Constitution extended to the 1st respondent's proposed NGO.
- e. That the learned Judges erred in law by disregarding the religious preference in the Constitution and its preamble, which influence should be applied in interpreting and applying the various constitutional provisions.
- f. That the Learned Judges erred in law by effectively reading into the Constitution non-discrimination clause, Article 27 the ground of sexual orientation.
- g. That the learned Judges erred in law by finding that morals and public policy have no legitimate role in the appellants determination on the acceptance of the registration of the proposed NGOs, contrary to Articles 24(5)(a), 36(3),19(2) ,11(1) & (2) of the Constitution and Sections 162, 163 and 165 of the Penal Code

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<sup>769</sup>NGOs Co-ordination Board v Eric, Petition 16 2019.

h. That the learned Judges erred in law by disallowing the appeal.

Three issues were raised by the Court in determination of the appeal, However, we shall consider issue 2 and 3 for purposes of sexual orientation as follows.

Issue 2: Whether the decision of the Executive Directive of the NGO Coordination Board violated Article 36 of the Constitution,

Issue 3: Whether the decision of the NGO Coordination Board was discriminatory and contravened Article 27 of the Constitution

## **COURTS FINDINGS.**

Before determination of the issues, Court emphasized that the matter before it was not about the legalization or decriminalization of LBGTIQ, or the morality of same-sex marriage but revolved around the question of whether refusal to register an organization of persons who fall within the LBGTIQ contravened the fundamental rights and freedom of association guaranteed in the Constitution and whether the rights to freedom of association and freedom from discrimination of those persons seeking to be registered were infringed upon.

Accordingly, Court proceeded to the issues as follows;

### **MAJORITY DECISION ON ISSUE 2**

Court found that interference by the respondent with the petitioners right to freedom of association did not pursue any legitimate aim such as national security or public safety, the prevention of disorder or crime, the protection of health and morals and the protection of the rights and freedom of others.

Accordingly, the majority held that it was their considered view that the appellant's limitation of the right to freedom of association was not proportionate to the aim sought.

Court looked at case law relating to the freedom of association and registration of LBGTIQ organizations and took note of jurisprudential standards applied elsewhere. In the case of **Gay Alliance of Students vs. Mathews**<sup>770</sup> the Court held that the University's refusal to register the Alliance hindered its efforts to recruit the new members and denied to the Alliance the enjoyment of the University's services,

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<sup>770</sup> United States Court of Appeal [ 4th Cir. 1976.

which other registered student organizations was afforded, thereby violating their freedom of association.

Court further considered the European Court of Human Rights in **Zhdanov and Others vs. Russia**<sup>771</sup> found that the Russian courts' decision refusing registration had interfered with the freedom of association of the applicant organizations and their founders or presidents, the individual applicants. The Court was not convinced that refusing to register the organizations had pursued the legitimate aims of protecting morals, national security and public safety, and the rights and freedoms of others. The only legitimate aim put forward by the authorities for the interference, which the Court assumed to be relevant in the circumstances, was the prevention of hatred and enmity, which could lead to disorder. In particular, the authorities believed that the majority of Russians disapproved of homosexuality and that therefore the applicants could become the victims of aggression.

Reference was made to The Kenyan Constitution which requires State organs, State officers, public officers to uphold national values and principles of governance such as human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination, and protection of the marginalized. In addition, the Constitution, in **Article 21 (1)** provides that it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights. Moreover, **Article 21(3)** imposes an obligation on all State organs and all public officers to address the needs of vulnerable groups within society including members of minorities and marginalized communities.

Given that the right to freedom of association is a human right and vital to the functioning of any democratic society as well as an essential prerequisite enjoyment of other fundamental rights and freedoms, Court held that this right is inherent in everyone irrespective of whether the views they are seeking to promote are popular or not.

The Supreme Court was inclined to the aforementioned Constitutional provisions, legal principles and case law, and held that it would be unconstitutional to limit the right to associate, through denial of registration of an association, purely on the basis of the sexual orientation of the applicants, as such, the respondent's decision was unreasonable and unjustified.

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<sup>771</sup> Application No. 12200/08, 35949/11 and 58282/12

Accordingly, the reasoning of the High Court that LGBTQIA+ communities just like any one else have a right to freedom of association which includes the right to form an association of any kind. Court emphasized that all persons, whether heterosexual, lesbian, gay, intersex or otherwise, will be subject to sanctions if they contravene existing laws. That by refusing to register the NGO, persons were convicted before they contravened the law. Such action is retrogressive. The majority affirmed the decision of the Court of Appeal that the appellant violated the 1st respondent's right to freedom of association under Article 36 of the

## **MAJORITY DECISION ON ISSUE**

The appellant argued that sexual orientation is not among the prohibited grounds contemplated under **Article 27 (4)** of the Constitution. Further, it faulted the majority decision of the Court of Appeal which affirmed the High Court decision which interpreted the term 'including' under **Article 27(4)** of the Constitution to give room for including sexual orientation in the non-discrimination clause. Article 27(4) of the Constitution provides as follows:

"The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth."

**Article 2**, paragraph 1, of the **International Covenant on Civil and Political Rights (ICCPR)** obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. **Article 26 of the ICCPR** not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property birth, or other status.

Regionally, **Article 2** of the **African Charter on Human and People's Rights** provides that every person shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other

opinion, national and social origin, fortune, birth, or other status. Further, according to the **Ontario Human Rights Commission**, the Glossary of Human Rights Terms, Sexual orientation is defined as the direction of one's sexual interest or attraction. It is a personal characteristic that forms part of who one is. It covers the range of human sexuality from lesbian and gay, to bisexual and heterosexual. **The UK Equality Act 2010, at Section 12** defines sexual orientation to mean a person's orientation towards persons of the same sex, persons of the opposite sex, or persons of either sex. In relation to the protected characteristic of sexual orientation, a reference to a person who has a particular protected characteristic is a reference to a person who is of a particular sexual orientation; or a reference to persons who share a protected characteristic is a reference to persons who are of the same sexual orientation.

Court considered the European Court of Human Rights in the case of **Salgueiro da Silva Mouta v. Portugal**<sup>772</sup> ruled that a person's sexual orientation is a concept which is undoubtedly covered under **Article 14** of the **European Charter on Human Rights**. In that regard, Article 14 of the European Charter on Human Rights provides for enjoyment of the rights set forth in this the Convention without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

In **Toonen v Australia**<sup>773</sup>, the Human Rights Committee observed that “in its view the reference to “sex” in **articles 2, paragraph 1, and 26** is to be taken as including sexual orientation”. Guided by the foregoing legal instruments, comparative analysis, and case law, The majority opinion was that the use of the word “sex” under **Article 27(4)** does not connote the act of sex per se but refers to the sexual orientation of any gender, whether heterosexual, lesbian, gay, intersex or otherwise. Further, the majority found that the word “including” under the same article was not exhaustive, but only illustrative and would also comprise “freedom from discrimination based on a person's sexual orientation.”

Court agreed with the finding of the High Court on interpretation of non-discrimination which excludes people based on their sexual orientation would conflict with the principles of human dignity, inclusiveness, equality, human rights and non-discrimination. To put it another way, to allow discrimination based on sexual orientation would be counter to these constitutional principles.” Therefore,

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<sup>772</sup> judgment of 21 December 1999, Reports 1999-IX, p. 327, para. 28

<sup>773</sup> Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994)

the appellant's action of refusing to reserve the name of the 1st respondent's intended NGO on the ground that "Sections 162, 163 and 165 of the Penal Code criminalizes Gay and Lesbian liaisons" was discriminatory in view of **Article 27(4)** of the Constitution.

Consequently, Court by majority found that the 1st respondent's right not to be discriminated directly or indirectly based on their sexual orientation was violated by the appellant and the appeal failed.

## **DISSENTING OPINION OF JUSTICE MOHAMMED K. IBRAHIM**

His Lordship Mojammed K. Ibrahim failed to agree with the majority and accordingly a minority judgement, He considered the three issues raised by the Court, but for purposes of sexual orientation, the last two issues ;2 and 3 of the dissenting opinion are considered as below;

### **Issue 2**

His Lordship disagreed with the majority finding on this issue in the current instance, the appellant claimed that it refused to approve any of the names suggested by the first respondent because Sections 162, 163, and 165 of the Penal Code penalize homosexual and lesbian relationships since they are incompatible with the natural order of things.

He considered Article 36 that establishes the freedom to association, expression and movement for all but evoked Article 24 where limitation of rights and fundamental freedoms is permissible upon certain strict conditions. The conditions are that; first a right or fundamental freedom in the Bill of Rights should only be limited by a law and second, to the extent only that the limitation is reasonable and justifiable in an open and democratic society.

Such limitation must be based on human dignity, equality and freedom. In the case of **Shollei v Judicial Service Commission & another**<sup>774</sup> where the Court endorsed the views of **E.C. Mwita J. in Jack Mukhongo Munialo & 12 others v. Attorney General**<sup>775</sup> when he made an observation pertaining to the limitation of rights under Article 24 that "Even where the right or fundamental freedom has been limited by

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<sup>774</sup> (Petition 34 of 2014) [2022] KESC 5 KLR

<sup>775</sup> Petition No 182 of 2017; [2017] eKLR

law, the yardstick for determining reasonableness and justifiability of the limitation is whether such limitation is acceptable in an open and democratic society’.

His Lordship observed that the court in considering the limitation under **article 24(1)**, must bear in mind that there is no superior right and take into consideration factors such as the nature of the right to be limited, the importance and purpose of the limitation, the nature and extent of the limitation and the need to ensure that enjoyment of rights and fundamental freedoms by one individual does not prejudice the rights of others. This calls for balancing of rights under the principle of proportionality because rights have equal value and therefore maintain the equality of rights.”

Under the Kenyan Constitution, the only rights not subject to any limitation are those found in **Article 25** of the Constitution and include freedom from torture and cruel, inhuman or degrading treatment or punishment; freedom from slavery or servitude; the right to a fair trial; and the right to an order of habeas corpus.

His Lordship noted that Democratic societies are governed by laws. Kenya is no different. The moral foundations of their society serve as the basis kenyan laws found in the Constitution and the various Statutes enacted by Parliament. The laws must be observed and respected.

He argues such law that ought to be respected is the **Non-Governmental Organizations Co-ordination Act,1990** which was enacted with the key objective of regulating the registration and co-ordination of all national and international Non-Governmental Organizations operating in Kenya.

Relevant to the dispute before Court was **Regulation 8 (3)(b)(ii) of the Non-Governmental Organizations Co-ordination Regulations, 1992** which gives the Director the discretion to refuse to approve reservation of a name of an organization where “such a name is in the opinion of the Director repugnant to or inconsistent with any law or is otherwise undesirable.” The appellant submitted that it declined to approve any of the names as proposed by the 1st respondent on the ground that **Sections 162, 163 and 165 of the Penal Code** criminalize gay and lesbian liaisons as the same goes against the order of nature. The Penal Code is another statute that prescribes behaviour and actions that are considered criminal in Kenya. **Section 162** sets out categories of “unnatural offences”, defined as “carnal knowledge against the order of nature”.

In consideration of **section 162**, He alludes to the explanation by **Justice Ouko**, that **Sections 162 and 165** criminalize male homosexual relationships while Section 163 prescribes a penalty of imprisonment for seven years, He holds a similar position with Justice Ouko when he states that due to the usage of the phrase "having carnal knowledge of any person," which is "against the order of nature," **Section 162's** interpretation allows for the inference that female same-sex relationships are also "unnatural." This means that these clauses can be used to prosecute both men and women who are in same-sex relationships.

His Lordship concluded issue two to the negative, He held that as long as **Sections 162, 163 and 165 of the Penal Code** remain valid laws, then the actions of the appellant in refusing to allow the reservations of names which include the terms "gays" and "lesbians", cannot be considered unreasonable, irrational or illegitimate.

His Lordship however attempted to give an alternative to change legislation to decriminalize homosexuality by stating that the alternative would be to rally the people of Kenya to pursue Parliament to amend the laws to repeal **Sections 162, 163 and 165 of the Penal Code**. I can do no more than repeat that other jurisdictions either through legislation or constitutional revisions have amended their laws to remove similar provisions including the United Kingdom in 2013, Scotland in 2014, Northern Ireland in 2019, Canada in 1969, and Australia in 1994 all amended their laws to remove similar provisions. Some countries such as South Africa in 2006 and Australia in 2017 went further to legalize same-sex marriages

He maintained that Society's social opinions and concerns are continually changing and that if the people of Kenya desire to have these laws removed from Statute, then legislators in their capacity as the voice of the people can enact, amend, and repeal these laws. However, until such time, **Sections 162, 163 and 165** remain in our statutes books as law.

### **Issue 3**

On this issue, the appellant argued that sexual orientation is not among the prohibited grounds contemplated under Article 27 (4) of the Constitution. Article 27(4) of the Constitution provides that the State shall not discriminate directly or indirectly against any person on grounds including sex. The Constitution does not include sexual orientation as one of the seventeengrounds. The majority have taken the view that use of the word "including" in Article 27 is not exhaustive but rather only illustrative leaving room to add to the list of grounds. Ouko SCJ on the hand is of the view that the framers of the constitution did not intend to include discrimination

on grounds of sexual orientation and had it been, then nothing would have been easier than to state so. Sex in the Black's Law Dictionary, 9th edition is defined as "the sum of the peculiarities of structure and function that distinguish a male from a female organism". The Britannica Online Encyclopaedia defines sex as "the sum of features by which members of species can be divided into two groups—male and female—that complement each other reproductively." The Black's dictionary defines sexual orientation as "a person's predisposition or inclination toward a particular type of sexual activity or behavior; heterosexuality, homosexuality or bisexuality." While the Britannica online Encyclopaedia defines it as "the enduring pattern of an individual's emotional, sexual, and/or romantic attraction. In science, sexual orientation is often divided into the three components of attraction, behaviour, and self-identification. There are myriad ways to describe sexual orientation, but the most common include: heterosexual, being attracted to the opposite gender; homosexual, being attracted to the same gender; and bisexual, being attracted to more than one gender." Looking at the history of our constitutional making process that lasted over ten years, the process was in all aspects consultative with Kenyans voting in a referendum twice, leading to the promulgation of the 2010 Constitution. I find persuasion in John Mutakha Kangu's book *Constitutional Law of Kenya on Devolution, 2015* where he underscores the importance of preparatory materials in constitutional interpretation when read together with the historical context of the country, as they provide useful background material that defines where the Kenyans were coming from and where they wanted to go. One of the key preparatory materials is the Final Report of the Constitution of Kenya Review Commission, 2005 (the CKRC Report) which captured the views and recommendations of Kenyans. Chapter 4 of the CKRC Report on the goals and objective of the review, the Commission noted that among the critical objectives were the need to achieve equal rights for all and gender equity being "the equal treatment of men and women, especially on opportunities to participate in public affairs, commerce and social life, including the family." The Commission was keen to note that women were victims of family and customary laws that sometimes discriminated against them in their rights to inheritance, custody of children, commercial law and practices especially concerning loans and even hindered their participation in politics or commerce.

From this, the inclusion of sex as one of the grounds in Article 27(4) is not contentious and is clear that the intention of the framers of the Constitution was to achieve gender equality and equality for all on all fronts in society. On the other hand, the issue of same-sex marriages and homosexuality arose in several instances

and is mentioned in the CKRC Report at several stages. On page 100, at the tail end of Chapter 8, the Commission, from the views and profiles of Kenyan Communities, recommended that in family and marriage, same-sex unions should be outlawed. On page 381, the Steering Committee Consensus Building Group, which was tasked with building consensus on contentious issues, after numerous meetings and deliberations, on the character of Marriage, endorsed the recommendation of the Technical Working Group “B” that the draft Constitution should clarify the definition of marriage to prohibit same-sex marriages. The Consensus initiative accordingly recommended that marriage could take place only between persons of the opposite sex. “(c) The Character of Marriage the Draft Constitution protects the right to marry and found a family. Some delegates feared that this provision may permit homosexual marriages since the draft Constitution did not specify that marriage can only take place between persons of the opposite sex. The Group endorsed the recommendation of the Technical Working Group 'B' on Citizenship and Bill of Rights that the draft should clarify the definition of marriage to prohibit same sex marriages.

It was felt that these definitions should consider the African culture and context, and further clarity on these and similar concepts could eliminate controversy on an otherwise acceptable Bill of Rights.” On pages 436 and 437, the Technical Working Committee “B” from their deliberations recommended that same-sex marriages and homosexuality should be prohibited. The Committee of Experts established in 2009, embarked on a constitutional review process under the Review Act, 2008 building on the work of the Constitutional Review Commission of Kenya (CKRC). It was tasked with identifying and preparing a report on contentious and non-contentious issues, inviting representations from all interested persons on the issues and then preparing a harmonized draft constitution. As required by Sections 29 and 30 of the Review Act, 2008 the Committee of Experts took into consideration the views of the people of Kenya as presented to the Constitution of Kenya Review Commission, captured in the CKRC Report as well as the CKRC drafts; the CKRC Draft of September 2001; the draft that came out of the National Constitutional Conference termed the Bomas Draft of 2004; and the referendum draft termed the Proposed New Constitution of 2005. Notably, the Committee of Experts in their Final Report made no mention of the issues in contest herein. The original views of Kenyans captured in the CKRC Report found final expression in **Article 45(2) of the Constitution** which provides that “Every adult has the right to marry a person of the opposite sex, based on the free consent of the parties.” The CKRC Report must be read in the

context that it reflects the intentions and recommendations of the framers of the Constitution, informed by the views of Kenyans. But it must also be read in the context of the fact that it was prepared roughly eighteen (18) years ago. Perhaps the views of Kenyans have since evolved. But this cannot be determined and considered in this judgement. It can only be the subject of a referendum. However, what is evident is, with these thoughts, comments and recommendations in the CKRC Report, the inclusion of sexual orientation in the Bill of rights was always in contention. It is therefore my considered view that it is problematic to read sexual orientation as one of the grounds to be included in **Article 27(4)**. In some places where the right against discrimination was meant to include sexual orientation, it has been expressly stated as such in either the statutes or the national constitutions of those countries. These countries include South Africa, Angola, Mozambique as well as México, Portugal, Sweden, the United Kingdom, Canada Fiji and New Zealand. In any case, the appellant in rejecting the names proposed did so on grounds that they were inconsistent with the law. I arrive at the conclusion that the appellant's rejection of the names proposed by the 1st respondent did not amount to discrimination on the basis of sex or sexual orientation as it was firmly within the law. I would have for these reasons allowed the appeal and set aside the decision of the Court of Appeal. However, as these views are in the minority, the decision of the Court is that of the majority.

### **Nabageresa Jacqueline v AG**

The applicant aka Jacqueline Kasha is a Ugandan LGBTQIA rights activist and the founder and executive director of the LGBTQIA rights organization called Freedom & Roam Uganda (FARUG).

In 1999, she campaigned to end homophobia in Uganda, where homosexuality is illegal.

In 2010 a Ugandan newspaper Rolling Stone published names and photos of people believed to be homosexual, with the headline "Hang Them". It listed Nabagesera and her colleague David Kato<sup>776</sup>, both of whom sued the tabloid and set a benchmark for human rights in Uganda. Nabagesera explained it set a precedence as an attempt to protect "privacy and the safety we all have against incitements to violence". Kato was later killed following the legal battle with the publication.

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Nabagesera tried to adopt a child in Uganda, as the adoption process does not use sexuality as a bar to adoption in Uganda, but she was told that she could not adopt because she "wasn't palatable"<sup>777</sup>.

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<sup>777</sup> "Would-be Ugandan Parents Denied Adoptions Because of Sexuality". Global Press Journal. 2020-06-07. Retrieved 2020-06-07.



## **CHAPTER FIFTY**

### **NIGERA POSITION**

On January 7, 2014, Nigeria’s former president, Goodluck Jonathan, signed the Same-Sex Marriage (Prohibition) Bill (SSMPA) into law. The notional purpose of the SSMPA is to prohibit marriage between persons of the same sex. In reality, its scope is much wider. The law forbids any cohabitation between same-sex sexual partners and bans any “public show of same sex amorous relationship.” The SSMPA imposes a 10-year prison sentence on anyone who “registers, operates or participates in gay clubs, societies and organization” or “supports” the activities of such organizations. Punishments are severe, ranging from 10 to 14 years in prison. Such provisions build on existing legislation in Nigeria, but go much further: while the colonial-era criminal and penal codes outlawed sexual acts between members of the same sex, the SSMPA effectively criminalizes lesbian, gay, bisexual, and transgender (LGBT) persons based on sexual orientation and gender identity.

This report documents the human rights impact of the SSMPA on LGBT individuals and its effects on the activities of non-governmental organizations that provide services to LGBT people. This followed consultations with Nigeria-based LGBT activists and groups, and mainstream human rights organizations.

While existing legislation already criminalizes consensual same-sex conduct in Nigeria, the report found that the SSMPA, in many ways, officially authorizes abuses against LGBT people, effectively making a bad situation worse. The passage of the SSMPA was immediately followed by extensive media reports of high levels of violence, including mob attacks and extortion against LGBT people. Human rights groups and United Nations officials expressed grave concern about the scope the law, its vague provisions, and the severity of punishments. On February 5, 2014, following the passage of the SSMPA, the Special Rapporteur on Human Rights Defenders in Africa noted with concern in a press release, “the increase in cases of physical violence, aggression, arbitrary detention and harassment of human rights defenders working on sexual minority issues.”

While Human Rights Watch found no evidence that any individual has been prosecuted or sentenced under the SSMPA, the report concludes that its impact appears to be far-reaching and severe. The heated public debate and heightened media interest in the law have made homosexuality more visible and LGBT people even more vulnerable than they already were. Many LGBT individuals interviewed by Human Rights Watch said that prior to the enactment of the SSMPA in January 2014, the general public objected to homosexuality primarily on the basis of religious beliefs and perceptions of what constitutes African culture and tradition. The law has become a tool being used by some police officers and members of the public to legitimize multiple human rights violations perpetrated against LGBT people. Such violations include torture, sexual violence, arbitrary detention, violations of due process rights, and extortion. Human Rights Watch research indicates that since January 2014, there have been rising incidents of mob violence, with groups of people gathering together and acting with a common intent of committing acts of violence against persons based on their real or perceived sexual orientation or gender identity.

For instance, in February 2014 in Gishiri village, Abuja, a group of approximately 50 people armed with machetes, clubs, whips, and metal wires dragged people from their homes and severely beat at least 14 men whom they suspected of being gay. Three victims told Human Rights Watch that their attackers chanted: “We are doing [President Goodluck] Jonathan’s work: cleansing the community of gays.” Another victim said that the attackers also shouted: “Jungle justice! No more gays!”

Arbitrary arrest and extortion by police are commonplace under the SSMPA. Interviewees in Ibadan and other places told Human Rights Watch that they had been detained by the police multiple times since the passage of the SSMPA. Human Rights Watch interviewed eight of the 21 young men who were arrested, but not charged, at a birthday party in Ibadan. They told Human Rights Watch that members of the public informed the police that gay men were gathered together and when police arrived and found a bag of condoms that belonged to an HIV peer educator, they were all arrested. They were held in police custody for four days, and released, without charge, after paying bribes ranging from 10,000-25,000 Naira (approximately US\$32-64). These individuals said they had never been subjected to questioning, arrest, or detention prior to the enactment of this law. Individuals who have been arrested and detained are released on “bail,” usually after offering bribes to the police. Faced with 14 years’ imprisonment, several interviewees said they had little choice but to pay.

Lesbians and gay men interviewed by Human Rights Watch said that the law has had an insidious effect on individual self-expression. Since January 2014, several said that they had adopted self-censoring behavior by significantly and consciously altering their gender presentation to avoid detection or suspicion by members of the public and to avoid arrest and extortion. They told Human Rights Watch that this was not necessarily a major concern prior to the passage of the SSMPA. Lesbian and bisexual women in particular reported that fear of being perceived as “guilty by association” led them to avoid associating with other LGBT community members, increasing their isolation and, in some cases, eventually compelling them to marry an opposite-sex partner, have children, and conform to socially proscribed gender norms.

The SSMPA contributes significantly to a climate of impunity for crimes committed against LGBT people, including physical and sexual violence. LGBT victims of crime said the law inhibited them from reporting to authorities due to fear of exposure and arrest. “No way would we file a complaint,” Henry, a victim of mob violence in Lagos, said. “When it’s an LGBT issue, you can’t file a complaint.” Henry told Human Rights that the mob attack in June 2014 in Lagos was the first time that he had been a victim of violence because of his sexual orientation, and that prior to the SSMPA, he had no reason to file complaints with the police.

Interviewees, including representatives of mainstream human rights organizations, said the SSMPA has created opportunities for people to act out their homophobia with brutality and without fear of legal consequences. Under the auspices of the SSMPA, police have raided the offices of NGOs that provide legal and HIV services to LGBT communities. For example, shortly after the SSMPA passed in January 2014, police raided an HIV awareness meeting in Abuja and arrested 12 participants on suspicion of “promoting homosexuality.” They were detained in police custody, without charge, for three weeks, before paying a bribe of 100,000 Naira (approximately \$318) to secure their release.

Punitive legal environments, stigma, and discrimination based on sexual orientation and gender identity, together with high levels of physical, psychological, or sexual violence against gay men and other men who have sex with men (MSM), impedes sustainable national responses to HIV. When acts of violence are committed or condoned by officials or national authorities, including law enforcement officials, this leads to a climate of fear that fuels human rights violations and deters gay men

and other MSM from seeking and adhering to HIV prevention, treatment, care, and support services.

The SSMPA contravenes basic tenets of the Nigerian Constitution, including respect for dignity and prohibition of torture. It also goes against several regional and international human rights treaties which Nigeria has ratified, including the African Charter on Human and Peoples' Rights (African Charter), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights. Human rights treaties impose legal obligations on Nigeria to prohibit discrimination; ensure equal protection of the law; respect and protect rights to freedom of association, expression, privacy, and the highest attainable standard of health; prevent arbitrary arrests and torture or cruel, degrading, and inhuman treatment; and exercise due diligence in protecting persons, including LGBT individuals, from all forms of violence, whether perpetrated by state or non-state actors.

In November 2015, the African Commission on Human and Peoples' Rights urged the Nigerian government to review the SSMPA in order to prohibit violence and discrimination on the basis of sexual orientation and gender identity and ensure access to HIV prevention, treatment, and care services for LGBT individuals.

Nigerian authorities should act swiftly to protect LGBT people from violence, whether committed by state or non-state actors. Law enforcement officials should stop all forms of abuse and violence against LGBT people, including arbitrary arrest and detention, torture in custody, and extortion, and without delay ensure that they are able to file criminal complaints against perpetrators.

## **ALMOST PROSECTED CASE IN NIGERIA.**

A decision on Tuesday by a High Court judge in Lagos to strike out the case against 47 Nigerian men arrested in 2018 for public displays of affection with people of the same sex is welcome, but more work is needed, says the Human Dignity Trust (HDT).

The men had been charged under the Same Sex Marriage (Prohibition) Act 2013 (SSMPA). The case had previously been delayed several times after prosecution witnesses failed to appear. Presiding judge, Justice Rilwan Aikawa, struck out the case and said he had done so due to the "lack of diligent prosecution."

‘After two years of numerous court appearances and the threat of a prison sentence hanging over the mens’ heads, it is extremely welcome news that this case has been struck out,’ said Téa Braun, HDT’s Director.

Speaking to The Rustin Times, Xeenarh Mohammed, Executive Director of The Initiative for Equal Rights (TIERS), which provided legal support to the men following their arrest, said, ‘The wheels of justice are slow, but they have finally landed at our doorstep. Although we were aiming for an acquittal and a dismissal, the most important thing is that the boys are free, and they can finally start to pick up the threads of their lives.’

According to TIERS, a dismissal would have meant that the individuals are free of all charges and the case can never be brought up again in any court of law. However, a strike out means that they are free to go away now, but the police could arrest them again anytime in the future on these same charges.

HDT stands with TIERS in expressing disappointment that the threat of arrest remains. Under this draconian law, which clearly stigmatises and discriminates against LGBT Nigerians, these same individuals could be subjected to similar treatment all over again. The law itself must be struck down as a violation of basic human rights

## **TÉA BRAUN, DIRECTOR, HDT**

In August 2018, 57 men were arrested at a hotel in the Egbeda district of Lagos. Police claimed that those arrested were about to be “initiated into a gay club”, while those arrested indicated that it was a birthday party. The men were arraigned and pleaded not guilty to charges of conspiracy, membership of a secret cult and unlawful gathering. They were subsequently charged instead under the SSMPA’s provision that criminalises the “public show of same sex amorous relationship” with up to 10 years’ imprisonment.

The charges were the first to be brought under the controversial Act, which was signed into law in 2014 under then President Goodluck Jonathan, to international outcry. Under pre-existing law, a relic of the British colonial period, Nigeria already criminalises consensual same-sex sexual activity in private, which attracts a maximum penalty of 14 years’ imprisonment. Additionally, Sharia Law in 12 northern States criminalises same-sex intimacy between both men and women.

**National Coalition for Gay and Lesbian Equality v. Minister of Justice, Constitutional Court of South Africa<sup>778</sup>**

**Facts**

The National Coalition for Gay and Lesbian Equality and the Human Rights Commission brought a lawsuit challenging the constitutionality of statutory and common law offences criminalising anal sex between consenting adult men (referred to as the “sodomy laws”). The High Court ruled the laws unconstitutional and invalid. a decision of the Constitutional Court of South Africa which struck down the laws prohibiting consensual sexual activities between men. Basing its decision on the Bill of Rights in the Constitution – and in particular its explicit prohibition of discrimination based on sexual orientation – the court unanimously ruled that the crime of sodomy, as well as various other related provisions of the criminal law, were unconstitutional and therefore invalid.

The Constitutional Court reviewed the order of the High Court.

**Issue**

Whether laws criminalising sexual activity between consenting adult men violated the Constitution of South Africa.

**Comparative Law**

*Bowers v. Hardwick*, United States Supreme Court, 1986 (upholding constitutionality of State law criminalising sodomy).

***Romer v. Evans*, United States Supreme Court<sup>779</sup>**, (finding unconstitutional a State constitutional amendment that withdrew a specific class of people – gays and lesbians – from the protection of the law without a legitimate State purpose, in violation of the equal protection clause of the federal Constitution).

*R v. M(C)*, Ontario Court of Appeal, Canada, 1995 (finding that a higher age of consent for anal intercourse than for vaginal intercourse was discriminatory and violated Section 15(1) of the Canadian Charter of Rights and Freedoms).

**Majority Opinion (per Justice Ackermann)**

First the Court summarised the stages of a Section 9 discrimination inquiry. Because differentiation was on a specified ground (sexual orientation), discrimination was

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<sup>778</sup> (9 October 1998)

<sup>779</sup> 1996

established. Unfair discrimination was therefore presumed, but the Court was still required to consider whether fairness had not been established. It did this by analysing the impact of the sodomy laws.

The Court held that the sodomy laws reinforced existing social prejudices and had a severe impact, “affecting the dignity, personhood and identity of gay men at a deep level”. Furthermore, the laws had “no other purpose than to criminalise conduct which fails to conform with the moral or religious views of a section of society”. Therefore, the discrimination was unfair.

The main argument was that sodomy laws were inconsistent with the right to equality. However, the Court also considered the right to dignity, protected by **Section 10**. The constitutional protection of dignity required the Court “to acknowledge the value and worth of all individuals as members of our society”.

The sodomy laws punished “a form of sexual conduct which is identified by our broader society with homosexuals. Its symbolic effect is to state that in the eyes of our legal system all gay men are criminals.” But the harm was not just symbolic. Gay men were at risk of arrest, prosecution and conviction for engaging in “sexual conduct which is part of their experience of being human”. The Court found that punishing sexual expression “degrades and devalues gay men in our broader society. As such it is a palpable invasion of their dignity and a breach of section 10 of the Constitution.”

The Court emphasised that the privacy argument was as important as the equality argument. It defined privacy as physical space but also as a “sphere of private intimacy and autonomy” in which human relationships were nurtured without interference. “The way in which we give expression to our sexuality is at the core of this area of private intimacy. If, in expressing our sexuality, we act consensually and without harming one another, invasion of that precinct will be a breach of our privacy.”

Under **Section 36(1)**, the Court considered whether the limitation was reasonable and justifiable “in an open and democratic society based on human dignity, equality and freedom”. Considering the factors listed in **Section 36(1)**, the Court found the rights involved were very important and that the limitation represented a severe infringement. No valid purpose for the limitation had even been suggested. “The enforcement of the private moral views of a section of the community, which are based to a large extent on nothing more than prejudice, cannot qualify as such a legitimate purpose.”

Moreover, nothing “in the jurisprudence of other open and democratic societies based on human dignity, equality and freedom” pointed in a different direction. Instead, there was “a definite trend towards decriminalisation”. The Court cited cases from the European Court and the United Nations Human Rights Committee. The United States, the Court observed, was an exception to this general trend. Nevertheless, the US case of **Bowers v. Hardwick** had been the subject of “sustained criticism” and more recently the US Supreme Court, in **Romer v. Evans**, had struck down an amendment to a State constitution that prohibited public measures designed to protect persons on the basis of their sexual orientation. The South African Constitution, unlike the US Constitution, contained express privacy and dignity guarantees as well as an express prohibition of unfair discrimination on the ground of sexual orientation.

“A number of open and democratic societies have turned their backs on the criminalisation of sodomy in private between adult consenting males, despite the fact that sexual orientation is not expressly protected in the equality provisions of their constitutions. Their reasons for doing so ... fortify the conclusion which I have reached that the limitation in question in our law regarding such criminalisation cannot be justified” under the Constitution.

### **CONCURRENCE (PER JUSTICE SACHS)**

Justice Sachs framed the question as one about “the nature of the open, democratic and pluralistic society contemplated by the Constitution”. He began by asking whether it was the act or the person that was the target of sodomy laws and concluded that it was the person. The laws at issue failed the harm principle, under which conduct was only criminalised if it caused harm. “In the case of male homosexuality, however, the perceived deviance is punished simply because it is deviant.”

Because sodomy laws had the effect of making everything associated with homosexuality “queer, repugnant or comical”, the equality interest was directly engaged. “People are subject to extensive prejudice because of what they or what they are perceived to be, not because of what they do.”

Justice Sachs rejected the notion, proffered by the applicants, that the privacy argument was a “poor second prize”. He emphasised that equality and privacy could not and should not be treated separately. In this case, a single situation could “give rise to multiple, overlapping and mutually reinforcing violations of constitutional

rights”. The violation of equality by the sodomy laws “is all the more egregious because it touches the deep, invisible and intimate side of people’s lives”.

Privacy was not just about the bedroom. As Justice Blackmun described in his dissent in *Bowers v. Hardwick*, privacy was not just a negative right to occupy a private space free from government intrusion. It was the right to make fundamental decisions about intimate relationships without penalisation.

Autonomy, **Justice Sachs** explained, meant more than “the right to occupy an envelope of space in which a socially detached individual can act freely from interference by the state”. Individuals were not “isolated, lonely, and abstract” figures. The Constitution: “acknowledges that people live in their bodies, their communities, their cultures, their places and their times. The expression of sexuality requires a partner, real or imagined. It is not for the state to choose or to arrange the choice of partner, but for the partners to choose themselves.”

Justice Sachs viewed equality and dignity as complementary principles. “The manner in which discrimination is experienced on grounds of race or sex or religion or disability varies considerably ... The commonality that unites them all is the injury to dignity imposed upon people as a consequence of their belonging to certain groups. Dignity in the context of equality has to be understood in this light.” The sodomy laws, by denying “full moral citizenship in society because you are what you are, impinge on the dignity and self-worth of the group”. He referred to South Africa’s apartheid past. “At the heart of equality jurisprudence is the rescuing of people from a caste-like status and putting an end to their being treated as lesser human beings because they belong to a particular group.”

According to **Justice Sachs**, “the success of the whole constitutional endeavour in South Africa will depend in large measure on how successfully sameness and difference are reconciled”. Equality is not sameness or uniformity but rather acknowledgement and acceptance of difference. “What the Constitution requires is that the law and public institutions acknowledge the variability of human beings and affirm the equal respect and concern that should be shown to all as they are.”

**Justice Sachs** also addressed morality and argued for a morality based on the “deep political morality” of the Constitution’s Bill of Rights. “What is central to the character and functioning of the state ... is that the dictates of the morality which it enforces, and the limits to which it may go, are to be found in the text and spirit of the Constitution itself.”



## CHAPTER FIFTY-ONE

### BOTSWANA POSITION.

Motshidiemang v. Attorney General

The High Court of Botswana declared that the time was ripe to decriminalize homosexuality, thereby overturning the 2003 decision in *Kanane v. S*, which upheld the constitutionality of the sodomy laws. The case was brought by a gay man who challenged the Botswana Penal Code provisions that criminalized same-sex sexual intercourse on the grounds that they infringed his rights to dignity and liberty and to be free from discrimination. The Court held that sexual orientation is innate to an individual and that the criminalization of same-sex sexual conduct infringed the rights to liberty, dignity and privacy and constituted discrimination. It added that there was no public purpose in continuing the criminalization and that there was no justification for infringing upon those rights.

#### Facts

Letsweletse Motshidiemang, a gay Botswana man, challenged the provisions in the Botswana Penal Code which criminalized sodomy. Motshidiemang argued that the provisions meant he was “prohibited from expressing the greatest emotion of love, through the act of enjoying sexual intercourse with another consenting adult male” [para. 27].

Motshidiemang challenged **sections 164, 165 and 167 of the Penal Code**. **Section 164** states: “Any person who – (a) has carnal knowledge of any person against the order of nature; (b) [not relevant] or (c) permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of an offence and is liable to imprisonment for a term not exceeding seven years”.

**Section 165** states: “Any person who attempts to commit any of the offences specified in section 164 is guilty of an offence and is liable to imprisonment term not exceeding five years”.

**Section 167** states: “Any person who, whether in public or private, commits any act of gross indecency with another person, or procures another person to commit any

act of gross indecency with him or her, or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or private, is guilty of an offence”.

Motshidiemang argued that the provisions violated his rights to liberty, dignity and privacy and the right to be free from discrimination, as protected by the Constitution of Botswana. He submitted that although the offence in **section 167** was gender neutral, its effect disproportionately affected him as a gay man and was therefore discriminatory in effect.

**Section 3(c)** of the Constitution states: “Whereas every person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right whatever his or her race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following, namely – (a) life, liberty, security of the person and the protection of the law; (b) freedom of conscience, of expression and of assembly and association; and (c) Protection for the privacy of his or her home and other property and from deprivation of property without compensation”.

Section 9(1) states: “Except with his or her own consent, no person shall be subjected to the search of his or her person or his or her property or the entry by others on his or her premises”. Section 9(2) includes a set of circumstances under which the right can be limited.

Section 15 of the Constitution states: “(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect. (2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority. (3) In this section, the expression ‘discriminatory’ means affording different treatment to different persons, attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description”.

Motshidiemang filed an application in the High Court of Botswana in Gaborone. The case was brought against the Attorney General as representative of the State. The High Court admitted Lesbians, Gays and Bisexuals of Botswana (LEGABIBO), an

organization working towards “a tolerant social environment where diversity is appreciated,” as amicus curiae in the case [para. 14]. LEGABIBO’s objectives are to “strengthen the participation of lesbian, gay and bisexual people in the formulation of policy in Botswana, to carry out political lobbying for equal rights and decriminalisation of same sex relationships, to act on behalf of and represent lesbian, gay and bisexual people and to support public health interests by establishing an environment that enables lesbian, gay and bisexual people to protect themselves and others from violation of their basic rights”

### **Decision Overview**

Judge Leburu delivered the unanimous judgment of the High Court. The central issue before Court was whether sections 164(a) and (c), 165, and 167 of the Penal Code of Botswana unjustifiably limited Motshidiemang’s rights to liberty, dignity and privacy and were discriminatory in effect.

Motshidiemang argued that the provisions were unconstitutional because they were “not made for the peace, order and good government of Botswana” and because the lack of clarity on the specific conduct that was criminalized rendered them vague [para. 29]. In addition, he argued that his right to liberty had been infringed “by prohibiting him from using his body as he chooses and sees fit, so long as he does not cause disrespect and harm to the enjoyment of the freedoms by others” [para. 30]. He also argued that the provisions subjected him to inhuman and degrading treatment “in that they prohibited him from expressing sexual affection through the only means possible to him as a homosexual” and that they violated his right to privacy as they interfered with an “intimate and personal aspect of his life, that is not harmful to the public interest or public good” [para. 30]. He submitted that, despite being gender neutral, section 167 discriminated against him as a gay man because its effect on him was greater than on females “who have other means of enjoying penetrative sexual intercourse” [para. 31].

Motshidiemang noted that Botswana was ready to “embrace and tolerate homosexuality” because Parliament had passed the Employment (Amendment) Act which prohibited discrimination based on sexual orientation, the Botswana National Vision stated that Botswana must be a “morally tolerant” and “compassionate, just and caring” nation and the Afro-Barometer indicated that 43% of Botswanans are not opposed to homosexuality [para. 32].

LEGABIBO submitted that the provisions were discriminatory in effect even though they appeared gender neutral, and that the criminalization of same-sex sexual

conduct inhibited LGBT individuals from accessing necessary medical care, making it contrary to the public interest and public health. LEGABIBO's application was supported by an affidavit from an expert from the Gender, Health and Justice Research Unit at the University of Cape Town in South Africa. The expert highlighted the inflated levels of violence and discrimination faced by LGBT individuals when accessing health care in Botswana and that the provisions represent structural stigma ("social stigma that is institutional or made into law") [para. 34]. LEGABIBO also highlighted that section 141 of the Penal Code concerning rape is gender neutral, thus covering non-consensual anal penetration, which made the impugned provisions redundant.

The State argued for the constitutional validity of the provisions. It stated that the provisions are not discriminatory as they apply equally to everyone, of all sexual preferences, highlighting that merely being a homosexual is not criminalized, only certain acts considered against the order of nature. On the vagueness argument, the State argued that the provisions were neither vague nor ambiguous as "sexual intercourse against the law of nature" simply meant anal penetration. In addition, the State highlighted that the enjoyment of fundamental rights is also subject to limitations as provided for the Botswana Constitution. The State maintained that the Courts should defer to Parliament to determine issues of morality as Parliament represents the people of the country.

The Court examined the history of the offence of sodomy, noting that it was introduced into Botswana during the colonial period and that many British colonies adopted the structure of the offence from the Indian Penal Code. The sodomy laws remained on the statute books when Botswana became independent in 1964. The Court then analysed how same sex intercourse has been decriminalized globally, influenced by arguments similar to those raised in this case. It noted that the "repeal of the sodomy laws was greatly influenced, in large part, by the inherent recognition of such laws as being discriminatory, invasive of personal dignity, privacy, autonomy, liberty and lastly, the absence of compelling public interest to intrude and regulate private sexual expression and intimacy between consenting adults" [para. 58].

The Court rejected the State's argument that the matter should be decided by Parliament, referring to section 18 of the Constitution which allows any person who believes that a right is being violated to approach the courts for adjudication. The

Court reiterated that the courts are “the ultimate interpreter and arbiter of our Constitution”.

The Court emphasized that the Constitution “ought to be interpreted according to imperatives of the prevailing socio and political context”. With reference to the Attorney General v. Dow<sup>780</sup> case, the Court confirmed that it is required to have regard to international treaties, agreements and conventions and that domestic laws should be interpreted in a manner that does not conflict with Botswana’s international obligations.

The Court rejected Motshidiemang’s argument that the provisions were vague. It accepted that section 10 of the Constitution states that “[n]o person shall be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law” [para. 89]. However, with reference to the South African case of Affordable Medicines Trust v. Minister of Health 2006 (3) SA 247 (CC) and the US case of Grayned v. City of Rockford 408 US 104 (1972) the Court stressed that the doctrine of legality “does not require absolute certainty of the laws” [para. 90]. In relying on the decisions in Botswana cases of Gaolete v. S [1991] BLR 325 HC and Kanane v. S [2003] (2) BLR 67 (CA), and the UK case of Black-Clawson International Ltd v. Papierwerk Waldof AG [1975] 1 ALL ER 810 (HL) the Court held that the provisions were not vague and had indeed been defined by the court.

In discussing Motshidiemang’s argument that the provisions violated his right to privacy, the Court noted that privacy “must be interpreted in the light of the current era and context” [para. 112]. It quoted Black’s Law Dictionary which stated that the right to privacy is the “the right to live a life of seclusion, the right to be free from unwanted publicity, and the right to live without unwarranted interference by the public in matters with which the public is not necessarily concerned” [para 112]. The Court also referred to article 12 of the Universal Declaration of Human Rights (UDHR) and article 17 of the International Covenant on Civil and Political Rights, and to a number of other international declarations which protect the right.

With reference to the case of **Ketlhaotswe v. Debswana Diamond Company**<sup>781</sup> the Court stressed that the constitutional right to privacy is a “multifaceted and multi-pronged” [para. 114] right, and that the constitutional protections should not be interpreted as relating only to the “protection against the search of his or her person,

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<sup>780</sup> [1992] BLR 119 (CA)

<sup>781</sup> (Pty) Ltd CVHGB-001160-07

property, or entry by others on his/her premises”. The Court noted that “such a linear and face value interpretation runs foul to our cherished generous, purposive and context orientated mode of constitutional interpretation”. However, the Court also emphasized that the right is not absolute, but can only be limited by a law, for the purpose of protecting other rights and be reasonably justifiable in a democratic society.

By referring to the Indian case of **Navtey Singh Johar v. Union of India, Ministry of Law and Justice**<sup>782</sup> – which struck down the sodomy laws – the Court reiterated that the right to privacy “protects the liberty of people to make certain crucial decisions regarding their well-being, without coercion, intimidation or interference, from any direction, be it governmental or otherwise” [para. 122].

It also referred to the South African case of **National Coalition for Gay and Lesbian Equality v. Minister of Justice**<sup>783</sup> which discussed how the right protects the right to “nurture human relationships without interference from outside the community”. The Court mentioned two US cases: **Griswold v. Connecticut**<sup>784</sup> which struck down the law prohibiting married adults using birth control on the grounds that the “sanctity and privacy of the marital bedroom” was violated and **Lawrence v. Texas**<sup>785</sup> which declared that the sodomy offence violated the right to privacy.

The Court held that the impugned provisions in this case did infringe Motshidiemang’s right to express his sexuality in private and that he has a right to a “sphere of private intimacy and autonomy”, which is not harmful to any person.

The Court referred to the US case of **Planned Parenthood of South Eastern PA v. Casey**<sup>786</sup> in respect of the right to liberty and emphasized that “matters of personal intimacy and choice are central and key to personal liberty and autonomy and that it is not the business of the law to choose for a person his/her intimate partner”. The Court noted that “[a]s a nation, there is an ardent need to respect our diversity and plurality by being tolerant to minority views and opinions” and that sexual preference must be respected. It added that “sexual orientation is innate to a human being ... [i]t is not a fashion statement or posture”. The Court held that the right to liberty goes beyond freedom from physical restraint as it “includes and protects inherently private choices, free from undue influence, irrational and unjustified

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<sup>782</sup> (Writ Petition No. 76 of 2016, Supreme Court)

<sup>783</sup> 1999 (1) SA 6 (CC)

<sup>784</sup> 381 US.479, 85S (1965)

<sup>785</sup> 539 US.558

<sup>786</sup> 505 US 833 (1992)

interference by others”. The Court held that Motshidiemang’s right to liberty had been “emasculated and abridged” by the provisions’ criminalization of anal penetration.

The Court defined dignity to mean “worthy of honour and respect”, and deemed it to be a core value of the fundamental rights. The Court referred to the Botswana cases **Attorney General v. Rammoge**<sup>787</sup> and **ND v. Attorney General of Botswana**<sup>788</sup> and the **Canadian case of Law v. Canada**<sup>789</sup>, and noted articles 1, 2 and 3 of the UDHR. It held that sexual intercourse is not merely for the purposes of procreation but is an expression of love and intimacy, and that its criminalization violated Motshidiemang’s right to dignity.

The Botswana Constitution prohibits discrimination based on “sex”, and, with reference to the Canadian case of **Vriend v. Alberta**<sup>790</sup> and the UN Human Rights Committee case of **Toonen v. Australia Communication**<sup>791</sup>, the Court held that this must be interpreted to include sexual orientation. Here the Court referred to the Botswana case **Moatswi v. Fencing Centre Ltd**<sup>792</sup>, the South African case **City Council of Pretoria v. Walker**<sup>793</sup>, the Hong Kong case **Leung v. Secretary for Justice**<sup>794</sup> and the **European Court of Human Rights (ECtHR) case Sutherland v. United Kingdom**<sup>795</sup>.

Accordingly, the Court held that the provisions “have a substantially greater impact on the applicant as a homosexual, who engages only in anal sexual penetration; than it does on heterosexual men and women”. It added that “denying the applicant the right to sexual expression, in the only way natural and available to him, even if that way is denied to all, remains discriminatory in effect, when heterosexuals are permitted the right to sexual expression, in a way that is natural to them’.

The Court discussed the **Kanane case** – which had found that the impugned provisions in this case were not unconstitutional – and stressed that the Court in that case had held that “Gay men and women do not represent a group or class which at this stage has been shown to require protection under the Constitution”. It also

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<sup>787</sup> (unreported, delivery on 16 March 2016)

<sup>788</sup> MAHGB-000449-15 (unreported, delivered on 29 September 2017)

<sup>789</sup> (Minister of Employment and Immigration) 1999 (1) SCR 497

<sup>790</sup> [1998] 1 S.C.R. 493

<sup>791</sup> No. 488/1992

<sup>792</sup> [2002] (1) BLR 262 (IC)

<sup>793</sup> 1998 (2) SA 363

<sup>794</sup> [2006] 4 HKLRD 211 (CA)

<sup>795</sup> No. 25186/94

identified how the present case must be distinguished from the **Kanane case**: expert evidence was adduced in this matter; and the Court of Appeal in Kanane did not address the issues of privacy and dignity or whether the provisions were discriminatory in effect. With reference to the South African case **Minister of Home Affairs v. Fourie**<sup>796</sup> the Court stressed that “[p]lurality, diversity, inclusivity and tolerance are quadrants of a mature and an enlightened democratic society”.

Accordingly, the Court held that section 164(a) and (c) and 165 “impair the applicant’s right to dignity, privacy, liberty (autonomy) and lastly that the said provisions are discriminatory in effect”.

Having found that there was a limitation to constitutionally-protected rights, the Court examined whether that limitation was justifiable and referred to the **Canadian case of R v. Oakes**<sup>797</sup>. The Court stated that in the State’s affidavit “there is no scintilla or iota of justification, advanced for the derogation in question”, and that it made only bald assertions to justify the limitation.

The Court referred to **Good v. Attorney General** (2) and noted that “[w]hether something is within the public interest, ultimately depends upon a host of several considerations, including, but not limited to the peace, security, stability and well-being of the people”. The Court noted that “[p]ublic opinion is relevant in matters of constitutional adjudication, but it is not dispositive” as “[s]uch public opinion is rendered Lilliputian by the towering and colossal human rights ‘triangle of constitutionalism’, namely; liberty, equality and dignity”. The Court referred to **Ramantele v. Mmusi**<sup>798</sup>, the South African case of **S v. Makwanyane**<sup>799</sup> and the UK Privy Council case of **Reyes v. R**<sup>800</sup> which all confirmed that although public opinion may have some relevance, it cannot replace the court’s obligation to interpret and uphold the Constitution.

The Court held that “criminalising consensual same sex in private, between adults is not in the public interest” as the provisions “exceed the proper ambit and function of criminal law ... where there is no conceivable victim and complainant”. It found that “any notion of public morality justification (which is a question of prejudice), fails to satisfy the proportionality test”. The Court held that the provisions “do not serve any useful public purpose” and that “the means used to impair the right or

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<sup>796</sup> [2005] ZACC 19

<sup>797</sup> (1986) 1 SCR 103

<sup>798</sup> CACGB-104-12) [2013] BWCA 1

<sup>799</sup> 1995 (3) SA 391 (CC)

<sup>800</sup> [2002] UKPC II

freedoms ... are more than is necessary to accomplish the enforcement of public morality or objective”.

The Court found that the provisions “oppress a minority and then target and mark them for an innate attribute that they have no control over and which they are singularly unable to change”. It added that “consensual sex conduct, per anus, in my view, is merely a variety of human sexuality”. It held that there is “nothing reasonable and justifiable by discriminating against fellow members of our diversified society”. The Court stressed that as legislation reflects the people’s will and because discrimination on grounds of sexual orientation was prohibited under the Employment (Amendment) Act the people had spoken on the need to protect LGBT rights.

Directly responding to the **Kanane decision** which had said that the time had not yet arrived to decriminalize same-sex sexual practices, the Court stated that “time has come that private same sexual intimacy between adults must be decriminalised”. The Court referred to the Zimbabwean case **Banana v. S** 1998 (1) ZLR 309 (S), the Belize case **Orozco v. Attorney General of Belize** AD 2016, Claim No. 668/2010 and the ECtHR cases of **Norris v. Ireland** (1989) 13 ECHR 186, **Modinos v. Cyprus** (1993) 16 ECHR 485.

The Court noted that sodomy provisions “are a relic of Victorian era and were influenced by Judeo-Christian teachings” and that the premise that the sole purpose of sexual intercourse was for procreation “is no longer valid and sustainable” [para. 208]. With reference to **Miliangos v. George Frank (Textiles) Ltd** [1997] AC 445, the Court stressed that once the reason for a law has ceased, the law itself must also cease. The Court also pointed out that there existed other provisions in the penal code which criminalized non-consensual sexual acts and acts of indecency done in public – such as those which criminalize indecent practices in practice, rape, indecent assault and defilement. Accordingly, Court found that there existed no need for criminalizing consensual same-sex sexual intercourse in private.

The Court held that it was entitled to sever “private” from the conduct prohibited by section 167 on the grounds that the “regulation of conduct deemed indecent, done in private between consenting adults, is a violation of the constitutional right to privacy and liberty”.

Consequently, the court deemed sections 164(a) and (c), and 165 of the Penal Code to be unconstitutional and ordered the word “private” to be removed from section 167. This was on the grounds that the provisions violated the right to liberty, privacy

and dignity under section 3, privacy under section 9 and were discriminatory in violation of section.

In the *People v. Siyah Pembe Üçgen İzmir Association* (“Black Pink Triangle”), İzmir Court of First Instance No. 6, Turkey, the Court observed that it was not possible to characterize as immoral the fact that someone had a particular involuntary sexual orientation or the use of words such as lesbian, gay, bisexual, travesty or transsexual nor was being gay, lesbian, travesty or transsexual prohibited under national law, therefore the use of such terms in Black Pink Triangle’s statute could not be considered immoral or contrary to law. The Court also reasoned that, to characterize an association’s aims as immoral, it had to be shown that those aims were against strictly determined morals that are accepted by the whole society. The general aim of the Black Pink Triangle was to strengthen solidarity among LGBT persons, cultivate a freer environment in society and end discrimination against LGBT individuals. In declining to dissolve the association and affirming that lesbian, gay, bisexual, travesty and transsexual individuals have the same rights as everyone else to form an association, the court noted that Turkish laws did not prevent LGBT persons from forming an association.

[69] Closer home, within the African continent, the Court of Appeal of Botswana in case of the *Attorney General of Botswana v. Thuto Rammoge and 19 Others*, Civil Appeal No. 128 of 2014 grappled with similar questions as those before this Court. The case concerned the constitutionality of the refusal by Botswana’s Department of Civil and National Registration to register a civil society group, Lesbians, Gays, and Bisexuals of Botswana (LEGABIBO) which had sought to register as a society under Botswana’s Societies Act. The refusal to register LEGABIBO was on the basis that same-sex conduct was at the time criminalized by sections 164 and 167 of the Penal Code of Botswana. The Court held that the right to freedom of assembly and association protected the rights of Lesbians, Gays, Bisexuals and their supporters to register a society to promote the rights of the members of the grouping and to lobby for legal reform. Significantly, the Court noted that even though Botswana’s Penal Code then prohibited same-sex sexual acts,



## **CHAPTER FIFTY-TWO**

### **INDIAN CULTURE**

#### **Early modern period**

The Fatawa-e-Alamgiri of the Mughal Empire mandated a common set of punishments for homosexuality, which could include 50 lashes for a slave, 100 for a free infidel, or death by stoning for a Muslim. While pederasty was often considered as "pure love" and prevalent among those from Central Asia, in India, however, this wasn't as rife. The governor of Burhanpur was murdered by a boy servant with whom he tried to be intimate with. Muslim Urdu poetry of the era sometimes expressed homoerotic viewpoints reminiscent of bromances, but these were not explicitly homosexual in nature.

Homosexuality was prohibited for much of the existence of the Portuguese Empire. With the judicial records of prosecutions by both the Portuguese Crown, and Catholic Goa Inquisition, dating from the early 16th century. In 1528, a muslim man being noted as one of the first condemned to be burnt, made into dust, his goods confiscated for the Crown and his descendants defamed, for the crime.

Two women using carrots as dildos, 20th century gouache painting.

The British Raj, in directly governed British territories, replaced the criminal offences and punishments set out in the Mughal Fatawa 'Alamgiri, with those of the 1862 Indian Penal Code, section Section 377 covering homosexuality. The law stated: "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offense described in the section." The law was drafted by Thomas Babington Macaulay, who based it on anti-sodomy laws that already existed in Britain." The term "order of the nature" was never defined, hence considering its vagueness, the law could apply to virtually any sexual act considered

against this order by the British Judiciary, which included all penetrative sexual acts, except for vaginal penetration by a man. There are not many cases that were tried under this law, though, as there were only exist 5 recorded cases that were tried under Section 377 India till 1920. The law had a larger impact on social values than legal ones.

The anti-sodomy law in Britain and, in turn, India, was inspired by the 'purity campaign', an ideology that aimed at repressing sexual conduct in British society. This campaign also changed the perception and beliefs about sexualities in the European society.

One of the first sodomy-related cases to be prosecuted under British rule in India was the case of *Khairati vs Queen Empress* in 1884. Khairati was first called on by the police when he was seen cross-dressing and singing with a group of women in Moradabad. The case was brought to the Allahabad high court, where Khairati was forced to undergo a medical examination and it was found that he had an 'extended anal orifice' which was the sign of a 'habitual catamite'. Cross-dressing was, again, used as evidence to support this argument. Cross-dressing was normal in indigenous culture in India, but since this did not fit the moral standards of sexuality of Britishers and the ambiguity of Section 377, Khairati was arrested and prosecuted in court.

In 1977 Shakuntala Devi published the first study of homosexuality in India. Whilst convictions under Section 377 were rare, [citation needed] with no convictions at all for homosexual intercourse in the twenty years to 2009, [citation needed] Human Rights Watch have said that the law was used to harass HIV/AIDS prevention activists, as well as sex workers, men who have sex with men, and other LGBT groups. The group documents arrests in Lucknow of four men in 2006 and another.

Homosexual intercourse was a criminal offence from the introduction of Section 377 of the Indian Penal Code in 1860 until the Delhi High Court's 2009 decision in *Naz Foundation v. Govt. of NCT of Delhi*. After the Delhi court's ruling was overturned in 2013, homosexual intercourse was re-criminalized until the Supreme Court of India's 2018 ruling in *Navtej Singh Johar v. Union of India*. This made it an offence for a person to voluntarily have "carnal intercourse against the order of nature."

AIDS Bhedbhav Virodhi Andolan Protest (1992)

The AIDS Bhedbhav Virodhi Andolan (ABVA), or the AIDS Anti-discrimination movement, organized the first public protest against anti-sodomy laws in India in August 1992.

The ABVA was an activist group, with its original intent being spreading awareness regarding AIDS in India, as they opposed the intolerant practices and discrimination of the Indian government against HIV positive patients. They protested against the government policy that required the doctors to disclose the names of HIV-positive patients, who were then put in isolation. The group organized multiple protests demanding rights for HIV-affected people and sex workers.

In 1991, 7 members of ABVA published "Less Than Gay: A Citizens' Report on the Status of Homosexuality in India", which was the first report to publicly recognize the status of queer people in India and addressed the discrimination they faced. The report demanded the rights for the queer community in India, as it imposed a need to repeal Section 377 and the Army, Navy, and Air Force act of 1950. This report was followed by a public protest, organized by the ABVA in New Delhi, which is recognized as the first public demonstration against anti-sodomy laws in India. This demonstration protested Section 377 and its use by the police to harass the gay community. The protest was particularly sparked by an act of police brutality in Connaught Place, where 18 people were arrested on the charges that they were allegedly going to engage in homosexual acts. This protest was joined by over 500 people, which included multiple democratic and civil rights groups.

ABVA, in 1994, filed the first Public Interest Litigation (PIL) challenging Section 377 and its validity. This PIL was filed in a response to the denial by authorities to a request by ABVA demanding the distribution of condoms in Tihar Jail. The reason for this as stated by Kiran Bedi, the then Inspector General of Prisons in India, was the fact that the distribution of condoms would acknowledge and accept the existence of homosexual practices in the jail. The petition was dismissed in 2001 in the Delhi High Court.

The Friendship Walk is the first and oldest pride march in India and South Asia. This was first organized on 2 July 1999 in the city of Kolkata. During this time period, gay rights activists in India had started demanding that political leaders include gay rights as a part of their election campaigns, but these demands were ignored. So, in order to make a political statement, Owais Khan first proposed the idea of the

friendship walk. This idea was circulated among the public and received mixed reactions until the walk was finally organized.

The pride march was joined by 15 people from all across the country, who wore custom-designed, bright yellow T-shirts with a graphic of footsteps and a motto that read 'Walk on the rainbow'. The participants of the march further divided themselves into two groups, one of which continued the walk towards North Kolkata and the other one towards South Kolkata. They proceeded to meet multiple Human rights organizations, NGOs, and AIDS prevention groups to voice their agenda and spread their message. The walk ended with both groups meeting at the George Bhavan where all the participants were interviewed by the media, as they shared their views on the issue of rejection of Homosexuality and sexual/gender non-conformity in India. The news spread across South Asia and the pride march was met with strong support not only in India but from people in Pakistan and Bangladesh as well.

This law was struck down by the 2009 Delhi High Court decision *Naz Foundation v. Govt. of NCT of Delhi*, which found Section 377 and other legal prohibitions against same-sex conduct to be in direct violation of fundamental rights provided by the Indian Constitution.

Decisions of a High Court on the constitutionality of law (i.e. judicial review) apply throughout India, and not just to the territory of the state over which the High Court in question has jurisdiction. However, even after the pronouncement of verdict, there have been (rare) incidents of harassment of homosexual groups. [36]

On 16 February 2012, the Supreme Court, during a hearing of a bunch of appeals filed against decriminalisation of gay sex, observed that homosexuality should be seen in the context of changing society as many things which were earlier unacceptable have become acceptable with the passage of time.

The two-judge bench, composed of Justices G S Singhvi and S J Mukhopadhaya, opined that homosexuality should be seen in the light of changing times where phenomena of live-in relationship, single parents and artificial fertilisation have become normal. They had also pointed out that many things, which were considered immoral 20 years ago, have become acceptable to society now. The bench said that gay sex was not an offence prior to 1860 and referred to paintings and sculptures of Khajuraho. Senior Advocate Amrendra Sharan, who opposed the Delhi High Court

order of decriminalising gay sex on behalf of the Delhi Commission for Protection of Child Rights, had then submitted that social issues cannot be decided on the basis of sculptures. The apex court bench, however, observed that it reflects society of that time and homosexuality should not be seen only in terms of sexual intercourse. Earlier, the Supreme Court bench had asked the anti-gay rights groups, challenging legalisation of gay sex to explain how such acts are against the order of nature as submitted by them. The apex court was hearing petitions filed by anti-gay rights activists and also by political, social and religious organisations which have opposed the Delhi High Court verdict decriminalising homosexual behaviour.

However, on 23 February 2012, the Union Home Ministry of the UPA government replying to a Supreme Court observation, told the Supreme Court that it was opposed to the decriminalisation of gay sex. "This is highly immoral and against the social order," the Home Ministry told the apex court. It said that India's moral and social values were different from other countries, and therefore, the nation should not be guided by them. The Central Government reversed its stand on 28 February 2012, asserting that there was no error in decriminalising gay sex. This resulted in the SC pulling up the Centre for frequently changing its stand on the issue. Don't make a mockery of the system and don't waste the court's time, an apex court judge told the government.

Also, in 2012, a guide titled 'Creating Inclusive Workplaces for LGBT Employees in India' was developed by IBM, Goldman Sachs, Google together with Community Business, a non-profit organization.

In December 2013, however, India's top court upheld the law that criminalises gay sex, in a ruling that reverses a landmark 2009 Delhi High Court order which had decriminalised homosexual acts. The court said it was up to parliament to legislate on the issue.

Indians have traditionally interpreted Section 377, a 153-year-old colonial-era law, as condemning a same-sex relationship as an "unnatural offence", and also considering it punishable by a 10-year jail term. Political, social and religious groups petitioned the Supreme Court to have the law reinstated in the wake of the 2009 court ruling.

The protests against the reinstatement of Section 377 took place across India, and resulted in political activism across political parties to declare their support for the law's repeal. By April 2014, the month of the upcoming election, at least three major political parties - the Aam Aadmi Party, the Congress and the Communist Party of

India (Marxist) - had included support for decriminalization of homosexual relations in their election manifestos.

In July 2014 first book on Genderqueer in Tamil and first Tamil book on LGBTQIA was from Srishti Madurai was released by BJP's state general

## **Russian culture**

In the Russian Federation, lesbian, gay, bisexual, and transgender (LGBT) people face legal and social challenges not experienced by others. Although sexual activity between same-sex couples is legal<sup>801</sup>, homosexuality is disapproved of by most of the population, and same-sex couples and households headed by same-sex couples are ineligible for the legal protections available to opposite-sex couples. Russia provides no anti-discrimination protections for LGBT people and does not have a designation for hate crimes based on sexual orientation and gender identity.

Russia has long held strongly negative views regarding homosexuality, with recent polls indicating that a majority of Russians are against the acceptance of homosexuality and have shown support for laws discriminating against homosexuals. Despite receiving international criticism for the recent increase in social discrimination, crimes, and violence against homosexuals, larger cities such as Moscow<sup>802</sup> and Saint Petersburg<sup>803</sup> have been said to have a thriving LGBT community. However, there has been a historic resistance to gay pride parades by local governments; despite being fined by the European Court of Human Rights in 2010 for interpreting it as discrimination, the city of Moscow denied 100 individual requests for permission to hold Moscow Pride through 2012, citing a risk of violence against participants.

In December 1917, after the October Revolution, the Russian Soviet Republic (later the Russian SFSR) decriminalised homosexuality<sup>804</sup>. However, in 1933, the Soviet Union under Joseph Stalin recriminalised sex between men. Article 121 was added to the criminal code on 7 March 1934 for the entire Soviet Union that expressly

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<sup>801</sup> "Russia: Update to RUS13194 of 16 February 1993 on the treatment of homosexuals". Immigration and Refugee Board of Canada. 29 February 2000. Retrieved 21 May 2009.

<sup>802</sup> "Gay in Putin's Moscow: why the city is pinker than you think". The Guardian. 13 June 2015.

<sup>803</sup> "Inside the gay club scene in St Petersburg, Russia". Daily Xtra. 31 May 2014.

<sup>804</sup> [Russia Under the Bolshevik Regime. E.H. Carr. 1994]

prohibited male homosexuality, with up to five years of hard labour in prison. During the Soviet regime, Western observers believed that between 800 and 1,000 men were imprisoned each year under Article 121<sup>805</sup>. After the dissolution of the Soviet Union, homosexuality acts between consenting males were re-legalised in 1993, removing Article 121 from the RSFSR penal code<sup>806</sup>.

Since 2006, under Vladimir Putin, regions in Russia have enacted varying laws restricting the distribution of materials promoting LGBT relationships to minors; in June 2013, a federal law criminalizing the distribution of materials among minors in support of non-traditional sexual relationships was enacted as an amendment to an existing child protection law<sup>807</sup>. The law has resulted in the numerous arrests of Russian LGBT citizens publicly opposing the law and there has reportedly been a surge of anti-gay protests, violence, and even hate crimes. It has received international criticism from human rights observers, LGBT activists, and media outlets and has been viewed as a de facto means of criminalizing LGBT culture<sup>808</sup>. The law was ruled to be inconsistent with protection of freedom of expression by the European Court of Human Rights but as of 2021 has not been repealed<sup>809</sup>. In 2022, the law was extended to apply to anyone regardless of age, thus making any expression deemed a promotion of non-traditional sexual relationships illegal<sup>810</sup>.

In a report issued on 13 April 2017, a panel of five expert advisors to the United Nations Human Rights Council—Vitit Muntarbhorn, Sètonджи Roland Adjovi; Agnès Callamard; Nils Melzer; and David Kaye—condemned the wave of torture and killings of gay men in Chechnya.

Homosexuality has been documented in Russia for centuries. Medieval Russia was apparently very tolerant of homosexuality, with foreign visitors to the country surprised by displays of affection between homosexuals. The earliest documented bans on homosexuality date to the early-mid 17th century, during the reign of Tsar Alexis Mikhailovich, who began the process of the Europeanization and

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<sup>805</sup> "Resource Information Center: Russia". USCIS. 14 October 2015.

<sup>806</sup> "Russia: Update to RUS13194 of 16 February 1993 on the treatment of homosexuals". Immigration and Refugee Board of Canada. 29 February 2000. Retrieved 21 May 2009.

<sup>807</sup> Paul Gallagher; Vanessa Thorpe (2 February 2014). "Shocking footage of anti-gay groups". Irish Independent. Retrieved 12 February 2014.

<sup>808</sup> Elder, Miriam (11 June 2013). "Russia passes law banning gay 'propaganda'". The Guardian.

<sup>809</sup> "Dismantling LGBT+ rights as a means of control in Russia". Freedom House. Retrieved 13 August 2021.

<sup>810</sup> Farrant, Theo (6 December 2022). "From museums to books: How Russia's anti-LGBT laws will impact culture". euronews. Retrieved 8 December 2022.

modernization of Russia<sup>811</sup>.better source needed] Under the reign of Peter the Great in the 18th, who introduced a wide range of reforma aimed at modernizing and Westernizing Russia, the were a ban on male homosexual activity, but only in military statutes for soldiers. In 1832, the criminal code included Article 995, which stated that "muzhelozhstvo", or men lying with men, was a criminal act punishable by exile to Siberia for up to 5 years. Men lying with men was interpreted by courts as meaning anal sex. Application of the laws was rare, and the turn of the century found a relaxation of these laws and a general growing of tolerance and visibility.

In the wake of the October Revolution, the Bolshevik regime decriminalized homosexuality. The Bolsheviks rewrote the constitution and "produced two Criminal Codes – in 1922 and 1926 – and an article prohibiting homosexual sex was left off both."<sup>812</sup> The new Communist Party government removed the old laws regarding sexual relations, effectively legalising homosexual and transgender activity within Russia, although it remained illegal in other territories of the Soviet Union, and the homosexuals in Russia were still persecuted and sacked from their jobs<sup>813</sup>. Under Joseph Stalin, the Soviet Union recriminalized homosexuality in a decree signed in 1933<sup>814</sup>. The new Article 121, which punished "muzhelozhstvo" with imprisonment for up to 5 years, saw raids and arrests. Female homosexuals were sent to mental institutions. The decree was part of a broader campaign against "deviant" behavior and "Western degeneracy". Following Stalin's death, there was a liberalisation of attitudes toward sexual issues in the Soviet Union, but homosexual acts remained illegal. Discrimination against LGBT individuals persisted in the Soviet era, and homosexuality was not officially declassified as a mental illness until 1999<sup>815</sup>.

Soviet Article 121 was often commonly used to extend prison sentences and to control dissidents. Among those imprisoned were the well-known film director Sergei Paradjanov and the poet Gennady Trifonov. Under Mikhail Gorbachev's administration in the late 1980s, the first gay organization came into being. The Moscow Gay & Lesbian Alliance was headed by Yevgeniya Debryanskaya and

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<sup>811</sup> Kuzenkov, Pavel (9 March 2014). "The Russian Empire was Europe's real melting pot". Retrieved 9 September 2018.

<sup>812</sup> "1917 Russian Revolution: The gay community's brief window of freedom". BBC. 2017. Retrieved 9 April 2019.

<sup>813</sup> "1917 Russian Revolution: The gay community's brief window of freedom". BBC. 2017. Retrieved 9 April 2019.

<sup>814</sup> Morgan, Joe (17 June 2018). "The Secret Gay History of Russia". Gay Star News. Retrieved 21 March 2021.

<sup>815</sup> "1917 Russian Revolution: The gay community's brief window of freedom". BBC News. 10 November 2017. Retrieved 3 January 2023.

Roman Kalinin, who became the editor of the first officially registered gay newspaper, Tema. The fall of the USSR accelerated the progress of the gay movement in Russia. Gay publications and plays appeared. In 1993, a new Russian Criminal Code was signed, without Article 121. Men who had been imprisoned began to be released<sup>816</sup>.

### **Current situation**

In preparation of hosting the Winter Olympics in 2014, the Russian minister of sport, Vitaly Mutko stirred international concerns when he announced that the country planned to enforce its new anti-gay laws when it hosts the 2014 Winter Olympics in Sochi<sup>817</sup>.

The announcement prompted fears that foreign Olympic athletes and spectators could be affected by the law, signed last month by President Vladimir Putin, which bans “homosexual propaganda.” Since then, a top Russian lawmaker commented that the winter games would not be subject to the laws.

President Putin also recently signed another law that restricts the adoption of Russian children by people living in countries that recognize same-sex marriage.

According to a recent by Pew Research Center survey the enacted laws seem align with Russia’s rejection of homosexuality. About three-quarters (74%) of Russians said homosexuality should not be accepted by society, while just 16% said it should be accepted. The global survey assessed attitudes on homosexuality in 39 countries and found widespread rejection of homosexuality in Russia as well as in parts of Asia, Africa and predominantly Muslim nations.

Globally, homosexuality was most accepted in Spain (88%), Germany (87%), the Czech Republic (80%) and Canada (80%). A smaller majority of people in the United States (60%) also thought it should be accepted.

Homosexuality was officially removed from the Russian list of mental illnesses in 1999 (after the endorsement of the World Health Organization's ICD-10 classifications)<sup>818</sup>.

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<sup>816</sup> LGBT rights in Russia, Wikipedia.

<sup>817</sup> Russia’s anti-gay laws in line with public’s views on homosexuality, By Katie Reilly.

<sup>818</sup> Warner, Nigel (November 1999). "The Russian Federation has dropped "homosexual orientation" from its new classification of mental and behavior disorders". ILGA Euroletter 75]. France QRD]. Archived from the original on 25 July 2008.

As far as adoptions of children: Single persons living within Russia, regardless of their sexual orientation, can adopt children. Russian children can be adopted by a single homosexual who lives in a foreign country provided that country does not recognize same-sex marriage<sup>819</sup>. A couple can adopt children together, as a couple, only if they are a married heterosexual couple.

Despite the fact that the Russian constitution guarantees the right of peaceful association, various organs of authority in Russia refuse to register LGBT organizations<sup>820</sup>.

### **Public opinion**

Public opinion in Russia tends to be hostile toward homosexuality and the level of intolerance has been rising<sup>821</sup>. A 2013 survey found that 74% of Russians said homosexuality should not be accepted by society (up from 60% in 2002), compared to 16% who said that homosexuality should be accepted by society<sup>822</sup>.

In a 2015 survey of 2,471 Russians, 86% said homosexuality should not be accepted by society. In a 2007 survey, 68% of Russians said homosexuality is always wrong (54%) or almost always wrong (14%)<sup>823</sup>.

In a 2005 poll, 44% of Russians were in favour of making homosexual acts between consenting adults a criminal act; at the same time, 43% of Russians supported a legal ban on discrimination on the basis of sexual orientation<sup>824</sup>. In 2013, 16% of Russians surveyed said that gay people should be isolated from society, 22% said they should be forced to undergo treatment, and 5% said homosexuals should be "liquidated". In Russian psychiatry, Soviet mentality about homosexuality has endured into the present day<sup>825</sup>.

For instance, in spite of the removal of homosexuality from the nomenclature of mental disorders, 62.5% of 450 surveyed psychiatrists in the Rostov Region view it

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<sup>819</sup> "Russia's Putin signs law limiting adoption by gays". USA Today. The Associated Press. 3 July 2013.

<sup>821</sup> Morello, Carol (4 June 2013). "Acceptance of gays in society varies widely". Washington Post.

<sup>822</sup> "The global divide on homosexuality: greater acceptance in more secular and affluent countries". Pew Research Global Attitudes Project. 4 June 2013.

<sup>824</sup>

<sup>825</sup> S Smith, Tom W. (April 2011). "Cross-national differences in attitudes toward homosexuality" (PDF). Charles R. Williams Institute on Sexual Orientation (UCLA Law School). Archived from the original (PDF) on 5 March 2016. Retrieved 12 June 2013. ne 2013. avenko, Yuri; Perekhov, Alexei (13 February 2014). "The State of Psychiatry in Russia". *Psychiatric Times*. Vol 31 No 2. 31 (2).

as an illness, and up to three-quarters view it as immoral behavior. The psychiatrists sustain the objections to pride parades and the use of veiled schemes to lay off openly lesbian and gay persons from schools, child care centres, and other public institutions<sup>826</sup>. A Russian motorcycle club called the Night Wolves, which is closely associated with Russian President Vladimir Putin and which suggests "Death to faggots" as an alternate name for itself<sup>827</sup>, organized a large Anti-Maidan rally in February 2015 at which a popular slogan was "We don't need Western ideology and gay parades!"<sup>828</sup>

## **Prohibition of Same-sex unions**

Neither same-sex marriages nor civil unions of same-sex couples are allowed in Russia. In July 2013, Patriarch Kirill, the leader of the Russian Orthodox Church, of which approximately 71% of Russians are adherents<sup>829</sup>, said that the idea of same-sex marriage was "a very dangerous sign of the Apocalypse"<sup>830</sup>. At a 2011 press conference, the head of the Moscow Registry Office, Irina Muravyova, declared: "Attempts by same-sex couples to marry both in Moscow and elsewhere in Russia are doomed to fail. We live in a civil society, we are guided by the federal law, [and] by the Constitution that clearly says: marriage in Russia is between a man and a woman. Such a marriage [same-sex] cannot be contracted in Russia."<sup>831</sup> The vast majority of the Russian public are also against same-sex marriage<sup>832</sup>. In July 2020, Russian voters approved a Constitution amendment banning same-sex marriage<sup>833</sup>. In the 2021 case *Fedotova and Others v. Russia*, the European Court of Human Rights ruled that it was a violation of human rights for Russia not to offer any form of legal recognition to same-sex relationships<sup>834</sup>.

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<sup>826</sup> Ibid. "Public opinion poll: Majority of Russians oppose gay marriages and a gay President but support ban on sexual orientation discrimination". Gayrussia.ru. 19 May 2005. Archived from the original on 5 December 2015. Retrieved 26 May 2009.

<sup>827</sup> "Thousands take part in 'Anti-Maidan' protest in Moscow against uprising in Ukraine". Telegraph.co.uk. 21 February 2015. Archived from the original on 12 January 2022. Retrieved 22 August 2015.

<sup>828</sup> Walker, Shaun (15 January 2015). "Patriotic group formed to defend Russia against pro-democracy protesters". *The Guardian*.

<sup>829</sup> Religion in Russia according to the Religious Belief and National Belonging in Central and Eastern Europe survey by the Pew Forum, 2017

<sup>830</sup> Herszenhorn, David M. (11 August 2013). "Gays in Russia find no haven, despite support from the West". *The New York Times*.

<sup>831</sup> "Same-sex marriages not allowed in Russia – Moscow registrar". Interfax-Religion. 13 January 2011. Retrieved 13 January 2011.

<sup>832</sup> "Same-Sex Marriage Nixed By Russians". Angus Reid Global Monitor. 17 February 2005. Archived from the original on 25 May 2009. Retrieved 21 May 2009.

<sup>833</sup> "Russian parliament begins legalising ban on same-sex marriage". Reuters. 15 July 2020. Retrieved 16 July 2021.

<sup>834</sup> Fedele, Giulio (23 July 2021). "The (Gay) Elephant in the Room: Is there a Positive Obligation to Legally Recognise Same-Sex Unions after *Fedotova v. Russia*?". *EJIL: Talk!*. Retrieved 13 August 2021.

## **RESTRICTIONS ON JOINING MILITARY SERVICE**

Before 1993, homosexual acts between consenting males were against the law in Russia<sup>835</sup>, and homosexuality was considered a mental disorder until adoption of ICD-10 in 1999<sup>836</sup> but even after that military medical expertise statute was in force to continue considering homosexuality a mental disorder which was a reason to deny homosexuals to serve in the military. On 1 July 2003, a new military medical expertise statute was adopted; it said people "who have problems with their identity and sexual preferences" can only be drafted during war times. However, this clause contradicted another clause of the same statute which stated that different sexual orientation should not be considered a deviation. This ambiguity was resolved by the Major-General of the Medical Service Valery Kulikov who clearly stated that the new medical statute "does not forbid people of non-standard sexual orientation from serving in the military."<sup>837</sup> However, he added that people of non-standard sexual orientation should not reveal their sexual orientation while serving in the army because "other soldiers are not going to like that; they can be beaten"<sup>838</sup>. President Vladimir Putin said in a U.S. television interview in 2010 that openly gay men were not excluded from military service in Russia<sup>839</sup>. In 2013, it was reported that the Defense Ministry had issued a guideline on assessment of new recruits' mental health that recommends recruits be asked about their sexual history and be examined for certain types of tattoos, especially genital or buttocks tattoos, that would allegedly indicate a homosexual orientation<sup>840</sup>.

## **REJECTION OF GAY PRIDE EVENTS**

LGBT activists in Saint Petersburg, Russia, 1 May 2017

There have been notable objections to the organization of gay pride parades<sup>841</sup> in several Russian cities, most prominently Moscow, where authorities have never

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<sup>835</sup> "Russia: Update to RUS13194 of 16 February 1993 on the treatment of homosexuals". Immigration and Refugee Board of Canada. 29 February 2000. Retrieved 21 May 2009.

<sup>836</sup> Warner, Nigel (November 1999). "The Russian Federation has dropped "homosexual orientation" from its new classification of mental and behaviour disorders". *ILGA Euroletter 75*. France QRD]. Archived from the original on 25 July 2008.

<sup>837</sup> "Gays are not Willingly Accepted in the Russian Army". Pravda Online. 1 December 2003. Archived from the original on 26 May 2009.

<sup>838</sup> "Gays are not willingly accepted in the Russian army". Pravda.ru. 1 December 2003.

<sup>839</sup> "Russian army put on alert for tell-tale tattoos". BBC News. 25 January 2013.

<sup>840</sup> Spinella, Peter (25 January 2013). "New soldiers face gay tattoo check". *Moscow Times*.

<sup>841</sup> "Gay man arrested at otherwise peaceful St Petersburg Pride". Xtra. 29 July 2014. Retrieved 30 May 2018.

approved a request to hold a gay pride rally<sup>842</sup>. Former Moscow mayor Yuri Luzhkov supported the city's refusal to authorize the first two editions of Nikolay Alexeyev's Moscow Pride events, calling them as "satanic". The events still went on as planned, in defiance of their lack of authorization<sup>843</sup>. In 2010, Russia was fined by the European Court of Human Rights, ruling that, as alleged by Alexeyev, Russian cities were discriminating against the gay community by refusing to authorize pride parades. Although authorities had claimed allowing pride events to be held would pose a risk of violence, the Court ruled that their decisions "effectively approved of and supported groups who had called for [their] disruption."<sup>844</sup> In August 2012, contravening the previous ruling, the Moscow City Court upheld a ruling blocking requests by the organizers of Moscow Pride for authorization to hold the parade yearly through 2112, citing the possibility of public disorder and a lack of support for such events by residents of Moscow<sup>845</sup>.

## **Chechnya**

Chechen leader Ramzan Kadyrov (right) with Chechnya's parliamentary chairman Magomed Daudov

Anti-gay purges in the Chechen Republic have included forced disappearances — secret abductions, imprisonment, and torture — by authorities targeting persons based on their perceived sexual orientation. An unknown number of men, who authorities detained on suspicion of being gay or bisexual, have reportedly died after being held in what human rights groups and eyewitnesses have called concentration camps<sup>846</sup>.

Allegations were initially reported on 1 April 2017 in *Novaya Gazeta*<sup>847</sup>, a Russian-language opposition newspaper, which reported that since February 2017 over 100 men had allegedly been detained and tortured and at least three had died in an extrajudicial killing. The paper, citing its sources in the Chechen special services,

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<sup>842</sup> "Moscow says No to May 25 gay pride parade". RIA Novosti. 15 May 2013.

<sup>843</sup> "Moscow bans 'satanic' gay parade". BBC News. Retrieved 15 February 2014.

<sup>844</sup> "European court fines Russia for banning gay parades". BBC News. 6 March 2012. Retrieved 16 February 2014.

<sup>845</sup> "Gay parades banned in Moscow for 100 years". BBC. 17 August 2012. Retrieved 7 November 2013.

<sup>846</sup> Reynolds, Daniel (10 April 2017). "Report: Chechnya Is Torturing Gay Men in Concentration Camps". *The Advocate*. Retrieved 16 April 2017.

<sup>847</sup> Milashina, Elena (1 April 2017). "Murder of honor: the ambitions of a well-known LGBT activist awake a terrible ancient custom in Chechnya". Retrieved 14 April 2017. "*Novaya Gazeta*" became aware of mass detentions of residents of Chechnya in connection with their unconventional sexual orientation – or suspicion of such. At the moment, more than a hundred men have been informed of the detention. "*Novaya Gazeta*" knows the names of the three dead, but our sources say that there are many more victims.

called the wave of detentions a "prophylactic sweep"<sup>848</sup>. The journalist who first reported on the subject went into hiding<sup>849</sup>. There have been calls for reprisals against journalists who report on the situation<sup>850</sup>.

As news spread of Chechen authorities' actions, which have been described as part of a systematic anti-LGBT purge, Russian and international activists scrambled to evacuate survivors of the camps and other vulnerable Chechens but were met with difficulty obtaining visas to conduct them safely beyond Russia<sup>851</sup>.

The reports of the persecution were met with a variety of reactions worldwide. The Head of the Chechen Republic Ramzan Kadyrov denied not only the occurrence of any persecution but also the existence of gay men in Chechnya, adding that such people would be killed by their own families<sup>852</sup>. Officials in Moscow were sceptical, although in late May the Russian government reportedly agreed to send an investigative team to Chechnya<sup>853</sup>. Numerous national leaders and other public figures in the West condemned Chechnya's actions, and protests were held in Russia and elsewhere. A report released in December 2018 by the Organization for Security and Cooperation in Europe (OSCE) confirmed claims that persecution of LGBT persons had taken place and was ignored by authorities<sup>854</sup>.

On 11 January 2019, it was reported that another 'gay purge' had begun in the country in December 2018, with several gay men and women being detained<sup>855</sup>.

The Russian LGBT Network believes that around 40 persons were detained and two killed<sup>856</sup>. In March 2021, Reuters reported that the European Union imposed

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<sup>848</sup> Ibid.

<sup>849</sup> "Analysis – She broke the story of Chechnya's anti-gay purge. Now, she says she has to flee Russia". The Washington Post. Retrieved 16 April 2017.

<sup>850</sup> Walker, Shaun (14 April 2017). "Journalists fear reprisals for exposing purge of gay men in Chechnya". Retrieved 15 April 2017 – via The Guardian.

<sup>851</sup> Ponniah, Kevin (19 May 2017). "Chechen gay men hopeful of finding refuge in five countries". BBC News. Retrieved 22 May 2017.

<sup>852</sup> Walker, Shaun (2 April 2017). "Chechen police 'have rounded up more than 100 suspected gay men'". The Guardian. Retrieved 16 April 2017.

<sup>853</sup> Walker, Shaun (26 May 2017). "Russia investigates 'gay purge' in Chechnya". The Guardian. Retrieved 27 May 2017.

<sup>854</sup> Gessen, Masha (21 December 2018). "A Damning New Report on L.G.B.T. Persecution in Chechnya". The New Yorker. Retrieved 13 January 2018.

<sup>855</sup> Kramer, Andrew E. (14 January 2019). "Chechnya Renews Crackdown on Gay People, Rights Group Says". The New York Times. ISSN 0362-4331. Retrieved 10 July 2019.

<sup>856</sup> Ingber, Sasha (14 January 2019). "Activists Say 40 Detained And 2 Dead In Gay Purge In Chechnya". NPR.org. Retrieved 10 July 2019.

economic sanctions on two Chechen officials accused of persecuting LGBT people in Chechnya.

A case in point is **Zhdanov and Others vs. Russia** where the Russian authorities rejected registration of gay societies, The European Court however found that the Russian courts' decision refusing registration had interfered with the freedom of association of the applicant organizations and their founders or presidents, the individual applicants. The Court was not convinced that refusing to register the organizations had pursued the legitimate aims of protecting morals, national security and public safety, and the rights and freedoms of others. The only legitimate aim put forward by the authorities for the interference, which the Court assumed to be relevant in the circumstances, was the prevention of hatred and enmity, which could lead to disorder. In particular, the authorities believed that the majority of Russians disapproved of homosexuality and that therefore the applicants could become the victims of aggression.



## **CHAPTER FIFTY-THREE**

### **ARABIC CULTURE**

#### **Asian culture**

### **THE CURRENT LEGAL STATUS OF HOMOSEXUALITY IN UGANDA.**

Homosexuality is illegal in Uganda. The Penal Code Act of 1950 criminalizes "carnal knowledge against the order of nature,"<sup>857</sup> which is interpreted to include homosexual acts. The section also provides for a penalty of engaging in homosexual acts of imprisonment for up to life.

In addition, there have been attempts to strengthen anti-homosexuality laws in Uganda in recent years. In 2014 the Anti-Homosexuality Act of 2014 was a bill signed into law in Uganda on February 24, 2014. The bill imposed harsher penalties for homosexuality, including life imprisonment for "aggravated homosexuality," which was defined as repeated homosexual acts or same-sex relations with a person under 18 or with a disabled person.

The law also criminalized the promotion of homosexuality, with penalties of up to seven years in prison for those convicted. The law was widely criticized both domestically and internationally, with many human rights groups and foreign governments calling for it to be repealed.

However, the law was later struck down by Uganda's Constitutional Court on a technicality. In August 2014, the act, was challenged in the Constitutional Court by a coalition of Ugandan human rights organizations, including the Human Rights Awareness and Promotion Forum (HRAPF), the Center for Health, Human Rights and Development (CEHURD), and the Uganda Association of Lawyers. The petitioners argued that the law violated several provisions of the Ugandan

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<sup>857</sup> Section 145 Ugandan Penal Code Act

Constitution, including the right to privacy, equality, and freedom from discrimination.<sup>858</sup>

The Constitutional Court ultimately struck down the law on a technicality, ruling that it was passed without the required quorum of Members of Parliament present. However, the court also noted in its ruling that the law violated several provisions of the Ugandan Constitution, and that the rights of LGBTQ+ individuals in Uganda should be protected.

However, there have been efforts to reintroduce similar legislation in subsequent years, and homosexuality remains illegal in Uganda under Section 145 of the Penal Code Act.

Before the Anti-Homosexuality Act of 2014 was passed in Uganda, there was already a strong culture of homophobia and discrimination against LGBTQ+ individuals in the country. Same-sex sexual activity was already illegal under Section 145 of the Penal Code Act, with penalties of up to life imprisonment. There had also been reports of violence, harassment, and discrimination against LGBTQ+ individuals in Uganda.

The bill was initially introduced in 2009, but it was not passed until 2014. The bill was strongly supported by conservative politicians, religious leaders, and civil society groups in Uganda who viewed homosexuality as a threat to traditional values and morality. Some also claimed that homosexuality was a Western import and a form of neocolonialism.

The bill was also supported by some foreign evangelical Christian groups who saw Uganda as a battleground for promoting anti-gay legislation and values. However, the bill was widely criticized by human rights groups and foreign governments, who viewed it as discriminatory and a violation of basic human rights. The passage of the bill sparked widespread protests and condemnation both domestically and internationally.

Furthermore, the constitutionality of Section 145 of the Penal Code Act in Uganda has been challenged one notable case is **Kasha Jacqueline Nabagesera v. Attorney General of Uganda**<sup>859</sup>. In this case, the petitioner, Kasha Jacqueline Nabagesera, a

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<sup>858</sup> Constitutional Petition No. 1 of 2014.  
<http://judiciary.go.ug/data/publications/35/Constitutional%20Petition%20No%201%20of%202014.pdf>

<sup>859</sup> Constitutional Petition No. 9 of 2013.

prominent Ugandan LGBT+ activist, argued that Section 145 violated several provisions of the Ugandan Constitution, including the right to privacy, equality, and freedom from discrimination. The petitioner also argued that the law had a chilling effect on free speech and association. The Constitutional Court of Uganda heard the case in 2014, but before it could issue a ruling, the Anti-Homosexuality Act of 2014 was passed, which further criminalized same-sex sexual activity and strengthened penalties for those convicted. The Constitutional Court ultimately struck down the Anti-Homosexuality Act on a technicality, but it did not issue a ruling on the constitutionality of Section 145.

**In *Human Rights Awareness and Promotion Forum (HRAPF) v. Attorney General of Uganda*<sup>860</sup>**, challenged the constitutionality of Section 145 and sought a declaration that the provision violated the rights to privacy, freedom of expression, and freedom from discrimination)

On 21 August 2014, Ugandan police raided a private LGBT+ gathering in Kampala, arresting several people on charges of violating Section 145 of the Penal Code. In October 2019, Ugandan police arrested 16 people, including LGBTQ+ activists, on charges of violating Section 145 of the Penal Code. In December 2020, Ugandan police arrested 23 people, including LGBTQ+ individuals and allies, on charges of violating Section 145 of the Penal Code. In February 2021, a Ugandan court convicted 19 of the individuals arrested in December 2020 on charges of violating Section 145, sentencing them to one year in prison.

After the Anti-Homosexuality Act of 2014 was struck down by the Constitutional Court of Uganda on a technicality, there was mixed reactions from various groups and individuals in Uganda. Some supporters of the bill, including conservative politicians and religious leaders, criticized the ruling and vowed to continue their efforts to criminalize homosexuality. Some also accused the international community of interfering in Uganda's internal affairs and promoting homosexuality as a way to undermine traditional values and morals.

On the other hand, human rights groups, LGBTQ+ activists, and many foreign governments welcomed the ruling, viewing it as a victory for human rights and the rule of law. Some also saw it as an opportunity to push for greater protections for LGBTQ+ individuals in Uganda and to challenge other discriminatory laws and practices.

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<sup>860</sup> Constitutional Petition No. 5 of 2015.

Despite the ruling, discrimination and violence against LGBTQ+ individuals in Uganda continued. LGBTQ+ individuals still faced stigma and persecution in many parts of the country, and some continued to face arrest and imprisonment under Section 145 of the Penal Code Act.

**Legal aftermaths of the Anti-Homosexuality Act of 2014 being struck down:**

- Section 145 of the Penal Code Act remained in force, which criminalizes "carnal knowledge against the order of nature," including consensual same-sex sexual conduct. This provision continues to be used to prosecute LGBTQ+ individuals in Uganda.
- The government of Uganda did not attempt to pass another version of the Anti-Homosexuality Act, although there have been ongoing efforts by some conservative politicians and religious leaders to criminalize homosexuality through other means.
- The Constitutional Court's ruling in the *Kasha Jacqueline Nabagesera v. Attorney General of Uganda* case affirmed the importance of protecting the rights of all individuals, regardless of sexual orientation or gender identity, under the Ugandan Constitution.
- The ruling also reinforced the role of the judiciary in upholding the rule of law and preventing the violation of constitutional rights and freedoms.'
- The ruling highlighted the importance of international human rights norms and standards in guiding domestic legal systems, and the need for Uganda to uphold its commitments to human rights as a member of the international community.

**Demerits:**

- **Discrimination and backlash:** Same-sex marriage can face opposition and discrimination from individuals and groups who hold discriminatory attitudes towards the LGBTQ+ community.
- **Legal and social challenges:** Same-sex marriage may face legal and social challenges, such as restrictions on adoption or child custody, or social stigma and rejection from family and community members.
- **Gendered expectations and roles:** Same-sex marriage may reinforce traditional gender roles and expectations, especially for couples who conform to gender norms.
- **Cultural and religious objections:** Same-sex marriage may face objections from certain cultural or religious groups who do not recognize or support same-sex relationships.

**Non-Discrimination:** The Ugandan Constitution prohibits discrimination on the basis of sex, race, ethnicity, religion, and other grounds. This provision can be used to argue that LGBTQ+ individuals should not face discrimination or harassment based on their sexual orientation or gender identity.

### **LEGAL DEMERITS:**

- **Criminalization of Homosexual Acts:** Same-sex relationships and sexual acts are criminalized under Section 145 of the Penal Code in Uganda. This criminalization can result in arrests, detention, and imprisonment of LGBTQ+ individuals, which can have serious legal and social consequences.
- **Limited Legal Protections:** Same-sex couples in Uganda do not have access to legal protections, such as inheritance rights or the ability to jointly own

property. This can create legal and social challenges for same-sex couples in areas such as healthcare, housing, and employment.

- **Social Stigma and Discrimination:** Same-sex relationships and LGBTQ+ individuals in general may face social stigma and discrimination in Uganda. This can lead to harassment, violence, and other forms of discrimination, both within and outside of the legal system.

It's important to note that the legal merits and demerits of same-sex relationships in Uganda are heavily influenced by cultural and social factors, and these factors may vary depending on the specific context and community.



## **CHAPTER FIFTY-FOUR**

### **DIFFERENT VIEWS TOWARDS HOMOSEXUALITY**

Homosexuality is viewed by many as a social problem. As such, there has been keen interest in elucidating the origins of homosexuality among many scholars, from anthropologists to zoologists, psychologists to theologians. Research has shown that those who believe sexual orientation is inborn are more likely to have tolerant attitudes toward gay men and lesbians, whereas those who believe it is a choice have less tolerant attitudes. The current qualitative study used in-depth, open-ended telephone interviews with 42 White and 44 Black Americans to gain insight into the public's beliefs about the possible genetic origins of homosexuality. Along with etiological beliefs (and the sources of information used to develop those beliefs), we asked respondents to describe the benefits and dangers of scientists discovering the possible genetic basis for homosexuality. We found that although limited understanding and biased perspectives likely led to simplistic reasoning concerning the origins and genetic basis of homosexuality, many individuals appreciated complex and interactive etiological perspectives. These interactive perspectives often included recognition of some type of inherent aspect, such as a genetic factor(s), that served as an underlying predisposition that would be manifested after being influenced by other factors such as choice or environmental exposures. We also found that beliefs in a genetic basis for homosexuality could be used to support very diverse opinions, including those in accordance with negative eugenic agendas.

Recent scientific and media attention has been focused on research attempting to discern potential origins of homosexuality. Homosexuality is generally framed as a social problem, which can explain this intense interest in seeking its causes. Among the scientific studies exploring the etiology of homosexuality, much work has examined the possible influence of genes. Importantly, attributing causation of human characteristics to genetics generates a way of framing the issue that may have particular social implications. For example, when traits are understood to derive from genetic origins, they may be perceived as more immutable, “natural,” and/or as something that “cannot be helped” (Stein, 1999). Such attributions concerning

causation can subsequently affect individuals' beliefs, attitudes and behaviors (Weiner, Perry, & Magnusson, 1988). Considering the potential social and psychological implications of framing homosexuality as something that is or is not caused by genes, it is necessary for more studies to focus on the public's etiologic beliefs. In addition, the field of bioethics has shown the importance of exploring potential dangers and benefits of discovering the genetic bases for many psychosocial phenomena; therefore, a focus on the public's understanding of the ramifications of genetic explanations for homosexuality will expand this important literature.

In response to this need for further study, we present in this paper qualitative data addressing the following two main issues: (a) The public's beliefs about genetic and other potential origins of homosexuality; and (b) public opinion on the psychosocial benefits and dangers connected to discovering the potential genetic origins of homosexuality. We believe that the richness of qualitative data can help us gain important insights into respondents' ideas and reasoning.

Ascribing the etiology of homosexuality to genetics implies that homosexuality is immutable and uncontrollable, and therefore is not a choice or "lifestyle." Research has found that positive attitudes toward homosexuality are associated with the belief that its origins are biological, whereas negative attitudes are associated with the view that its origin is personal choice (Jayaratne, 2002; PEW Research Center, 2003; Schneider & Lewis, 1984; Whitley, 1990; Wood & Bartkowski, 2004). Because beliefs about the origins of homosexuality are strongly related to attitudes, it is likely that such beliefs will ultimately relate to social policy and behaviors.



## **CHAPTER FIFTY-FIVE**

### **PUBLIC OPINION ON THE ETIOLOGY OF HOMOSEXUALITY**

Despite ambiguity in existing scientific research, analysis of Gallup poll data demonstrates that the percentage of individuals expressing the belief that homosexuality is something people are “born with” more than tripled, from 13% in 1977 to 40% in 2001<sup>861</sup>. The percentage of those attributing homosexuality to environment or upbringing dropped from 56% in 1977 to 39% in 2001 (PEW Research Center, 2003; ReligiousTolerance.org, 2004). However, the Gallup polls have framed the question concerning the origins of homosexuality in terms of nature versus nurture, disregarding the possibility that the public believes choice plays a role (PEW Research Center, 2003). In 1985, a Los Angeles Times poll showed that most respondents (42%) believed homosexuality is a choice, whereas fewer believed that it is due to environmental factors (20%) or biology (20%). However, by 2004, the percentage of respondents citing choice (35%) or environment (14%) dropped, while the percentage citing biology increased to 32% (Roper Center, 2004). Although these data have shown historical shifts in the public's beliefs about the origins of homosexuality, data gathered from the different polls have been inconsistent and even slightly contradictory by using an interview format that allows for the expression of all possible etiologic beliefs. Therefore, it is necessary to explore further the public's ideas concerning the origins of homosexuality.

A case in point is Owunna a Nigerian American photographer who was unwillingly outed to his family at 15, the solution to what some family members perceived as a problem was to send him from his hometown of Pittsburgh to his parents' native Nigeria to reconnect with his roots. In an interview with NPR in 2017, He states that "Because the idea was if I get re-exposed to my culture, there's no way that I would be this way," Owunna said. "This is an American thing. This is because I grew

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<sup>861</sup> ReligiousTolerance.org, 2004.

up in America." For several years, Owunna traveled to his family's hometown in Nigeria twice a year. But when he was eighteen, he said through laughter, "They found out that I was still gay."

The above points to the aspect that homosexuality is partly due to society and one's respective environmental encounters

## **PUBLIC OPINION ON THE BENEFITS AND DANGERS CONNECTED TO DISCOVERING THE POSSIBLE GENETIC ORIGINS OF HOMOSEXUALITY**

As genetic science advances and social policy decisions are made, the general public (as well as scientists themselves) need an awareness of how genetic explanations for human characteristics can be used to both help and harm individuals and societies. While genetic science can better humanity, the histories of genetics-based discrimination and eugenics practices cannot be forgotten or ignored. Bioethicists are greatly concerned with such issues and hope to educate the public concerning the pros and cons of advances in genetic science (Nuffield Council on Bioethics, 2001; President's Council on Bioethics, 2004). Therefore, it is important to gain a sense of the public's awareness of the potential psychosocial ramifications of discovering possible genetic origins for homosexuality.

### **POSSIBLE BENEFITS**

In some polls and studies of heterosexual people's attributions for homosexuality, it has been demonstrated that when individuals believe that homosexuality is a matter of personal choice, their attitudes toward gay men and lesbians tend to be more negative, whereas more positive attitudes toward gay men and lesbians are associated with attributing homosexuality to something people are "born with" (Schneider & Lewis, 1984; Whitley, 1990; Wood & Bartkowski, 2004). Weiner et al.'s (1988) research concerning people's attributions for psychosocial stigmas also found that attributing the cause of a social stigma to something believed to be uncontrollable and immutable (such as genetics) is related to more positive attitudes. A focus on genetic origins also serves to counter the assertions by religious fundamentalist groups that homosexuality is a chosen "sin" and is "unnatural." These findings have led some individuals and groups to assume that identifying a genetic causal role for homosexuality will result in more tolerant attitudes, as well

as social and legal gains for gays and lesbians. This assumption is anecdotally reflected in the adoption by many gay men and lesbians of the “I was born this way” assertion when advocating for legal and civil rights. It is unclear, however, if the general public has also considered these possible social, political and psychological benefits of discovering a genetic basis for homosexuality. The current study is a much-needed addition to research concerning this sociopolitical issue.



## **CHAPTER FIFTY-SIX**

### **POSSIBLE DANGERS**

While many believe that identifying a genetic basis for homosexuality may result in concrete gains for gay and lesbian rights, others remain more skeptical (Billings, 1994; Brookey, 2001; Burr, 1996a; Greenberg & Bailey, 1993; Haynes, 1995; Hegarty, 2002; Nardi, 1993; Wilcox, 2003). Similar to other minority populations, gay and lesbian people have been persecuted or considered deviant throughout history. Although homosexuality was no longer defined by the American Psychiatric Association (APA) as a psychiatric illness after 1973, discrimination against gay men and lesbians continues even in the face of the depathologization of homosexuality by some social institutions. The link between homosexuality and stigma seems quite resistant to attempts at normalizing gay and lesbian identity. It seems tenuous, therefore, to assert that the discovery of a genetic link for homosexuality would somehow “legitimate” gay and lesbian identity, or result in the eradication of societal discrimination against homosexual people, despite empirical evidence of an association between genetic explanations and tolerance toward gays and lesbians.

History also demonstrates that establishing causal genetic links connected to stigmatized identities does not necessarily mitigate discrimination (Brookey, 2001; Brookey, 2002; Nardi, 1993). Rather, a genetic link to homosexuality may be interpreted by some as a genetic anomaly, flaw or defect that might someday be preventable or even “cured.” Indeed, the history of persecution of gay men and lesbians over the last 100 years includes the eugenics movement, which attempted to justify discrimination on the basis of perceived genetic inferiority. This movement culminated in Nazi Germany with the genocidal extermination of several populations deemed “subordinate” and “less desirable,” including gay men and lesbians (Black, 2003).

Additionally, some current researchers still advocate positions somewhat reminiscent of eugenics arguments. A recent article by Bailey and Greenberg (2001), published in the Archives of Sexual Behavior, contains the following statement:

Allowing parents, by means morally unproblematic in themselves, to select for heterosexuality would be morally acceptable. This is because allowing parents to select their children's sexual orientation would further parents' freedom to raise the sort of children they wish to raise and because selection for heterosexuality may benefit parents and children and is unlikely to cause significant harm (from the Abstract).

In light of these findings and assertions, and given that public opinion influences social policy, more systematic and extensive examination of these issues seems critical. Therefore, we also chose to investigate in this study whether the public has considered the psychosocial harm that could result from discovering a genetic basis for homosexuality.



## **CHAPTER FIFTY-SEVEN**

### **SCIENTIFIC VIEW ON HOMOSEXUALITY.**

The factors attributed an individual's same-sex sexual orientation or sexual preference remain poorly understood regardless of general terminology in this field which has underlying implications that suggest various assumptions about the etiologic bases. For instance, while the use of the term “sexual orientation” evokes, at best, a relatively neutral stance on etiology, there is no denying the subtle message inherent in the use of the term “sexual preference” to suggest that there is at least some degree of individual choice involved. Two major categories of scientific explanations have been proposed to explain the origins of homosexuality based on biological and psychosocial influence as discussed below.

Biological theories focus on anatomical, hormonal and genetic factors as argued by different scientists such as Allen & Gorski, in 1992, LeVay in 1991, Dr Swaab & Hofman in 1990, Blanchard in 2001, Brown, Fin, Cooke, & Breedlove, in 2002; Mustanski, Chivers, & Bailey, 2002) or genetic factors respectively.

According to Veniegas & Conley<sup>862</sup>, no single, specific gene has been implicated in an association with homosexuality to date, and researchers have been unable to identify linkages to any genetic region in lesbians. Findings from genetic studies of homosexuality in humans have been confusing—contradictory at worst and tantalizing at best—with no clear, strong, compelling evidence for a distinctly genetic basis for homosexuality<sup>863</sup>.

In contrast, more psychologically- and sociologically-based studies investigate the roles of individual choice and decision-making, identity development, societal hierarchies, gender role stereotypes, role expectations and conformity in the etiology

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<sup>862</sup> (Veniegas & Conley, 2000).

<sup>863</sup> Byne, 1994; McGuire, 1995; Nuffield Council on Bioethics, 2001.

of homosexuality<sup>864</sup> Of the various theories offered to explain the origins of homosexuality, however, it is clear that no single account has won the favor of the scientific community.

The study by Pew Research Centre was part of a larger study of the public's understanding of genetic science and the use of genetic explanations for several human behaviors and characteristics, including sexual orientation with a national probability sample of 1200 White and Black respondents throughout the United States. This survey was conducted from January to June 2001. In order to gain a more complete understanding of how people thought about some of these genetic issues.

## **HOW GENETIC INFORMATION CAN HELP AND HARM PEOPLE**

To investigate participants' ideas about how information concerning a genetic basis for homosexuality could impact individuals and social systems in both beneficial and negative ways, interviewers posed two questions: (a) "If it were found that homosexuality is partly genetic, how do you think that information might be used to help people?" and (b) "If it were found that homosexuality is partly genetic, how do you think that information might be used to harm people?" Interviewers requested clarification when answers were ambiguous or incomplete.

Participants first answered the question concerning their belief about the extent to which genes play a role in the etiology of homosexuality. The answers were coded into five categories: (a) genes are fully responsible; (b) genes are partly responsible; (c) genes play a role in some gay people but not in others; (d) genes are not at all responsible; (e) don't know.

Participants were also asked to elaborate on why they believed and the extent to which homosexuality was genetic which led to answers that included a discussion of other potential causes of homosexuality categorized into four broad categories of causal influences: (a) Genetic/Biological, Environmental and Personal Choice.

Answers coded as Genetic/Biological contained terms related to biology and/or genetics or focused on physical aspects of the body. Responses coded as

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<sup>864</sup> Laumann, Gagnon, Michael, & Michaels, 1994.

Environmental focused on external factors that impacted on gay men or lesbians, rather than biological factors or factors relating to individuals' mental or motivational states. Answers coded as Personal Choice specifically referred to gay men's and lesbians' personal desires, liking, and choices. Genes/biology, environment, and personal choice were the three main domains of causal explanations on the origins of homosexuality.<sup>865</sup>

The study also considered the sources of information participants used when developing their ideas about the origins of homosexuality and coded their answers to the question concerning what factors had influenced their opinion. These included; gay family members, gay friends, acquaintances, or co-workers, non-gay family and friends, personal experiences, mass media, scientific research and religious teachings.

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<sup>865</sup> PEW Research Center, 2003.



## **CHAPTER FIFTY-EIGHT**

### **GENETIC INFLUENCES ON HOMOSEXUALITY.**

The study considered genetic influence as part of the etiology of homosexuality based on the following responses of some respondents who asserted that homosexuality is totally genetic:

“I think it's genetic. You can't control your feelings. Those feelings happen and if those feelings are for someone of the same sex, well, there they are.” (White male, 39 years old, 1-year college)

“I think it's genetic. I just think it happens to people...I don't think it's anything they really want.” (White male, 66 years old, 2 years of college)

“Certainly, with the stigma that's associated with being gay in this country, it's not something people would choose. To the extent that there are gays represented in the population also indicates that it is something that is genetic and inherent and not a lifestyle choice.” (White male, 48 years old, law degree)

“I feel that you can look at a person and know, so to me that has to be genetic. It's not something you see [because of] a certain way they're treated. I think it's there.” (White female, 61 years old, high school degree)

According to these individuals, homosexuality must be genetic because it cannot possibly be due to what they saw as the other possible cause—either choice or environment. In these cases, participants appeared to view the origins of homosexuality through the lens of either the nature vs. free will dichotomy or the nature vs. nurture dichotomy.

Many respondents believed that genes are partly the cause of homosexuality, yet they expressed a variety of opinions regarding the degree of the genetic influence.

“Yeah, [it has] a lot to do with it--very major factor.” (White male, 60 years old, vocational school degree)

“There are genetic factors that can help to predisposition people to be more likely to be homosexual.” (White male, 47 years old, bachelor's degree)

“I think genetics play a small part, a small part.” (Black male, 53 years old, 2 years of college)

A few participants stated that they believe homosexuality could have a genetic basis in some gay people, but not in other gay people.

“I think some are born and I think some are made.” (Black female, 71 years old, master's degree)

“I think that sometimes it can be in your genes and then I think sometimes it's a life you live and the people you associate with.” (White female, 69 years old, education unknown)

“I think that people can have the genes to be homosexual and then particular people just like to do it like that.” (Black female, unknown age, high school degree)

These statements may indicate a more sophisticated view concerning the origins of homosexuality in that participants seem to recognize human complexity and individual differences. Scholars (Garnets & Peplau, 2000; Rosario, 1996; Stein, 1997; Whisman; 1996) have also pointed out the likely etiological variations for homosexuality depending on the individual.

Finally, a large number of respondents stated that genes are not at all responsible for homosexuality, and instead other biological factors, the environment and/or choice are the causes. Their statements concerning the origins of homosexuality are included in the next sections of this paper.

## **OTHER BIOLOGICAL INFLUENCES**

Other biological explanations besides genetics were given for the origin of homosexuality (10 responses). The brain, hormones, the blood, disease, and ambiguous genitalia were suggested as some of the possible biological causes.

“It's a female brain inside of a male body, and vice versa with a lesbian.” (White male, 60 years old, vocational school)

“It's something wrong with them—a brain defect or something.” (White male, 38 years old, high school degree)

“It just has to be in the blood some type of way.” (Black female, 19 years old, high school degree)

“I don't know if it's genetic, but it's a disease.” (White male, 38 years old, high school degree)

Four respondents believed that the biological factor of ambiguous genitalia is homosexuality's cause. We investigate this possible conflation of biological sex and homosexuality in more detail in a later section of this paper.

“We've seen studies where people may have been born with both genitalia.” (Black male, 45 years old, master's degree)

“Part of their genitals are outside and they have to make a decision whether they're gonna be a boy or a girl at birth, so they did surgery and sometimes they didn't always make the right decision.” (White female, 52 years old, 1 year of college)

Although all these responses clearly fall into the broader category of biological/genetic, it is unclear how to interpret these statements in terms of participants' specific etiologic beliefs within this category. It may be that participants equated these biological factors with genetic factors, viewing all biology as ultimately stemming from genes.

Importantly, however, even though we asked respondents about their belief in the possible genetic basis of homosexuality and about any other potential causes of homosexuality, few gave biological answers other than genetics.



## **CHAPTER FIFTY-NINE**

### **THE INTERNATIONAL SCIENTIFIC COMMUNITY VIEW ON THE ETIOLOGY OF HOMOSEXUALITY.**

The International scientific community has contradicting views on biological and genetics as the cause or origin of homosexuality among various people with one part holding that Homosexuality isn't a choice but rather a genetically enhanced matter caused by one's hormones and the other holding the view that genetics has nothing to do with homosexuality as considered below.

### **THE VIEW THAT GENETICS CAUSES HOMOSEXUALITY;**

#### **Studies of the brain structure**

A number of sections of the brain have been reported to be sexually dimorphic; that is, they vary between men and women. There have also been reports of variations in brain structure corresponding to sexual orientation.

In 1990, Dick Swaab and Michel A. Hofman reported a difference in the size of the suprachiasmatic nucleus between homosexual and heterosexual men<sup>866</sup>. In 1992, Allen and Gorski reported a difference related to sexual orientation in the size of the anterior commissure<sup>867</sup>, however, but this research was refuted by numerous studies, one of which found that the entirety of the variation was caused by a single outlier<sup>868</sup>.

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<sup>866</sup> Swaab DF, Hofman MA (December 1990). "An enlarged suprachiasmatic nucleus in homosexual men" (PDF). *Brain Research*. 537 (1–2): 141–8. doi:10.1016/0006-8993(90)90350-K. PMID 2085769. S2CID 13403716.

<sup>867</sup> Allen LS, Gorski RA (August 1992). "Sexual orientation and the size of the anterior commissure in the human brain". *Proceedings of the National Academy of sciences of the United States of America*. 89 (15): 7199–202. Bibcode:1992PNAS...89.7199A. doi:10.1073/pnas.89.15.7199. PMC 49673. PMID 1496013.

<sup>868</sup> Byne W, Tobet S, Mattiace LA, Lasco MS, Kemether E, Edgar MA, et al. (September 2001). "The interstitial nuclei of the human anterior hypothalamus: an investigation of variation with sex, sexual orientation, and HIV status". *Hormones and Behavior*. 40 (2): 86–92. doi:10.1006/hbeh.2001.1680. PMID 11534967. S2CID 3175414.

A 2010 study by Garcia-Falgueras and Swaab stated that "the fetal brain develops during the intrauterine period in the male direction through a direct action of testosterone on the developing nerve cells, or in the female direction through the absence of this hormone surge. In this way, gender identity (the conviction of belonging to the male or female gender) and sexual orientation are programmed or organized into brain structures while still in the womb. There is no indication that social environment after birth has an effect on gender identity or sexual orientation<sup>869</sup>.

Research on the physiologic differences between male and female brains are based on the idea that people have male or a female brain, and this mirrors the behavioral differences between the two sexes. Some researchers state that solid scientific support for this is lacking. Although consistent differences have been identified, including the size of the brain and of specific brain regions, male and female brains are very similar<sup>870</sup>.

### **Sexually Dimorphic Nuclei in The Anterior Hypothalamus**

LeVay also conducted some of these early researches. He studied four groups of neurons in the hypothalamus called INAH1, INAH2, INAH3 and INAH4. This was a relevant area of the brain to study, because of evidence that it played a role in the regulation of sexual behaviour in animals, and because INAH2 and INAH3 had previously been reported to differ in size between men and women<sup>871</sup>.

He obtained brains from 41 deceased hospital patients. The subjects were classified into three groups. The first group comprised 19 gay men who had died of AIDS-related illnesses. The second group comprised 16 men whose sexual orientation was unknown, but whom the researchers presumed to be heterosexual. Six of these men had died of AIDS-related illnesses. The third group was of six women whom the

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<sup>869</sup> Garcia-Falgueras A, Swaab DF (2010). "Sexual Hormones and the Brain: An Essential Alliance for Sexual Identity and Sexual Orientation". *Pediatric Neuroendocrinology. Endocr Dev. Endocrine Development*. Vol. 17. pp. 22–35. doi:10.1159/000262525. ISBN 978-3-8055-9302-1. PMID 19955753.

<sup>870</sup> McCarthy MM, Wright CL, Schwarz JM (May 2009). "New tricks by an old dogma: mechanisms of the Organizational/Activational Hypothesis of steroid-mediated sexual differentiation of brain and behavior". *Hormones and Behavior*. 55 (5): 655–65. doi:10.1016/j.yhbeh.2009.02.012. PMC 2742630. PMID 19682425.

<sup>871</sup> LeVay S (August 1991). "A difference in hypothalamic structure between heterosexual and homosexual men". *Science*. 253 (5023): 1034–7. Bibcode:1991Sci...253.1034L. doi:10.1126/science.1887219. PMID 1887219. S2CID 1674111.

researchers presumed to be heterosexual. One of the women had died of an AIDS-related illness<sup>872</sup>.

The HIV-positive people in the presumably heterosexual patient groups were all identified from medical records as either intravenous drug abusers or recipients of blood transfusions. Two of the men who identified as heterosexual specifically denied ever engaging in a homosexual sex act. The records of the remaining heterosexual subjects contained no information about their sexual orientation; they were assumed to have been primarily or exclusively heterosexual "on the basis of the numerical preponderance of heterosexual men in the population"<sup>873</sup>

LeVay found no evidence for a difference between the groups in the size of INAH1, INAH2 or INAH4. However, the INAH3 group appeared to be twice as big in the heterosexual male group as in the gay male group; the difference was highly significant, and remained significant when only the six AIDS patients were included in the heterosexual group. The size of INAH3 in the homosexual men's brains was comparable to the size of INAH3 in the heterosexual women's brains<sup>874</sup>.

William Byne and colleagues attempted to identify the size differences reported in INAH 1–4 by replicating the experiment using brain sample from other subjects: 14 HIV-positive homosexual males, 34 presumed heterosexual males (10 HIV-positive), and 34 presumed heterosexual females (9 HIV-positive). The researchers found a significant difference in INAH3 size between heterosexual men and heterosexual women. The INAH3 size of the homosexual men was apparently smaller than that of the heterosexual men, and larger than that of the heterosexual women, though neither difference quite reached statistical significance<sup>875</sup>.

Byne and colleagues also weighed and counted numbers of neurons in INAH3 tests not carried out by LeVay. The results for INAH3 weight were similar to those for INAH3 size; that is, the INAH3 weight for the heterosexual male brains was significantly larger than for the heterosexual female brains, while the results for the gay male group were between those of the other two groups but not quite

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<sup>872</sup> *ibid.*

<sup>873</sup> *ibid.*

<sup>874</sup> [https://en.wikipedia.org/wiki/Biology\\_and\\_sexual\\_orientation#cite\\_note-Lenroot\\_2010-74](https://en.wikipedia.org/wiki/Biology_and_sexual_orientation#cite_note-Lenroot_2010-74)

<sup>875</sup> Byne W, Tobet S, Mattiace LA, Lasco MS, Kemether E, Edgar MA, et al. (September 2001). "The interstitial nuclei of the human anterior hypothalamus: an investigation of variation with sex, sexual orientation, and HIV status". *Hormones and Behavior*. 40 (2): 86–92. doi:10.1006/hbeh.2001.1680. PMID 11534967. S2CID 3175414.

significantly different from either. The neuron counts also found a male-female difference in INAH3, but found no trend related to sexual orientation<sup>876</sup>.

LeVay has said that Byne replicated his work, but that he employed a two-tailed statistical analysis, which is typically reserved for when no previous findings had employed the difference. LeVay has said that "given that my study had already reported a INAH3 to be smaller in gay men, a one tailed approach would have been more appropriate, and it would have yielded a significant difference [between heterosexual and homosexual men]". [12]:110

J. Michael Bailey however criticized LeVay's critics—describing the claim that the INAH-3 difference could be attributable to AIDS as "aggravating", since the "INAH-3 did not differ between the brains of straight men who died of AIDS and those who did not have the disease".[79]:120 Bailey has further criticized the second objection that was raised, that being gay might have somehow caused the difference in INAH-3, and not vice-versa, saying "the problem with this idea is that the hypothalamus appears to develop early. Not a single expert I have ever asked about LeVay's study thought it was plausible that sexual behavior caused the INAH-3 differences."<sup>877</sup>

The SCN of homosexual males has been demonstrated to be larger (both the volume and the number of neurons is twice as many as in heterosexual males). These areas of the hypothalamus have not yet been explored in homosexual females nor bisexual males nor females. Although the functional implications of such findings still have not been examined in detail, they cast serious doubt over the widely accepted Dörner hypothesis that homosexual males have a "female hypothalamus" and that the key mechanism of differentiating the "male brain from originally female brain" is the epigenetic influence of testosterone during prenatal development<sup>878</sup>.

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<sup>876</sup> *ibid.*

<sup>877</sup> Bailey J (2003-03-10). *The Man Who Would Be Queen*. ISBN 978-0-309-08418-5.

<sup>878</sup> Swaab DF, Gooren LJ, Hofman MA (1992). "Gender and sexual orientation in relation to hypothalamic structures". *Hormone Research* (Submitted manuscript). 38 (Suppl 2): 51–61. doi:10.1159/000182597. hdl:20.500.11755/7cb8b769-4329-407a-b0ee-13e011017f68. PMID 1292983.



## CHAPTER SIXTY

### CHILDHOOD GENDER NONCONFORMITY

According to **Micheal Bailey J** Childhood gender nonconformity is a strong predictor of adult sexual orientation that has been consistently replicated in research, and is thought to be strong evidence of a biological difference between heterosexual and non-heterosexuals. He states that “childhood gender nonconformity comprises the following phenomena among boys: cross-dressing, desiring to have long hair, playing with dolls, disliking competitive sports and rough play, preferring girls as playmates, exhibiting elevated separation anxiety, and desiring to be—or believing that one is—a girl. In girls, gender nonconformity comprises dressing like and playing with boys, showing interest in competitive sports and rough play, lacking interest in conventionally female toys such as dolls and makeup, and desiring to be a boy”. This gender nonconformist behavior typically emerges at preschool age, although is often evident as early as age 2. Children are only considered gender nonconforming if they persistently engage in a variety of these behaviors, as opposed to engaging in a behavior on a few times or on occasion. It is also not a one-dimensional trait, but rather has varying degrees<sup>879</sup>.

Children who grow up to be non-heterosexual were, on average, substantially more gender nonconforming in childhood. This is confirmed in both retrospective studies where homosexuals, bisexuals and heterosexuals are asked about their gender typical behavior in childhood, and in prospective studies, where highly gender nonconforming children are followed from childhood into adulthood to find out their sexual orientation. A review of retrospective studies that measured gender nonconforming traits estimated that 89% of homosexual men exceeded heterosexual males’ level of gender nonconformity, whereas just 2% of heterosexual men exceeded the homosexual median. For female sexual orientation, the figures were

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<sup>879</sup> Bailey JM, Vasey PL, Diamond LM, Breedlove SM, Vilain E, Epprecht M (September 2016). "Sexual Orientation, Controversy, and Science". *Psychological Science in the Public Interest*. 17 (2): 45–101. doi:10.1177/1529100616637616. PMID 27113562.

81% and 12% respectively. A variety of other assessments such as childhood home videos, photos and reports of parents also confirm this finding<sup>880</sup>.

Critics of this research see this as confirming stereotypes; however, no study has ever demonstrated that this research has exaggerated childhood gender nonconformity. J. Michael Bailey argues that gay men often deny that they were gender nonconforming in childhood because they may have been bullied or maltreated by peers and parents for it, and because they often do not find femininity attractive in other gay males and thus would not want to acknowledge it in themselves<sup>881</sup>.

Additional research in Western cultures and non-Western cultures including Latin America, Asia, Polynesia, and the Middle East supports the validity of childhood gender nonconformity as a predictor of adult non-heterosexuality. However, this does not mean that all non-heterosexuals were gender nonconforming, but rather indicates that long before sexual attraction is known, non-heterosexuals, on average, are noticeably different from other children. There is little evidence that gender nonconforming children have been encouraged or taught to behave that way; rather, childhood gender nonconformity typically emerges despite conventional socialization<sup>882</sup>. Medical experiments in which infant boys were sex reassigned and reared as girls did not make them feminine nor attracted to males

## **GAY UNCLE HYPOTHESIS**

This theory argues that the future genes of ones who has no family are likely to develop into gay genes. It advances that people who themselves do not have children may nonetheless increase the prevalence of their family's genes in future generations by providing resources (e.g., food, supervision, defense, shelter) to the offspring of their closest relatives<sup>883</sup>.

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<sup>880</sup> Bailey JM, Vasey PL, Diamond LM, Breedlove SM, Vilain E, Epprecht M (September 2016). "Sexual Orientation, Controversy, and Science". *Psychological Science in the Public Interest*. 17 (2): 45–101. doi:10.1177/1529100616637616. PMID 27113562.

<sup>881</sup> Bailey JM (2003-03-10). *The Man Who Would Be Queen: The Science of Gender-Bending and Transsexualism*. Joseph Henry Press. p. 80. ISBN 978-0-309-08418-5.

<sup>882</sup> Bailey JM, Vasey PL, Diamond LM, Breedlove SM, Vilain E, Epprecht M (September 2016). "Sexual Orientation, Controversy, and Science". *Psychological Science in the Public Interest*. 17 (2): 45–101. doi:10.1177/1529100616637616. PMID 27113562.

<sup>883</sup> Moskowitz C (11 February 2010). "How Gay Uncles Pass Down Genes". *livescience.com*. Retrieved 22 July 2020.

This hypothesis is an extension of the theory of kin selection, which was originally developed to explain apparent altruistic acts which seemed to be maladaptive. The initial concept was suggested by J. B. S. Haldane in 1932 and later elaborated by many others including John Maynard Smith, W. D. Hamilton and Mary Jane West-Eberhard<sup>884</sup>. This concept was also used to explain the patterns of certain social insects where most of the members are non-reproductive.

Vasey and VanderLaan tested the theory on the Pacific island of Samoa, where they studied women, straight men, and the fa'afafine, men who prefer other men as sexual partners and are accepted within the culture as a distinct third gender category. They found that the fa'afafine said they were significantly more willing to help kin, yet much less interested in helping children who are not family, providing the first evidence to support the kin selection hypothesis<sup>885</sup>.

The hypothesis is consistent with other studies on homosexuality, which show that it is more prevalent amongst both siblings and twins<sup>886</sup>.

Vasey and VanderLaan (2011) provides evidence that if an adaptively designed avuncular male androphilic phenotype exists and its development is contingent on a particular social environment, then a collectivistic cultural context is insufficient, in and of itself, for the expression of such a phenotype<sup>887</sup>.

The concept of a single “gay gene” may be debunked, but Dr. Eric Vilain, director of the Center for Genetic Medicine Research at Children’s National Health System, said the evidence still supports a biological connection to sexuality in three ways.

## **FRATERNAL BIRTH ORDER. (FBO)**

Men with older brothers are more likely to be homosexual, a finding from research that has been known and replicated for more than 20 years. Ray Blanchard and

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<sup>884</sup> Mayr E (1982). *The growth of biological thought: diversity, evolution, and inheritance*. Cambridge, Mass.: Belknap Press. p. 598. ISBN 978-0-674-36446-2.

<sup>885</sup> VanderLaan DP (2011). *The development and evolution of male androphilia in Samoan fa'afafine* (Ph.D. thesis).

<sup>886</sup> Vasey PL, VanderLaan DP (February 2010). "An adaptive Cognitive dissociation between willingness to help kin and nonkin in Samoan Fa'afafine". *Psychological Science*. 21 (2): 292–7. doi:10.1177/0956797609359623. PMID 20424059. S2CID 16265819.; Lay summary in: Bolcer J (5 February 2010). "Study Supports Gay Super Uncles Theory". *The Advocate*.

<sup>887</sup> Vasey PL, VanderLaan DP (February 2012). "Sexual orientation in men and vascularity in Japan: implications for the kin selection hypothesis". *Archives of Sexual Behavior*. 41 (1): 209–15. doi:10.1007/s10508-011-9763-z. PMID 21656333. S2CID 33348533.

Anthony Bogaert demonstrated that the probability of a boy growing up to be gay increases for each older brother born to the same mother, the so-called fraternal birth order (FBO) effect. Their first investigation indicated that each older brother increased the probability of being gay by about 33%<sup>888</sup>.

This startling phenomenon was confirmed in multiple studies based on independent populations totaling over 10,000 subjects, and a meta-analysis indicated that between 15% and 29% of gay men owe their sexual orientation to this effect<sup>889</sup>.

Despite this compelling evidence, a mechanism to account for the effect remained elusive. In PNAS, Bogaert et al, present direct biochemical evidence indicating that the increased incidence of homosexuality in males with older brothers results from a progressive immunization of the mother against a male-specific cell-adhesion protein that plays a key role in cell–cell interactions, specifically in the process of synapse formation, during development called neuroligin 4 Y-linked, or NLGN4Y. This study provides the first data-based explanation for the FBO effect and adds a significant chapter to growing evidence indicating that sexual orientation is heavily influenced by prenatal biological mechanisms rather than by unidentified factors in socialization<sup>890</sup>.

**Handedness.** There is a strong correlation between same sex sexual orientation and being something other than right-handed — so left-handed or ambidextrous — in both men and women. “It’s been proven in many studies and many cultures,” Vilain said.

**Familiality.** There is a subset of gay individuals who have more than one relative in their family that is also gay. For example, the new study found 30 percent of its subjects who reported same-sex behavior had a close relative who was also gay. This result speaks to the heritability of gayness, while also showing — much like the other results — that genetics can’t explain everything.

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<sup>888</sup> R Blanchard, AF Bogaert, Homosexuality in men and number of older brothers. *Am J Psychiatry* 153, 27–31 (1996).

<sup>889</sup>R Blanchard, Quantitative and theoretical analyses of the relation between older brothers and homosexuality in men. *J Theor Biol* 230, 173–187 (2004).

<sup>890</sup> AF Bogaert, et al., Male homosexuality and maternal immune responsivity to the Y-linked protein NLGN4Y. *Proc Natl Acad Sci USA* 115, 302–306 (2017).

## **SCIENTIFIC VIEW AGAINST GENETICS AS THE ETIOLOGY OF HOMOSEXUALITY.**

According to a study conducted by Ganna et al: Genome-Wide Association (GWA) study on 493,001 participants from the United States, the United Kingdom, and Sweden to study genes associated with sexual orientation, genes are not responsible for a person being gay or a lesbian<sup>891</sup>.

That's the first thing you need to know about the largest genetic investigation of sexuality ever, which was published Thursday in *Science*. The study of nearly a half million people closes the door on the debate around the existence of a so-called "gay gene."

In its stead, the report finds that human DNA cannot predict who is gay or heterosexual. Sexuality cannot be pinned down by biology, psychology or life experiences, this study and others show, because human sexual attraction is decided by all these factors.

"This is not a first study exploring the genetics of same-sex behavior, but the previous studies were small and underpowered," Andrea Ganna, the study's co-author and genetics research fellow at the Broad Institute and Mass General Hospital, said in a press briefing on Wednesday. "Just to give you a sense of the scale of [our] data, this is approximately 100 times bigger than any previous study on this topic."

Sexuality cannot be pinned down by biology, psychology or life experiences, this study and others show, because human sexual attraction is decided by all these factors.

The study shows that genes play a small and limited role in determining sexuality. Genetic heritability — all of the information stored in our genes and passed between generations — can only explain 8 to 25 percent of why people have same-sex relations, based on the study's results.

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<sup>891</sup> There is no 'gay gene.' There is no 'straight gene.' Sexuality is just complex, study confirms  
*Science* Aug 29, 2019 6:53 PM EST.

Moreover, the researchers found that sexuality is polygenic — meaning hundreds or even thousands of genes make tiny contributions to the trait. That pattern is similar to other heritable (but complex) characteristics like height or a proclivity toward trying new things. (Things like red/green colorblindness, freckles and dimples can be traced back to single genes). But polygenic traits can be strongly influenced by the environment, meaning there's no clear winner in this “nature versus nurture” debate.

It is worth keeping in mind that this study only covered some types of sexuality — gay, lesbian and cis-straight -but doesn't offer many insights into gender identity. In other words, the team only looked at the “LGB” within the acronym LGBTQIA+.

Of course, ethical concerns arise with any attempt to use biology to explain complex human behavior like sexuality. People like Michael Bailey, a psychologist at Northwestern University who conducted much of the early research into the heritability of sexuality, warned against taking these new genetics study — or any research on sexual behavior — out of context.

For instance, Bailey added, there is no evidence that things like conversion therapy work.

“Obviously, there are environmental causes of sexual orientation. We knew that before this study.” said Bailey, citing the well-defined role that life experiences play in sexual development. “But that doesn't mean we know how to manipulate sexual orientation mentally.”

This study pulled the information for 477,500 people across the UK Biobank and 23andMe who had taken a survey about various life behaviors, including whether they had engaged in a sexual experience with a person of the same sex at any point in their life. About 26,800 individuals — or 5 percent of the subjects fit this description, which is similar to the percentage reported across society more generally. All of the subjects consented to this research, including those pulled from 23andMe's archives.

The GWA study scans the DNA of hundreds or thousands of individuals, looking for common patterns that correspond with our health or our behaviors.

With this genetic trove available, the researchers conducted what's known as a genome-wide association study, or GWAS. As the PBS NewsHour reported previously, a GWAS study scans the DNA of hundreds or thousands of individuals, looking for common patterns that correspond with our health or our behaviors.

This may sound counterintuitive, but those variations can also share similarities. The books that make up family look similar to each other — in this example, they contain other shades of red.

A team led by Brendan Zietsch of the University of Queensland, Australia, mined several massive genome data banks, including that of 23andMe and the UK Biobank. They asked more than 477,000 participants whether they had ever had sex with someone of the same sex, and also questions about sexual fantasies and the degree to which they identified as gay or straight.

The researchers found five single points in the genome that seemed to be common among people who had had at least one same-sex experience. Two of these genetic markers sit close to genes linked to sex hormones and to smell—both factors that may play a role in sexual attraction. But taken together, these five markers explained less than 1 percent of the differences in sexual activity among people in the study. When the researchers looked at the overall genetic similarity of individuals who had had a same-sex experience, genetics seemed to account for between 8 and 25 percent of the behavior. The rest was presumably a result of environmental or other biological influences<sup>892</sup>.

Despite the associations, the authors found that the genetic similarities still cannot show whether a given individual is gay. “It’s the end of the ‘gay gene,’” says Eric Vilain, a geneticist at Children’s National Health System in Washington, D.C., who was not involved in the study.

The study received a warm welcome by researchers such as William Rice, an evolutionary geneticist at the University of California, Santa Barbara who stated that “A lot of people want to understand the biology of homosexuality, and science which has lagged behind that human interest,”

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<sup>892</sup>Analysis of half a million people suggests genetics may have a limited contribution to sexual orientation. By Sara Reardon on August 29, 2019

In 1993 geneticist Dean Hamer of the U.S. National Cancer Institute and his colleagues published a paper suggesting that an area on the X chromosome called Xq28 could contain a “gay gene.” But other studies, including the new paper, found no such link, and Sathirapongsasuti says that the new study is the final nail in the coffin for Xq28 as a cause of same-sex attraction.

## **CRITICISM.**

Hamer, however disagrees. His study, which analysed the genomes of 40 pairs of gay brothers, looked exclusively at people who identified as homosexual. He sees the new paper as an analysis of risky behavior or openness to experience, noting that participants who engaged in at least one same-sex experience were also more likely to report having smoked marijuana and having more sexual partners overall. Hamer says that the findings do not reveal any biological pathways for sexual orientation. He states that “I’m glad they did it and did a big study, but it doesn’t point us where to look.”

Rice and Vilain agree that the conclusion is unclear. A more detailed questionnaire that looks at more aspects of sexuality and environmental influences would allow the researchers to better pinpoint the roots of attraction.

The authors say that they did see links between sexual orientation and sexual activity, but concede that the genetic links do not predict orientation. “I think it’s true we’re capturing part of that risk-taking behavior,” Sathirapongsasuti says, but the genetic links still suggested that same-sex behavior is related to attraction.

Nevertheless, Hamer and others praise the new contribution to a field that suffers from a dearth of good studies. “I hope it will be the first of many to come.”

This GWAS study found that, like with many human behaviors, sexuality doesn’t have a strong genetic backing.

When the team looked for DNA patterns that had strong correlations, they found that no one gene could account for any more than 1 percent of people’s sexuality. The strongest signals came from five random genes.

Two of those genes correlated with same-sex sexuality in males, one of which is known to influence the sense of smell. One gene cropped up for females and two

others showed solid patterns in both males and females. But their individual scores never passed this 1-percent mark — meaning they are all minor contributors to same-sex sexual behavior

When the team looked more broadly across all the genomes — across the thousands of genes that they screened for the nearly 500,000 subjects — the genes similarities they found could only account for 8 to 25 percent of same-sex sexual behavior.

“It’s effectively impossible to predict an individual’s sexual behavior from their genome,” said Ben Neale, a geneticist at Massachusetts General Hospital and the Broad Institute who led the study. “Genetics is less than half of this story for sexual behavior.”



## CHAPTER SIXTY-ONE

### ENVIRONMENTAL INFLUENCES

A variety of environmental causes were given by participants in the Pew Research Study. To acquire a deeper understanding of the external influences participants believe contribute to homosexuality, we further coded environmental responses into the following categories: (a) upbringing, (b) lack of same-sex role models, (c) problems with the other gender/sex, (d) trauma, abuse or neglect, and (e) influence of homosexual others.

Several respondents from the study commented on the importance of one's upbringing (10 responses):

“It's if you're raised in that environment and if you're taught that it was okay.” (Black female, 53 years old, high school degree)

“The child got more attention, more care, or felt more comfortable with maybe their mother more than with their dad.” (Black male, 51 years old, one year of college)

“When a child is young, they tend to be around a lot of women, and the women ways, they fall upon them.” (Black male, 33 years old, vocational school)

“Because most of his siblings were girls, he tended to acquire what they were doing as opposed to engaging in what boys would engage in, and he just grew up with it.” (Black female, 54 years old, master's degree)

Interestingly, many answers concerning the upbringing of homosexual individuals focused on the influence of females on young males. Thus, many respondents may have been thinking more of gay men than lesbians when responding to the questions about homosexuality, a phenomenon found in other research<sup>893</sup>Two respondents

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<sup>893</sup> (Black & Stevenson, 1984; Haddock, Zanna, & Esses, 1993).

referred to a very specific aspect of upbringing: the lack of a male role model for gay men:

“[He] wasn't accepted by his father and that had a lot to do with him being a homosexual.” (Black female, 25 years old, 2 years college)

“He has the tendency to act female and prefer a male because he has no male figure in his life.” (Black female, 59 years old, 1 year of college)

Such beliefs about the origin of homosexuality are consistent with the psychoanalytic view that gay men have cold, distant relationships with their fathers, a view unsupported by empirical research yet still circulating in society and upheld by some psychoanalytic theorists.

**belief that homosexuality is due to problems with the other gender:**

Despite the fact that few studies (e. g., Tomeo, Templer, Anderson, & Kotler, 2001) have investigated a possible relationship between abuse and the development of homosexuality, this causal relationship was a fairly common idea in our sample of respondents.

## **THE INFLUENCE OF HOMOSEXUAL OTHERS**

(14 responses), respondents asserted: “I have seen those in some homes—they're growing up around people that we feel or think is a homosexual.” (Black female, 45 years old, bachelor's degree)

“It might be someone at a young age was approached by someone or introduced to it.” (White female, 47 years old, master's degree)

One participant stated the following about incarcerated fathers who were presumed to be gay because they engaged in homosexual behaviors in prison:

“Their child that comes to visit them, they altered their mind from birth to make them believing that this is all right, this is cool, and they turn these people into these homosexuals.” (White male, 54 years old, bachelor's degree)

Thus, the influence of homosexuals on others was seen as either passive (growing up in their presence) or as active (introducing heterosexual individuals to homosexuality). Some of these comments are expressions of the belief that all gays

and lesbians actively “recruit” young heterosexuals, a cultural myth that is often perpetuated by hate groups and some religious groups.

**Personal choice** Thirty-two responses by participants indicated a belief that homosexuality is at least partly a matter of choice. As several respondents concluded:

“I think that's it's a lifestyle—it's something that they choose to do.” (White female, 64 years old, bachelor's degree)

“I think some have tried this and it became a habit and they enjoyed it.” (Black female, 71 years old, master's degree)

“It's just due to a person's own desire and lust of their own flesh.” (White male, 47 years old, 2 years college)

“The men, I think it started from, it's like sports for them. It's like you want to find out what this is really about.” (Black male, 58 years old, law degree)

The view that **choice plays a role in homosexuality** has also been found in research concerning the etiologic beliefs of lesbians and gay men about their own sexual orientation (Whisman, 1996). However, this causal attribution is not the most common in the gay community, with most gays and lesbians citing biological and environmental origins (Bidstrup, 2000).

Interestingly, two participants suggested that while there may be a genetic predisposition toward homosexuality, it is still an individual's personal choice whether or not to acknowledge those feelings or act on them:

“The way they choose to live their life is not genetic, but just the fact of being a homosexual I think is genetic.” (White female, 38 years old, bachelor's degree)

“I feel that we all have some control over our destiny and our urges and our instincts—that they can be controlled.” (White male, 79 years old, bachelor's degree)

These statements indicate that, in accordance with others' views (e.g., Brookey, 2001; Byne & Stein, 1997; Greenberg & Bailey, 1993; Nardi, 1993), ascribing a genetic basis to homosexuality will not necessarily increase favorable attitudes

towards gays and lesbians, because for some individuals “genetic” does not necessarily mean “uncontrollable.” As others (e.g., Byne & Stein, 1997; Weinrich, 1995) point out, there are different models of biological causation, so that genes can be seen as having a direct impact on the development of homosexuality or an indirect impact, with environmental and personality factors moderating biology's influence.

**Other influences** Some respondents expressed other ideas about the origins of homosexuality that were nearly uniformly negative (9 responses):

“I think, personally, people just got their life messed up.” (Black male, 49 years old, 9th grade education)

“Homosexual is a fixation that you receive, like an Oedipus complex or something.” (White female, 64 years old, bachelor's degree)

“They're just being selfish and greedy—they use the genes as an excuse.” (Black female, unknown age, high school degree)

Religion also surfaced in the discussion of the etiology of homosexuality with religious reasons given by three participants:

“It's Satan's work,” (Black female, 58 years old, high school degree)

“God determines sexuality,” (Black male, 38 years old, bachelor's degree)

“It's something that the Lord has put upon you and you just have to bear that cross in your life.” (White female, 64 years old, bachelor's degree)

These three answers concerning the perceived origins of homosexuality, although all drawing upon religious beliefs, differ greatly in terms of the specific religious source and the respondents' subsequently positive or negative moral assessment of homosexuality. For instance, ascribing homosexuality to “Satan's work” makes it clear that homosexuality is seen as evil and against God's will. However, if homosexuality is considered a “cross to bear” that God has given, then that implies homosexuality is a punishment. The statement that “God determines sexuality” could again be construed that homosexuality is a punishment, but could also imply that it is just one of the many God-given features humans experience.



## **CHAPTER SIXTY-TWO**

### **SOURCES OF INFORMATION ABOUT HOMOSEXUALITY**

The study sought to understand more about participants' beliefs by investigating the sources of their information, whether they had seen or heard, once again, participants often gave multiple answers that fell into two or more categories.

Family members, friends, acquaintances, or co-workers who are gay When we asked about the sources of their information, many respondents gave statements indicating that their beliefs regarding the origins of homosexuality had derived from gay family members (12 responses) or gay friends, acquaintances, or co-workers (52 responses). Participants' responses were ambiguous about the amount and quality of their personal contact with the homosexual individuals they referred to.

Some respondents gained their information from talking with homosexual individuals:

“Well, I have a [gay] friend who told me, because I questioned him a lot about it.” (Black female, 25 years old, 2 years college).

“A friend of mine is and I used to ask her, ‘Why aren't you attracted to boys?’” (White female, 27 years old, bachelor's degree)

“I've worked with a number of social workers who are gay and we've had some conversations about their lives and their feelings and things that they experienced in life.” (Black male, 54 years old, bachelor's degree)

However, a more common source of information was merely knowing of or seeing someone presumed to be homosexual:

“I've seen a child. A two- or three-year-old child that had the tendencies.” (Black female, 73 years old, some college)

“You see people who look like they could be.” (White female, 64 years old, bachelor's degree)

“He was homosexual and I noticed this when he was 5 years old.” (Black female, 71 years old, master's degree)

“You can watch kids as they grow up and I've seen some kids that seemed like they were going to be a little, uh, soft, I guess I can put it that way.” (Black male, 24 years old, high school degree)

Many of these instances concerning observations (and all of the statements above) had to do with the violations of gender role norms that presumably indicated the sexual orientation of the individual. This theme of counter stereotyped gender role behaviors surfaced many times; thus, we investigate it in more depth in a later section of this paper.

Non-gay family and friend's Non-gay family and friends were mentioned 9 times as sources of information as reflected in the following statements:

“My son and I were talking the other day and we were talking about a fellow who grew up with him that is now deceased—he was homosexual.” (Black female, 71 years old, master's degree)

“My experience with most people [I've talked with] has been the opposite: I don't think most people believe that it's inherited or genetic.” (White male, 55 years old, bachelor's degree)

Personal experiences Three responses concerned using general personal experiences as one's source of information about the etiology of homosexuality.

“I was gonna just say just from some of the other things that I've seen. I haven't really read up on it.” (White female, 48 years old, 3 years of college)

“Just life experience—my own intuition.” (White male, 39 years old, 1 year of college)

## **SCIENTIFIC RESEARCH**

Some participants (8 responses) credited specific scientific research, yet when they did, they sometimes showed confusion about the scientific findings.

“I can reflect upon a couple psychology classes in college. The guy, Jung, who was opposed to Freud's theory, was an authoritarian on that.” (Black male, 51 years old, associate's degree)

In this statement the participant implied that Carl Jung was an authority on the etiology of homosexuality, even though Jung's ideas were never empirically tested and are controversial within the psychological community<sup>894</sup>.

## **RELIGIOUS RESPONSES.**

Religious teachings Religious teachings (10 responses) were also cited as a source of information about the etiology of homosexuality.

“I do read and study the Bible a lot and I know what the Bible says about it.” (White male, 47 years old, 2 years of college)

“I am a firm believer in the word of God.” (Black female, 50 years old, bachelor's degree)

“It's against God's will.” (White female, 21 years old, associate's degree)

It was noticed that many participants (n = 21) mentioned religion not only when explaining the source of their information, but also when justifying their answers and in the course of merely discussing the issue of homosexuality. Because religious views have been shown to play a large role in beliefs about and attitudes toward homosexuality<sup>895</sup>.

One respondent, after being asked the first survey question, declared:

“I think they all got to go to Alcatraz and just live happily ever after. Well, what was so funny, that Sunday morning my pastor said it the very same way.” (White female, 58 years old, vocational school)

Here, the respondent drew upon a recent conversation with a religious leader seemingly in order to justify the appropriateness of her beliefs concerning gays and lesbians that she expanded upon throughout the interview. However, many individuals who mentioned religion (n = 14) used it to justify their belief that

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<sup>894</sup>McGowan, 1994; von Raffay & Slotkin, 2000.

<sup>895</sup> (PEW Research Center, 2003)

homosexuality has nothing to do with genes, but instead is due to choose and/or environmental factors:

“I understand it from the Bible it is not natural.” (Black male, 59 years old, bachelor's degree)

“I know that it's a sin to be anything but a male and a female, straight.” (Black female, 53 years old, high school degree)

“Man was created in God's image, and therefore a sexual preference for the same sex is not a natural act and it is a choice.” (White male, 31 years old, associate's degree)

“I don't know if you know any verses of the Bible, but I'll tell you it's serious against anybody choosing to be homosexual.” (White male, 30 years old, associate's degree)

Thus, religious beliefs were most often used by participants to refute the possibility that biology plays a role in sexual orientation, and instead to assert that individual choice is a cause of homosexuality. Such attributions are consistent with being morally opposed to homosexuality, because ascribing homosexuality to choose (rather than to genes or environment) moves it into the moral domain. After all, immorality can only occur when there is volition.

## **ADDITIONAL THEMES THAT EMERGED DURING THE STUDY.**

Possible conflation of sex, gender, gender identity, gender roles, and sexual orientation A theme that emerged during investigation was the respondents' possible conflation of the concepts of biological sex, gender, gender identity, gender roles, and sexual orientation. Biological sex usually is determined by the appearance of the external genitalia and internal genital structures, along with chromosomal and hormonal patterns<sup>896</sup> whereas gender is the societal construction of “maleness” and “femaleness” and is not limited to biological sex

Gender identity is one's personal sense of being “male” or “female” and may or may not be related to biological sex or to gender, but usually is Gender roles are those

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<sup>896</sup> Byne & Sekaer, 2004.

behaviors, characteristics, customs and roles in a society that are considered “feminine” (i.e., appropriate for females) and those considered “masculine” (i.e., appropriate for males). They are socially prescribed and can change over time<sup>897</sup>. A homosexual sexual orientation is generally defined as sexual attraction to same-sex individuals. Possible conflation of these concepts occurred when participants discussed both the potential origins of homosexuality and the sources of their information.

Twenty-six participants made statements that revealed potential confusion about the difference between sex or gender and sexual orientation. For example, one participant asserted:

“It might come down to the fact that there's four different sexes in the human race: Heterosexual women, homosexual women, heterosexual men, homosexual men.” (White female, 47 years old, bachelor's degree)

In addition, respondents often demonstrated this possible conflation of sexual orientation with sex or gender by suggesting that a homosexual individual has the genes of the “other sex” or that, as discussed previously, ambiguous genitalia is the cause of homosexuality.

“A lot of it's been because they were operated on and made the wrong sex.” (White female, 58 years old, 11th grade education)

“Maybe you inherited more female genes and it's actually pulling you toward that kind of thing.” (Black male, 21 years old, 11th grade education)

“It goes back to genes, when they carry their extra gene for that of a man or that of a woman.” (Black male, 53 years old, 2 years college)

“You've got so many X and Y chromosomes and I think you get more of one chromosome when it's a homosexuality person.” (White female, 27 years old, bachelor's degree)

“If it were a girl, she might be born with more of a penis than the vagina.” (Black female, 54 years old, master's degree)

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<sup>897</sup> emedicine.com, 2004.

“They used to have circuses come to town and they'd say it was a half man, half woman. They told me that it meant that they were either a homo or a lesbian.” (White female, 83 years old, bachelor's degree)

Here, the respondents referring to intersex individuals, a population who have gained public attention since 1997 due to media reports about the “John/Joan” case (Colapinto, 1997) and to other forms of media information (e.g., Eugenides, 2002; Gorman & Cole, 2004). However, these respondents’ comments also indicate that they may be equating intersexuality with homosexuality. Therefore, they seem to believe that homosexuality is most often (or perhaps even always) associated with some sort of intersex condition, a belief that is woefully inaccurate.

Seven respondents demonstrated confusion about the differences between gender identity and sexual orientation. Their statements indicated a belief that homosexuality for all or many gay men and lesbians has to do with wanting to be the other sex or gender.

“They have to inherit a set of genes that makes them feel that they should be the opposite sex.” (White male, 62 years old, master's degree)

“They knew that they wanted to be the opposite sex although they weren't born that way.” (Black female, 41 years old, master's degree)

“He was a boy all his young life, but he was feeling like he was a girl and he felt better as being a girl than he was a boy.” (Black female, 53 years old, high school degree)

Many participants (n = 27) conflated the construct of gender roles with sexual orientation. For example, as two participants explained:

“Guys would be real, real feminine acting when they were little and the girls would be masculine acting and they grew up that way.” (White female, 27 years old, bachelor's degree)

“Maybe they have more female tendencies, or male, whichever.” (White female 52 years old, 1 year of college)

In particular, however, males exhibiting stereotyped feminine behaviors were most often cited as examples of gender role nonconformity (21 responses). It may be, then, that some of these participants have an awareness of research (e.g., Bailey & Zucker, 1995; Green, 1987) that has demonstrated a connection between gender role nonconformity in boyhood and later homosexuality in adult men. However, it also may be that respondents are merely using stereotypes to substantiate their beliefs, so that they view the violation of gender norms as a proxy for homosexuality.

“If it is a male and they have more female tendencies than they do male tendencies, I guess that would give them an excuse to say that is why they act so feminine and do what they do.” (Black female, 50 years old, bachelor's degree)

“The gay men that I know are so gay that they act exactly like a female towards a male.” (White male, 60 years old, vocational school)

“Most of his siblings were girls. He tended to acquire what they were doing as opposed to engaging in what boys would engage in and he just grew up with that.” (Black female, 54 years old, master's degree)

“There is so many feminine characteristics in him that he had to have been born with these. There's no way he would want to talk like that or walk like that.” (White female, 48 years old, 3 years of college)

As discussed previously, such gender role stereotypes were often cited as examples of how the environment can supposedly cause homosexuality, such as when a boy is raised around many girls and thus adopts their female behaviors. One respondent relayed a detailed story about a father who didn't take his son fishing, to the lumberyard, or to the hardware store to buy nails, but instead left the boy in the care of the mother, who taught the boy to bake cookies and pies. The conclusion of the story was:

“Her husband made her son a homo because he didn't teach the boy the boy things that the boy should have known.” (White female, 83 years old, bachelor's degree)

As mentioned before, when respondents were asked about homosexuality they tended to give examples of gay men rather than lesbians, especially when citing gender role violations. As others (Herek, 2002; Kite & Deaux, 1987) have pointed out, gender role “inversion” and homosexuality are often equated, especially for gay

men. Importantly, research has also shown that individuals who possess negative attitudes toward gender role inversion have more negative attitudes toward lesbians and gay men (Kerns & Fine, 1994; Whitley, 2001).

Family lineage A second important theme that surfaced in the interviews was participants' (n = 42) use of family lineage examples to explain their beliefs about homosexuality. Such examples appeared at various points in the interviews as respondents sifted through their ideas and tried to explain their reasoning. For most of these respondents who mentioned family lineage, when they cited an example in which only one homosexual individual was present in a family, they then concluded that homosexuality is likely not genetic. Respondents believing that genes play no role stated:

“I have an uncle that's homosexual, and it couldn't have been passed down through the genes because no one else in my family is homosexual.” (Black male, 33 years old, vocational school)

“Seems like if he got it from his genes, he'd have a homosexual in his family's background.” (White male, 38 years old, high school degree)

“I have eight sisters and one brother and she's the only that's gay. So, I really don't think genetics have anything to do with it.” (Black female, 58 years old, high school degree)

“To be honest, there's one in my family and I don't know where it came from.” (White female, 66 years old, high school degree)

“I would think that if it was genetic, he would've got it from someone else in his family, right? But no one in his family is gay.” (Black male, 37 years old, 2 years of college)

If, however, respondents mentioned more than one person in a family who was homosexual, they used this information to substantiate their belief that genes do indeed play a role. Participants citing a genetic basis for homosexuality explained:

“I've had some acquaintances who have had not one, but two children who have become homosexual. More than one in the family.” (White female, 58, master's degree)

“Well, I know of some families, it might skip the generation. But like one family I know, there is like maybe five homosexuals in the family.” (Black female, 25 years old, master's degree)

“I have seen it in a family where there's more than one case in a family.” (White female, 69 years old, education unknown)

Thus, participants' insufficient understanding of genetic mechanisms seemed to contribute to their use of simplistic reasoning concerning heritability and to a reliance on observable manifestations presumed to be genetic. These findings are consistent with research concerning the public's limited understanding of genetic science and point to the need for increased education in this area<sup>898</sup>.

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<sup>898</sup>Lanie et al., 2004; Richards, 1996; Richards & Ponder, 1996.



## **CHAPTER SIXTY-THREE**

### **HOW INFORMATION THAT HOMOSEXUALITY IS PARTLY GENETIC COULD BE USED TO HELP PEOPLE**

When asked how it could help people if it were discovered that homosexuality has a genetic basis, 11 participants said they did not know how such information could be helpful and 15 participants asserted that there would be nothing helpful about finding out that homosexuality is partly genetic. However, most respondents gave answers that reflected their belief in the benefits of this information.

Increase heterosexuals' tolerance Most statements (29 responses) from participants contained the idea that the information could be used to educate heterosexual people and help them to be more accepting and tolerant. Examples of these ideas are the following:

“It might help people accept homosexuals rather than try and change them into heterosexuals.” (White female, 47 years old, bachelor's degree)

“Maybe it would help the family to come to deal with it better.” (White female, 37 years old, associate's degree)

“Maybe people who object to homosexuality, maybe their eyes could be opened: ‘Okay, we just thought this was something that was learned instead of already instilled in them or they were born with it.’” (Black female, 44 years old, associate's degree)

“If it can be established that it is to a certain degree genetic, people will stop thinking that every gay or lesbian has been molested as a child or is warped, and [instead] can see it as it is.” (White male, 19 years old, high school degree)

Show that homosexuality is not a choice Similar to the previous category of responses is the view by five participants that the genetic information would make it clear that homosexuality is not a choice.

“It would demonstrate that homosexuality is not totally a choice.” (White male, 57 years old, doctorate degree)

“To maybe open the minds of people who consider it a chosen behavior that's against God.” (White female, 38 years old, bachelor's degree)

Help homosexuals accept themselves A separate category related to the idea of increasing tolerance was that the information will help homosexual individuals come to terms with their own sexuality and not feel ashamed (7 responses).

“I think the person themselves would feel better about themselves—they knew it was out of their control.” (White male, 62 years old, 2 years of college)

“It would especially help people who feel about their own sexual orientation that it's wrong.” (White male, 57 years old, doctorate degree)

Most of these responses concerning the use of genetic science to increase tolerance and acceptance implied that the key issue would be that homosexuality is not a personal choice and therefore that homosexual individuals cannot be held responsible, blamed, or shunned for their sexual orientation. This stance has also been taken by many gay and lesbian activists who believe that finding a genetic (and therefore supposedly immutable) cause for homosexuality will result in more tolerance and in the same legal and political protections that racial minorities currently possess.

However, others assert that finding a genetic basis for homosexuality will not necessarily lead to political or social tolerance and protections, but instead may result in gays and lesbians being seen as genetically inferior or defective, a biological view consistent with the eugenics movement<sup>899</sup>. In fact, the following category of responses demonstrates that the fear of Eugenics beliefs is not unfounded.

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<sup>899</sup> Byne & Stein, 1997; Rosario, 1996; Whisman, 1996.

Find a cure in total contrast to responses having to do with increasing tolerance and acceptance, 18 responses from participants focused upon finding a cure for homosexuality and changing the individual.

“If they could harness that gene and cut it out, it may help people because I've heard again, on the news and talk shows mainly, that gay people do not like being gay because they are hated.” (White female, 26 years old, high school degree)

“Maybe we should clone people so that we can get rid of people who have homosexuality in their genes.” (Black male, 58 years old, law degree)

“If that was detected and they could just straighten somebody out, that'd be good.” (White male, 44 years old, bachelor's degree)

“I guess if they wanted people not to be, they could remove the genes that cause it.” (White female, 37 years old, high school degree)

“Well, as far as I'm concerned, it'd be good to correct whatever the problem is in the gene and have all straight people.” (White female, 61 years old, high school degree)

In addition, two categories of responses, Do Genetic Testing (4 responses), and Assist in Family Planning (3 responses), indicated that homosexuality was viewed as undesirable and to be avoided:

“It might help some other people in making their decision as to whether or not they want to be parents.” (Black female, 41 years old, master's degree)

“You could have people check before they had children if that's something they wanted to avoid.” (Black female, 58 years old, high school degree)

In support of others' assertions<sup>900</sup>, these responses made it evident that the discovery of genetic causes for homosexuality made a little difference to some individuals in terms of their acceptance of it. Instead, these respondents asserted that getting rid of homosexuality is what would be helpful about identifying its genetic basis.

Gould & Whisman held a concern that the discovery of a genetic basis for homosexuality may lead not only to discrimination, but also to selective abortion, forced sterilization, gene therapy, and other eugenics practices. Indeed, some

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<sup>900</sup> (Brookey, 2001; Greenberg & Bailey, 1993; Hegarty, 2002; Nardi, 1993; Whisman, 1996; Wilcox, 2004)

scholars such as Burr have discussed how “beneficial” it would be for homosexuality to be due to genetics (rather than choice or environment), because the technology may soon exist to change people's genes.

As demonstrated in the next section of this paper, statements about changing or removing genes were also made, by other participants, when discussing the harm that could result from genetic markers. Clearly then, ideas about the benefits and problems associated with finding a genetic basis for homosexuality likely depend on people's personal biases and prejudices and cannot be separated from these preconceived notions (Brookey, 2000; Hegarty, 2002; Herrn, 1995; Stein, 1994).

### How Information That Homosexuality Is Partly Genetic Could Be Used to Harm People

Although 10 participants did not know how information about the genetic cause of homosexuality could be used to harm people and 12 respondents believed that there would be nothing harmful about such knowledge, most participants gave specific examples of how such genetic information could be harmful.

## **INCREASE HATE AND DISCRIMINATION**

Many respondents expressed concern that the information could be used to increase hate and discrimination.

“If employers have access to some kind of genetic profile and use it to discriminate.” (White female, 38 years old, bachelor's degree)

“It just adds fuel to the fire and it would just stereotype gays more.” (Black male, 37 years old, 2 years of college)

“Some parents might disown their children—they would know at an early stage that they are going to be homosexual and they will have nothing to do with them.” (Black female, 19 years old, high school degree)

“I'll use the leprosy thing: They're going to put people on an island and separate them.” (White female, 45 years old, 2 years of college)

“If it could be medically or genetically determined if someone's predisposed to homosexuality, it could affect military service. It could also affect employers. People

could be discriminated against because of their record.” (White male, 55 years old, bachelor's degree)

Many of these respondents recognized that some sort of genetic “marker” could serve to increase discrimination if prejudiced individuals were allowed access to this genetic information. As stated previously, these ideas are in accordance with the views of many researchers and gay and lesbian activists (Byne & Stein, 1997; Rosario, 1996; Whisman, 1996), who cite the histories of racism in numerous societies as examples of genetics-based discrimination.

These comments demonstrate that individuals have different ideas about the method of harm and the object of harm. Participants suggested that a genetic basis for homosexuality could be harmful to both homosexual individuals who could be “inflicted” with homosexuality, as though it were a disease. “It would harm them in the sense that it would be viewed as an okay lifestyle.” (White male, 31 years old, associate's degree)

The implication here is that if one views homosexuality as a choice that a person has control over, then one can denounce such behavior (and the person exhibiting the behavior) as wrong or immoral. However, a genetic basis for homosexuality may take away individual choice and control, thus reducing stigma and blame. Such a relationship between causal attributions and attitudes was also found by Weiner et al. (1988) who showed that when participants believed that a person with a stigma had no control over that stigma, their attitudes toward that person were more positive than when they believed the person did have control over the stigma.

## **INCREASE FAMILY BLAME**

Increasing family blame was another category of answers (7 responses):

“They might even use the information to blame the parents.” (Black female, 73 years old, some college)

“The person might go back to someone in their family and say ‘I am the way I am because of you’ or something like that.” (White female, 47 years old, master's degree)

“They find out someone is gay and it's going to be a full throttle attack on anyone that is related to this person.” (White female, 21 years old, associate's degree)

“They could be isolated like shorn sheep in terms of the fact that others would say it goes down through the family—that they all must be tainted with it.” (White male, 62 years old, 2 years of college)

Several of these statements suggest that a genetic basis for homosexuality implies its heritability, so that all individuals genetically related to someone who is homosexual would carry “undesirable” genes and thus would be ostracized for possessing such a “defect.”

The breadth of responses captured in the above survey highlights the fact that Americans have diverse opinions about the basis for homosexuality that incorporate, but extend far beyond, commonly discussed nature and nurture perspectives or genes versus choice arguments. Interestingly, despite the fact that the etiological factors contributing to sexual orientation are not understood by biological scientists, psychologists, or other scholars, few respondents stated that they did not know or understand the basis of homosexuality. In fact, the vast majority of respondents were readily able to articulate their views on the etiology of homosexuality and point to specific examples or sources supporting their opinions. Similar to other studies, it was found that some individuals' beliefs about the origins of homosexuality were rooted entirely within the broad categories of biological, environmental, choice or other specific factors such as those stemming from religious beliefs. The open-ended, exploratory nature of our study, however, allowed us to better appreciate the rich complexity of our respondents' views as respondents often suggested that multiple causal factors from more than one broad category contributed to homosexuality. A few even suggested etiological heterogeneity, noting that different causes might be important factors for different gay and lesbian individuals. This illustrates that some respondents likely recognized the complex basis of sexual orientation and were aware that the interaction of several variables likely impacts whether or not any particular individual is homosexual.

At the same time, however, many comments reflected a limited awareness about this multifactorial complexity or demonstrated that participants were swayed by their biases to reject perspectives that conflicted with their moral framework or limited

understanding. For instance, those who provided a conservative religious perspective as the sole contributing factor seemed less likely to consider biological contributions or account for environmental influences. In addition, many individuals, no matter what their etiological perspectives, used a simplistic understanding of inheritance and/or an inaccurate understanding of genetic or other biological concepts to support their views. We also found that many respondents substantiated their beliefs by associating homosexuality with a deviation from normal biological sexual differentiation and/or from stereotypical societal gender role norms. Again, such views demonstrate a lack of understanding, in that the lines are blurred between the different conceptual areas of biological sex, gender, gender roles, and sexuality. Nearly all of our respondents, who collectively embraced a wide range of beliefs on the origins of homosexuality, were easily able to state their beliefs and provide insights, often peppered with specific examples or experiences, regarding support for the foundation of their beliefs. Few, however, reflected on how their own biases, such as their moral framework or lack of scientific knowledge in this area, might cloud their understanding of homosexuality.

As with their etiological beliefs, we found that participants' perspectives on how genetic knowledge might benefit or harm individuals and society were diverse. Even respondents' concepts of what would be considered "helpful" versus what would be considered "harmful" to homosexuals varied significantly. For instance, although several respondents suggested that increased genetic knowledge about homosexuality would somehow increase societal and/or individuals' acceptance of homosexuality, some believed that such a shift in perspectives would be a helpful outcome whereas others viewed this same outcome as harmful. Similarly, some participants noted the possibility of genetic engineering to eradicate homosexuality as being a harmful potential outcome of increased genetic knowledge, whereas others suggested that such an outcome would be favorable. Given this, it is difficult to predict the potential impact any future genetic discoveries will have on the lives of gay and lesbian individuals, especially related to changes in public policies related to adoption, marriage, and discrimination law. It is clearly suggested from these results, however, that people with highly polar views on issues surrounding homosexuality will certainly look for, and easily find, ways to use any new genetic insights that emerge on its etiology to support the moral and sociopolitical agendas most congruent with their views. Given the responses here, it seems highly unlikely

that increased genetic information about homosexuality alone would be sufficient or compelling enough to shift any major policy changes given the diverse moral frameworks that make up the multicultural fabric of our American society.

The study found that genetic concepts, as understood by the respondents, could be used to support very diverse opinions, including those suggesting negative eugenic agendas in 21st century America. This suggests that significant caution is needed as genetic mechanisms are sought underlying complex human traits, especially those of an oppressed minority population.



## **CHAPTER SIXTY-FOUR**

### **UGANDAN SCIENTIFIC VIEW FROM THE MINISTRY OF HEALTH ON HOMOSEXUALITY**

The Minister of Health requested the Director General Health Services to constitute a team of expert scientists to review research data, deliberate and advise him on key questions about homosexuality. A team of scientists was appointed to respond to two questions: whether there was a scientific /genetic basis for homosexuality? And if homosexuality could be learned and unlearned?<sup>901</sup> The members of the Ministerial Scientific Committee on Homosexuality in the Ministry of Health consisted of 12 members who were; Dr. Jane Ruth Aceng, Dr. Isaac Ezati, Dr Jacinto Amandua, Dr. Sheila Ndyanabangis, Prof Seggane Musisi ,Assoc. Prof. Eugene Kinyanda, Dr David Basangwa, Dr. Sylvester Onzivua, Dr. Misaki Wayengera, Dr. Paul Bangirana ,Prof. Wilson Byarugaba Director General Health services Director Planning and Development Commissioner Clinical Services Head, Mental Health Desk, J Professor of Psychiatry, MAK Senior Research Scientist, Medical Research Council. Director, Butabika Hospital Senior Pathologist, Mulago Hospital Geneticist, MAK Clinical Psychologist, MAK Retired Professor and former Head of Human and Molecular Genetics, Dept of Pathology, MAK 12.

A series of meetings were held after the experts reviewed existing literature and presented their views, which were discussed to reach a consensus in respect to the above questions in reference to a background discussion and understanding of sex and homosexuality.

A background check revealed that Sex is a natural phenomenon in all life forms and is the basis for the reproduction and continuum of life, though some lower forms of life may have asexual reproduction. That Sexuality is determined by biology (anatomy, physiology, biochemistry) and how one relates to others which is a

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<sup>901</sup> Ministry of Health Scientific Statement on Homosexuality 10th February 2014.

function of psychology, sociology, and the culture in which one lives, the latter includes anthropology, religion and other environmental factors. Ultimately, these functions are determined by genes and their interactions with the environment. What, therefore, constituted normal sexual behavior in any given society (learned sexual practices) was a function of one's biology, psychology, sociology and culture, the last three being dynamic and often changing. Sexuality, on the other hand was found to depend on four interrelated factors:

- i) sexual identity (XX or XY karyotype that will determine the sex phenotype),
- ii) gender identity (the psychological feeling of being male or female and the accompanying gender roles),
- iii) sexual orientation (one's inner sexual attraction impulses: heterosexual - to opposite sex, or homosexual- to same sex),
- iv) Sexual response (Desire, Excitement, Orgasm, Resolution).

According to the Scientists, Homosexual behavior has existed throughout human history including in Africa. Judeo-Christian religions (Judaism, Christianity and Islam) condemn it but not all religions of the world condemn it. Many Western-based evangelistic missionaries and Arabs penetrated Africa and influenced her people with their views on homosexuality which is still existence, However, different cultures practice their sexualities differently and these practices have often changed with times. Homosexuality existed in Africa way before the coming of the white man.

However, most African cultures controlled sexual practices, be they heterosexual or homosexual, and never allowed exhibitionistic sexual behavior. Almost universally, they contained homosexual practices to such a point that overt homosexuality was almost unheard of. Indeed, there are undeclared homosexuals in Africa who may not even know it because their cultures never give room for the expression of such behavior. Many non-sex practicing individuals exist throughout African societies. No one has done any study to unpack their sexual orientations.

Accordingly, the Ugandan Scientists maintained that sexual exhibitionism, both heterosexual and homosexual is alien and repugnant to most African cultures



## **CHAPTER SIXTY-FIVE**

### **THE SCIENTIFIC BASIS OF HOMOSEXUALITY**

All studies of human sexuality in all races throughout the world and throughout human history have documented the presence of homosexuality. Studies in the animal world have also shown homosexual practices to exist in animal and insect species.

Genetic studies have attempted, though unsuccessfully to pinpoint to one specific homosexual gene. A singular determinant for sexual orientation has not been demonstrated. As a result, many scientists hypothesize that a combination of genetic, hormonal, psychological, environmental and social factors determines sexual orientation.

Studies in sexology have shown that sexual phenomena exist on a normal distribution continuum like most human attributes e.g height - most people are in the middle but others may be taller or shorter. Thus, also in sexuality, there are spectrum of sexual behaviors. Some people are less fixed in one form of sexuality than others. Thus, sexuality is a far more flexible human quality than used to be assumed in the past, demonstrating the biological variability within the human race.

Sexual expression is the function of biology, psychology, sociology and anthropology, the latter including cultural and religious influences. Ultimately, all sexual functions are determined by genes and their interactions with the environment. Thus, the causes of homosexuality can be traced to biological, social, environmental, psychological or a combination of them. These influence each other. Reparative therapies to change people's sexual practices have not proven successful and their scientific validity has remained questionable.

## **CAN HOMOSEXUALITY BE LEARNED OR UNLEARNED?**

Homosexuality is sexual behaviour (not a disorder) involving sexual attraction to people of the same sex. It is not clear whether this differing physiological response exists at birth or developed after homosexual experience later in life.

The conclusion from the current body of scientific evidence is that there is no single gene responsible for homosexuality and there is no anatomical or physiological data that can fully explain its occurrence.

Psychosocial causes of homosexuality imply that it may be learned through experiences in life. Previous disastrous heterosexual encounters (e.g. erectile dysfunction, premature ejaculation) may lead to aversion towards homosexual intercourse. A chance homosexual encounter in early life may be associated with sexual pleasure leading to homosexual relationships being associated with pleasure. The increasing influence of Western culture provides homosexuality as a choice one can make, it's therefore seen as a socially acceptable option for a few.

In conclusion, homosexual tendencies can be taken based on the person's judgement on what is pleasurable for them. Why this happens to some people is not clear, whereas some homosexuals may take up the behaviour as an open choice, for others it may be due to indoctrination, in summary, homosexuality has no clear-cut cause, several factors are involved which differ from individual to individual. It's not a disease that has a treatment.

Genetically, homosexuality represents one of the "sexual orientation" variants possible in the same species, As is the case for many human behavioral variants, the evolution and emergence of one's self identity as a 'homosexual- be it gay or lesbian' must be governed by nature and nurture, Ironically, an argument for a purely structural-genetic basis of the origins of homosexuality contravenes the essence of sex, which is that of procreation.

Specifically, the essence of homosexuality would be an antithesis for the Darwinian evolution of sex in species largely because homosexuality does not offer an opportunity for the self-propagation of the species, This has been a critical and fundamental argument by some scholars against the non-genetic basis of

homosexuality, However, the counterargument has been for group survival, that some individuals in a group not overburdened by reproduction responsibilities would be available to give a hand to weak members of the group (e.g, the elderly and children) as happens in social animals. In our view, at least from existing knowledge and literature, there is no basis for a single, definitive structural genetic basis of homosexuality. That said, the influence of the largely unstudied processes of epigenetics-which involves non-structural modifications of the genetic code, and represent one of the ways by which we learn many of our acquired traits that we can even pass on to our off-springs, cannot be ruled out. Chromosome linkage studies, based on linking a single gene locus to a physical trait, previously identified a position on the female chromose X (denoted Xq28) as a possible influence (Hamer, 1993). A preponderance of gay relatives on the maternal side, was also stated. Subsequent studies however, failed to replicate these findings. More recently, a group from the American Societies of Human Genetics has used a genome-wide study to replicate Hamer's Xq28 in animal model studies, in *Drosophila*. In Korea a scientific team induced attraction to urine of the same sex mice by deleting a single gene. These studies were not conclusive.

The practice of homosexuality in animals is, however, uncommon as are many physical deviants. Brain structure, again provides another area of controversy, with reports of homosexual versus heterosexual variations at the suprachiasmatic area and more recently the hypothalamus. Again, this study did not provide any conclusive evidence.

## **THE NEED TO REGULATE SEXUALITIES**

Throughout the world, human activity is regulated to 'safeguard citizens, especially the weak and vulnerable, against the dangers inherent in human activities. Thus, human sexuality also needs to be regulated especially as it is the core of the family and hence the nation. At anyone time rules and regulations are based on the current prevailing knowledge and understanding of what is to regulated. This knowledge and understanding may change depending on the times and circumstances. Today the world has come to the realization that indeed homosexuality is a minority sexual expression practiced by some few members of the community. But, like heterosexuality, it needs to be regulated. No country, in the world today, has come up with a successful way to regulate human sexuality, hence the daily scandals and

rapes of this world including sexual and gender-based violence or human trafficking for sex. That vulnerable populations (including children, minorities, refugees, the poor, the elderly, mentally ill etc) need to be protected against sexual (and other) exploitations is not in question.

They argued that African cultures had contained sexual vices and as such, there was need to revisit them to contain the present explosion of overt and coercive homosexual activity with the exploitation of young children.

## **FINDINGS**

The scientists concluded that there is no definitive gene responsible for homosexuality, that homosexuality is not a disease and not an abnormality, It was found that every society, has a small number of people with homosexual tendencies and as such, Homosexuality could be influenced by environmental factors such as culture, religion, information, peer pressure. They recommended that the practise needs regulation like any other human behaviour, with the main concern of protecting the vulnerable and the need for further studies to address sexualities in the African context.

## **WEAKNESS OF HOMOSEXUALITY.**

Negative health outcomes of this LGBTQIA+ are constantly brought to light and scant research is conducted or reported which is focused on the adaptive strategies and strengths LGB adolescents and adults have developed in the face of societal oppression and discrimination (Harper, Jamil & Wilson, 2007; Harper & Schneider, 2003

## **Depression**

Another study examining LGB youth resiliencies focused on a sample of gay/bisexual male youth in Puerto Rico (Toro-Alfonso, Diaz, Andujar-Bello & Nieves-Rosa, 2006). This study used various measurement scales to determine participants' perceived level of depression, social support, alcohol/drug use, and sexual activity. The results demonstrate the presence of a range of health-promoting strengths such as engagement in protected sexual activity, low consumption of drugs and alcohol, and the existence of strong social support networks (Toro-Alfonso, Diaz, Anduiar-Bello & Nieves-Rosa, 2006). The authors assert that even though

these young men were living in a hetero-normative Puerto Rican culture with pervasive homophobia and cultural stigma, they developed resiliency strategies that helped them to overcome potential obstacles. The development of strong ties with members of their social support network in order to assist with integrating their sexual orientation identity with their Latino identity and the ability to adapt to changes were noted as key strengths exhibited by the youth. The authors further note that the participants' lack of participation in risky sexual behavior suggests the presence of a positive identity and sense of self (Toro-Alfonso, Diaz, Anduiar-Bello & Nieves-Rosa, 2006). This was one of the few studies found to present resiliency strategies developed by gay/bisexual adolescents to combat negative social and cultural influences.

### **Lack of ability to procreate.**

According to Father Joseph Mukasa Nkeera, same-sex relationships are against our culture. They are foreign and very immoral and ungodly as such, He argues that if they decide to love each other as man to man and woman to woman having in mind that they can't produce children they need no chance to raise our children<sup>902</sup>. This position was considered by H.E Yoweri Kaguta Museveni when He tasked gay men to procreate as to a way to prove their relation<sup>903</sup>.

#### Restrictions in terms of adoption

The irony of LGBTQIA+ movement is that despite the lack of ability to procreate, its individuals are desirous to have children which has led to various adoption applications, however this has been in vain based on different cultural values, religion, tradition as well as the law as considered below.

In Uganda, Kasha Jacqueline Nabagesera a human rights activist who identifies as a lesbian. started the application process to adopt a child as a single parent from a local organization called Ugandans Adopt but a background check revealed her sexual deviation as a lesbian which prompted denial. Her hopes for adopting a child ended three years later when officials from the Ministry of Gender, Labour and Social Development told her they would not let her adopt a child on grounds of the child's

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<sup>902</sup> Would-be Ugandan Parents Denied Adoptions Because of Sexuality". Global Press Journal. 2020-06-07. Retrieved 2020-06-07.

<sup>903</sup> Museveni: Uganda won't support homosexuality. Daily Monitor by Tobbias Jolly Owiny, Reporter. Friday, February 17, 2023

best interests, A prime consideration in child matters known as the welfare principal established under The Childrens Act<sup>904</sup>

The Russian perspective towards adoption by same sex couples is similar to the Ugandan one Accordingly, a number of anti-LGBT activists actively campaigned for Anti-LGBT International Adoption Ban law in Russia which prohibits same gay couples and people with sexual devaitions from adopting children.

The National Organization for Marriage's head, Brian Brown traveled to Russia in June of 2013 to advocate for passage of the adoption ban. Brown gave an interview to a local television station in Moscow, where he told the reporters that prohibiting adoptions by gay and lesbian couples was a way of halting a slippery slope of “very negative developments all over the world.” In a speech before the Russian Duma’s committee on family, women and children, he stated, “Every child should have the right to have normal parents: a father and a mother.” Days after Brown's trip, President Putin signed the bill into law<sup>905</sup>.

Recently, President Putin in a press release argued that “...we must protect our children, and we will do this, protect our children from degradation and degeneration’. This clearly maintains Russia’s stand against the whole umbrella of LGBTQIA+ mainly by prohibition of adoption of children by gay parents.

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<sup>904</sup> Section 3.

<sup>905</sup> Press Releases: Russia Officially Implements Anti-LGBT International Adoption Ban February 14, 2014.



## **CHAPTER SIXTY-SIX**

### **Contemporary Issues in Sexual Orientation and Identity Development in Emerging Adulthood**

By emerging adulthood, almost all individuals will have identified a pattern of sexual attraction for same-sex and/or other-sex individuals and a subset will have adopted a sexual-minority identity label to accompany patterns of attraction and/or behaviour involving same-sex others<sup>906</sup>. Many others will have selected a heterosexual identity label, with or without consideration to its meaning<sup>907</sup>. However, despite evidence that sexual-minority youth are progressing through milestones associated with forming a sexual-minority identity at younger ages<sup>908</sup>, there is still much sexual identity work to be done—for them and their heterosexual counterparts—during emerging adulthood.

Developing a meaningful sense of one's sexual orientation and identity is an important undertaking during emerging adulthood. Indeed, Arnett's (2000) original proposal outlining emerging adulthood as a new period of the life course was in response to an increasingly drawn-out transitional period between adolescence and adulthood within industrialized societies driven by various social, economic, and demographic changes. One of these central changes has been a greater acceptance of premarital sex and cohabitation coupled with patterns of delaying marriage (Arnett, 2004) that has translated into increased opportunities for sexual and romantic exploration among emerging adults.

Engaging in sexual identity exploration also goes hand in hand with other prevailing characteristics of emerging adulthood. Arnett (2000, 2004, 2006, 2007) maintains that the distinctive features of emerging adulthood include negotiating experiences of instability, feelings of transition, heightened self-focus, and identity exploration. Exploring identity options and maintaining flexible commitments in identity domains, such as education, work, politics, and religion, is commonplace in

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<sup>906</sup> (Calzo, Antonucci, Mays, & Cochran, 2011; Floyd & Stein, 2002)

<sup>907</sup> (Morgan, Steiner, & Thompson, 2010; Morgan & Thompson, 2011; Striepe & Tolman, 2003)

<sup>908</sup> (Floyd & Bakeman, 2006; Grov, Bimbi, Nanin, & Parsons, 2006)

emerging adulthood<sup>909</sup> and sexuality is no exception. As a result, this developmental period offers an especially rich setting for studying how sexual identities are produced and maintained.

Despite emerging adulthood being the age of possibilities, it is important to recognize that the transition to adulthood is still frequently equated with heteronormative milestones such as marriage and parenthood<sup>910</sup>, for which there are many legal and structural barriers for sexual minority individuals. Furthermore, despite evidence of increasing social acceptance for sexual minority individuals facilitating earlier and less distinctive identity development<sup>911</sup>, sexual minority emerging adults continue to experience alarming levels of discrimination and victimization<sup>912</sup>. As such, sexual orientation and identity development during emerging adulthood, especially for those whose sexuality might diverge from normative models, may be both rife with opportunities for exploration and simultaneously constrained<sup>913</sup>.

A small but important body of research over the past 10 years has helped to begin delineating contemporary emerging adults' processes of sexual identity development. The goal of this review is to synthesize this recent literature with specific attention to issues of sexual identity and sexual orientation among contemporary emerging adults. The three main areas of focus in this review include

- (1) current definitions and conceptualizations of sexual identity, sexual orientation, and sexual orientation labels;
- (2) prevailing theories and perspectives on sexual minority and heterosexual sexual identity development; and
- (3) recent empirical research that informs our understanding of sexual orientation and identity development among emerging adult populations.

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<sup>909</sup> (Cote, 2006; Kroger & Marcia, 2011)

<sup>910</sup> (Waters, Carr, Keflalas, & Holdaway, 2011)

<sup>911</sup> (e.g., Savin-Williams, 2005)

<sup>912</sup> (e.g., Friedman et al., 2012)

<sup>913</sup> (Torkelson, 2012)



## CHAPTER SIXTY-SEVEN

### Definitions and Conceptualization

Identity is broadly understood as a personally and socially meaningful sense of one's goals, beliefs, values, and life roles<sup>914</sup>. More complex understandings of identity recognize that identity is defined at intrapersonal and interpersonal levels, consists of individual, relational, and collective identities and includes multiple identities or domains of identity that intersect and interact with each other<sup>915</sup>. Early models of sexual identity primarily focused on sexual minority populations and emphasized self-identification with and disclosure of a gay or lesbian label<sup>916</sup>. Later models of gay and lesbian identity development began taking into account both individual and group membership components of sexual identity<sup>917</sup>. Recently, sexuality researchers have adopted more inclusive and multidimensional conceptualizations of sexual identity that incorporate sexual attraction, fantasy, and behaviour, as well as romantic, emotional, and social preferences, in understanding sexual identity<sup>918</sup>. Contemporary scholars conceptualize sexual identity as comprising cognitive and emotional understandings that individuals have about the meaning and significance of numerous aspects of their sexuality, such as their sexual attractions, desires, behaviours, values, and relationships<sup>919</sup>. Together, this organized set of understandings help form a personally and socially meaningful sense of one's sexuality.

One important component of sexual identity is the understanding an individual hold about her or his sexual orientation. Despite the prevailing use of three discrete categories of sexual orientation (heterosexual, bisexual, or gay/lesbian<sup>920</sup>), contemporary definitions of sexual orientation are much more complex. Kinsey and colleague's innovative seven-category continuum first offered multiple sexual

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<sup>914</sup> Erikson, 1968; Marcia, 1987)

<sup>915</sup> (Vignoles, Schwartz, & Luyckx, 2011)

<sup>916</sup> (e.g., Cass, 1979; Coleman, 1982; Troiden, 1989).

<sup>917</sup> (e.g., Fassinger & Miller, 1996; McCarn & Fassinger, 1996)

<sup>918</sup> (Dillon, Worthington, & Moradi, 2011)

<sup>919</sup> (Horowitz & Newcomb, 2001; Savin-Williams, 2011)

<sup>920</sup> (Vrangalova & Savin-Williams, 2012)

orientation options based on the sex of sexual partners that ranged from “0” representing “exclusively heterosexual” to “6” representing “exclusively homosexual<sup>921</sup>”. However, despite its revolutionary qualities, this model is viewed as incomplete both because it is a binary model that forces same-sex and other-sex sexual behavior to vary in relation to each other and because it is singularly based on sexual behavior, thus ignoring other facets of sexuality<sup>922</sup>. Revised models allowed homoeroticism and heteroeroticism to vary independently (e.g., Storms, 1980), included multiple dimensions of sexual orientation (such as sexual attraction, sexual behavior, sexual fantasies, emotional preference, social preference, self-identification, and lifestyle) and added a temporal measurement<sup>923</sup>. Currently, a widely employed definition of sexual orientation is that it is a physiological predisposition toward patterns of sexual and romantic thoughts, affiliations, affection, or desires with members of one’s sex, the other sex, both sexes, or neither sex<sup>924</sup>. These predispositions are understood to exist on a continuum and may relate to a self-ascribed sexual orientation label drawn from existing social categories (i.e., heterosexual, bisexual, gay/lesbian, asexual). This label frequently represents a conscious acknowledgment and internalization of one’s sexual orientation<sup>925</sup> and has also been termed sexual orientation identity<sup>926</sup>. It important to clarify that although one chooses a sexual orientation label, sexual orientation is not considered mutable because it is “tied to physiological drives and biological systems that are beyond conscious choice<sup>927</sup>”

It is important to note that one’s sexual identity, sexual orientation, and sexual orientation label or identity do not necessarily correspond perfectly (Glover, Galliher, & Lamere, 2009; Savin-Williams, 2006). For example, an individual may elect to identify with a sexual orientation label that is more closely aligned with her or his behavioral experiences, rather than sexual attraction or desire. Further complicating matters is that sexual identity and sexual orientation labels are subject to both historical and cultural forces (Cohler & Hammack, 2007). As a result, it is both possible and likely for sexual identity to be altered over the life course as shifts

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<sup>921</sup> (Kinsey, Pomeroy, & Martin, 1948)

<sup>922</sup> (Savin-Williams, 2008; Sell, 1997)

<sup>923</sup> (past, present, and future; Klein, Sepekoff, & Wolf, 1985).

<sup>924</sup> (American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation, 2009)

<sup>925</sup> (Mohr, 2002)

<sup>926</sup> (Dillon et al., 2011)

<sup>927</sup> American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation, 2009, p. 30).

in awareness, understanding, and experience occur (e.g., Diamond, 2008). This complex and multidimensional perspective of sexual identity and sexual orientation has only recently gained momentum in the field of sexual identity research, spawning revisions of traditional models of sexual identity development and a number of research studies that attempt to identify patterns of exclusivity, variation, and consistency in sexual identities and labels over time.

## **Models of Identity Development**

In efforts to better understand the processes involved in forming a sexual identity, scholars have been proposing models of sexual identity development for over 30 years. Because early definitions of sexual identity primarily emphasized self-identification as a sexual minority, models of sexual identity development have chiefly focused on understanding the emergence and adoption of a sexual-minority identity. One of the most widely cited models of lesbian/gay identity development is Cass's (1979) six-stage process of incorporating a lesbian/gay identity into one's self-concept. These stages included identity confusion, identity comparison, identity tolerance, identity acceptance, identity pride, and identity synthesis.

Following Cass, multiple authors have offered other versions of sexual orientation/identity formation for gay and/or lesbian populations (and to a lesser degree bisexual populations). Almost all of these models describe a linear path of coming to terms with homoerotic desire and subsequent changes in self-concept that are required to accept, act upon, internalize, and disclose that desire with regard to one's individual and social identity as a sexual minority (Brown, 2002; Reynolds & Hanjorgiris, 2000). Unfortunately, when efforts have been made to empirically classify individuals using Cass's (1979) stage model, researchers have not found substantive evidence of participants in more than two stages<sup>928</sup>. However, there is some empirical evidence of three major milestones within sexual minority individual's pathways to "coming out":

- (1) an awareness of being different;
- (2) recognizing and exploring same-sex and other-sex attraction and behaviour; and
- (3) coming out to oneself and others, which includes an acceptance and integration of a sexual-minority identity and label<sup>929</sup>

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<sup>928</sup> (Johns & Probst, 2004; Halpin & Allen, 2004)

<sup>929</sup> (e.g., Cass, 1983; Chapman & Brannock, 1987; Fassinger & Miller, 1996; Levine, 1997).

Bisexual identity development has historically received less attention than gay or lesbian identity development but is typically considered distinct from heterosexual, gay, and lesbian identity development. In an early model of bisexual identity development, Weinberg, Williams, and Pryor (1994) concluded that many bisexual individuals initially establish a heterosexual identity and then experience an extended period of confusion based on attractions to both sexes before settling into a bisexual identity. Also, because typical notions of sexual identity are dichotomous, processes of bisexual identity development require identity “invention” and ongoing maintenance as a result of personal and social resistance to bisexual labels especially when in a monogamous partnership<sup>930</sup>. As a result, bisexual identity development is often viewed as more dynamic and open ended<sup>931</sup>, with women’s bisexuality being especially characterized by flexibility, fluidity, and complexity<sup>932</sup>. Heterosexual identity development has similarly received less attention than gay or lesbian identity development. Because sexual identity typically only becomes a visible aspect of development once an individual begins diverging from the heterosexual norm<sup>933</sup>, sexual identity researchers frequently conceptualize heterosexuality as an unmarked, or invisible, identity<sup>934</sup>. Indeed, sexual-minority individuals have often described their sexual identities as more salient and involving an effortful process than heterosexual-identified individuals<sup>935</sup>. Nonetheless, several models of heterosexual identity development have been proposed<sup>936</sup>, and all of them consider the likelihood that heterosexual identities are established without much critical examination or awareness as a result of heteronormative privilege. These models further propose that establishing an integrated or synthesized heterosexual identity requires mindful thought and action about one’s hetero sexuality and, likely, a consideration or recognition of possible alternatives.

Although the historical significance of these models is great, traditional models of sexual identity that put forth a predetermined developmental trajectory have recently been challenged<sup>937</sup>. A common criticism of traditional models has been that sexual identity development neither necessarily follows a consistent route, nor is necessarily a stable phenomenon, leading researchers to question whether or not

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<sup>930</sup> (Bradford, 2004; Brown, 2002; Collins, 2000)

<sup>931</sup> (Fassinger & Arseneau, 2007; Fox, 1995; Zinik, 1985)

<sup>932</sup> (Diamond, 2008; Kinnish, Strassberg, & Turner, 2005; Rust, 1993).

<sup>933</sup> (Striepe & Tolman, 2003)

<sup>934</sup> (e.g., Diamond, 2008; Frankel, 2004)

<sup>935</sup> (Konik & Stewart, 2004)

<sup>936</sup> (Eliason, 1995; Sullivan, 1998; Worthington, Savoy, Dillon, & Vernaglia, 2002)

<sup>937</sup> (Diamond, 2005; Savin-Williams, 2001)

there is a predictable series of steps or static categorization system for sexual identity<sup>938</sup>. In particular, individuals whose experiences of sexuality involve multiplicity and fluidity have been ill described by such models. It is now understood that patterns of sexual behavior and sexual orientation labels often shift over time (Diamond, 2008) and that there are often inconsistencies between individuals' sexual attractions, behaviors, and identities<sup>939</sup>. As such, the historically dichotomous and essentialist models of sexuality where individuals possess and seek to publicly embrace one "true" identity (heterosexual or gay/lesbian) are not empirically substantiated.

Recently, there have been efforts to amend previous models of sexual identity to better reflect the complexities and dynamics of sexual identity development through multidimensional, social constructionist models. For example, Horowitz and Newcomb (2001) proposed a social constructionist model that is meant to be applicable to individuals with various sexual orientation identities. The model separately considers sexual desire, behavior and identity and recognizes the ongoing and reflexive nature of sexual identity development. Dillon et al. (2011) also offered a multidimensional and universal model of sexual identity development that incorporates individual and social processes, including group membership, and is based loosely on Marcia's (1987) model of identity development. They describe five statuses that are presented as nonlinear and flexible. These include

(a) compulsory heterosexuality, defined by naïve commitment to heterosexual and heterosexism social assumptions;

(b) active exploration, defined by purposeful exploration and evaluation of one's own sexuality as well as consideration of one's and other's attitudes toward and privileges afforded to heterosexual and sexual-minority groups;

(c) diffusion, characterized by either a carefree or anxiety-provoking lack of commitments, either personally or social;

(d) deepening and commitment, including both that which is achieved by heterosexuals without active exploration and that which is achieved by heterosexual and sexual-minority individuals via active exploration of personal and social identities; and

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<sup>938</sup> (e.g. Eliason & Schope, 2007; Savin-Williams & Diamond, 2000)

<sup>939</sup> (Hoburg, Konik, Williams, & Crawford, 2004; Vrangalova & Savin-Williams, 2010)

(e) synthesis, where “individual sexual identity, group membership identity, and attitudes toward dominant and marginalized sexual orientation groups merge into an overall sexual self-concept”<sup>940</sup>.

Also challenging the traditional linear, stage-based models of sexual identity development, Savin-Williams (2001) offered a differential developmental trajectory model that assumes an interactive approach to development. This framework recognizes that both similarities and differences exist across, among, and between individuals of varying sexual orientations and identities, such that there are developmental milestones and processes that all individuals experience, however, each pathway is distinctive based not only on sexual orientation but other individual and group characteristics. In a similar movement away from stage models, Hammack and Cohler (2009) attempt to transcend essentialist and constructionist conceptualizations of sexual identity by employing narrative and life course perspectives to contextualize the process of sexual identity development in history and discourse. In this paradigm, identity is developed as individuals make sense of their own sexual desires and experiences through the process of narrative engagement within a given sociohistorical context.

Recent scholarship has also evidenced increased attention to individuals identifying as asexual and their processes of sexual identity development. In Storms’ (1980) two-dimensional model of sexual orientation, asexuality comprised the quadrant that represented individuals who were low in both same-sex and other-sex attraction or erotic fantasy. Many recent scholars have similarly emphasized that asexuality is defined by a lack of sexual attraction or low sexual desire<sup>941</sup>, with some empirical evidence to support this definition<sup>942</sup>. Embedded in this definition is the recognition that asexual individuals have the capacity for sexual arousal, varying histories of sexual behavior (solitary and partnered), and the potential for romantic attraction to and partnership with others (Bogaert, 2006). In a qualitative study of asexual identity development, Scherrer (2008) described the difficulties of finding and defining a sexual identity label, the adoption of an essentialist perspective on asexuality to gain legitimacy, and the importance of considering the romantic (in addition to the sexual) dimension. Self-identification as asexual is also very important, especially

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<sup>940</sup> Marcia’s (1987) at (p. 664).

<sup>941</sup> (Bogaert, 2006; DeLuzio Chasin, 2011)

<sup>942</sup> e.g., Brotto, Knudson, Inskip, Rhodes, & Erskine, 2010; Prause & Graham, 2007)

given the continued association between asexuality and diagnoses such as hyposexual desire disorder<sup>943</sup>.

Another important contemporary critique of traditional models of sexual identity is based on the increasing normalization of sexual diversity among current cohorts of (western) youth. Younger generations are increasingly accepting of sexual diversity, making same-sex sexuality less remarkable and rendering the old sexual identity categories and coming-out models less applicable<sup>944</sup>. Indeed, Savin-Williams (2005) proposed that these changes have eliminated the need for sexual identity labels, given that the creation of sexual categories reifies essentialist models that are overly fixated on sexual orientation and underemphasize other facets of sexuality. Furthermore, given that most models of sexual identity development neglect to examine the role of multiple individual differences, such as race, ethnicity, nationality, and socioeconomic class, future understandings of sexual identity must consider the intersection of these sociocultural and individual forces<sup>945</sup> have also argued for greater attention to gender ideologies in conceptualizations of sexual identity. Ultimately, despite the proliferation of divergent models of sexual identity development, contemporary scholars in the field are seemingly in agreement that current understandings of sexual identity should necessarily be culturally and historically situated and account for dynamic and complex experiences of sexual identity.

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<sup>943</sup> DeLuzio Chasin (2011)

<sup>944</sup> (Entrup & Firestein, 2007; Russell, Clarke, & Clary, 2009; Savin-Williams, 2005, 2008)

<sup>945</sup> (for an example, see Chun & Singh, 2010). Striepe and Tolman (2003)



## CHAPTER SIXTY-EIGHT

### Contemporary Topics in Research on Sexual Identity in Emerging Adulthood

#### Trajectories of Achieving Traditional Sexual Identity Milestones

Resulting from both the legacy of coming-out models and recent efforts to understand diversity within sexual-minority identity development, multiple researchers have continued to compare the sequence and timing of traditional developmental milestone trajectories for sexual-minority youth. Historically, research has suggested that sexual-minority youth typically adhere to a progression that involves awareness of difference in childhood, recognition of same-sex attraction during early adolescence, the original assumption of a same-sex identity label in late adolescence, and the solidification of a same-sex identity during emerging adulthood<sup>946</sup>. However, researchers have more recently suggested that sociohistorical forces normalizing same-sex sexuality have condensed the timing between milestones<sup>947</sup>. For example, in a cross-sectional analysis of reports of same-sex attraction and identity labels for sexual-minority youth, Glover found no differences between the adolescent and emerging adult participants, supporting assertions that contemporary youth are employing similar self-labels at both developmental stages<sup>948</sup>.

Despite movement toward earlier awareness and identification among sexual-minority youth, systematic variation in trajectories of development has been identified. Underscoring the diversity in timing of sexual orientation milestones, Friedman, Marshal, Stall, Cheong, and Wright (2008) found three trajectories among their U.S. urban sexual-minority male sample (ages 18–30, mean age 32) who all experienced traditional sexual identity milestones in the same order (same-sex

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<sup>946</sup> (e.g., Troiden, 1989)

<sup>947</sup> (e.g., Floyd & Bakeman, 2006; Grov et al., 2006)

<sup>948</sup> Glover et al. (2009)

attraction, same-sex sexual behavior, self-identification with a sexual-minority label, and disclosure to others) but varied in their timing. Members of the early trajectory reported experiencing all milestones before emerging adulthood. Members of the middle trajectory reported attraction and sexual behavior during adolescence but self-identification and disclosure during emerging adulthood. Members of the late trajectory did not report same-sex sexual experiences, self-identification, or disclosure until emerging adulthood. Floyd and Stein (2002), who found similar diverging trajectories in a younger U.S. sample of sexual-minority adolescents and emerging adults, proposed that some adolescents may wait until emerging adulthood to self-identity, disclose to others, and enter same-sex relationship because this period offers more freedom from parental control and peer stressors associated with high school.

In U.S.-based samples of sexual-minority adults that also included women, gender differences in the timing of traditional sexual identity milestones emerged, such that, on average, women reported older ages of first awareness, same-sex experience, and self-identification<sup>949</sup>. In a sample of 2,733 sexual minority adults from the east and west coasts of the United States, Grov et al. (2006) found that emerging adult men and women (ages 18–24) reported self-identification at younger ages (average age was about 15 years for men and 16 years for women) than all other age cohorts; similar findings materialized for coming out to others (an average of 17 years for both men and women) and first same-sex experience (averages of 16 years for men and 17 years for women). They found no differences based on race or ethnicity for the age that participants self-identified or were out to others, though racial-minority participants were less likely to be out to their parents.

With regard to the sequencing of the milestones, Floyd and Bakeman (2006) found that an “identity-centered” pattern of identity was more common among the younger cohort, such that emerging adult participants more frequently reported self-identifying before engaging in same-sex behavior than older adult participants. Women were also more likely to report this sequencing than men. In a study of a general sexual minority population in California (ages 18–84, mean age 49), Calzo, Antonucci, Mays, and Cochran (2011) found that most participants across age groups who achieved sexual identity milestones during emerging adulthood self-identified on average about a year before their first same-sex sexual experience. Extending the examination beyond these traditional milestones to identity

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<sup>949</sup> (Floyd & Bakeman, 2006; Grov et al., 2006)

commitment, relationship, and community connection among bisexual individuals, found increases in each of these variables from emerging adulthood through early and middle adulthood, with some evidence to suggest more identity and relationship exploration during emerging adulthood<sup>950</sup>.

Because understanding heterosexual identity development has not been subject to the same emphasis on milestones associated with coming out, researchers do not typically examine these variables to understand heterosexual adolescent and emerging adult heterosexual identity development. Nonetheless, we do know that the emergence of sexual feelings and other-sex attractions generally occurs in late childhood or early adolescence, followed by the onset of dating and partnered sexual activities in middle to late adolescence<sup>951</sup>. This trajectory, coupled with the traditional uncomplicated notion of heterosexual identity development, would suggest that by emerging adulthood, most heterosexual youth have “completed” an uncomplicated process of sexual identity development. However, there is some evidence for diversity among heterosexual emerging adults with regard to the processes of sexual identity development. For example, in two studies of college men and women (ages 18–23, mean age 19), qualitative analyses of participants’ narratives of sexual identity development identified that substantive subsets of exclusively heterosexual emerging adults (53% of men and 67% of women) reported having engaged in sexual identity questioning<sup>952</sup>. In another study of over 1,000 college students (ages 18–25, mean age = 20), Morgan (2012) employed Worthington et al.’s (2002) model of heterosexual sexual identity development to analyse participants’ sexual life history narratives, finding evidence that exclusively heterosexual participants described varying levels of sexual identity exploration and commitment, with 19% of men and 28% of women having actively and purposefully engaged in sexual identity exploration. However, these findings are not necessarily universal. In a qualitative study with 220 heterosexual-identified emerging adult college students in Turkey (ages 18–30; mean age = 20)<sup>953</sup>, found that most participants indicated that their sexual identity, feelings, and experiences had always been the same and that participants were confident that their sexual identity would remain the same into the future.

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<sup>950</sup> Brewster and Moradi (2010)

<sup>951</sup> (Diamond & Savin-Williams, 2009)

<sup>952</sup> (Morgan et al., 2010; Morgan & Thompson, 2011)

<sup>953</sup><sup>953</sup> Boratav (2006)

In summary, research on the patterns and timing of meeting traditional sexual identity milestones among contemporary youth indicates that emerging adulthood continues to be an important developmental period for sexual identity development. Understanding that many contemporary youths may be “completing” the traditional milestones before entering emerging adulthood is an important consideration for researchers and practitioners alike. Furthermore, knowing that other emerging adults are still grappling with issues of self-identification and identity disclosure and others are still just beginning to be aware of same-sex attractions during emerging adulthood points to the substantive variability of experience within this developmental period. Furthermore, the trend among contemporary emerging adults to self-identify before engaging in same-sex behavior is particularly important to recognize because it suggests that youth are privileging sexual attraction over sexual behavior as an indicator of sexual orientation. These trends appear to be particularly pronounced among young women, signifying gender differences in the timing and sequencing of sexual identity development. Lastly, research indicates variation in heterosexual identity developmental trajectories during emerging adulthood.

### **Consistency between Dimensions of Sexual Orientation and Sexual Identity**

In addition to continued interest in the timing and sequencing of traditional sexual identity milestones, a notable recent contribution from research has been a focus on identifying variation and consistency between different dimensions of sexual orientation and identity. For example, a study with almost 8,000 college students (ages 16–23; mean age = 22) from the United States and Canada obtained during the 1990s found general, but not absolute, consistency between measures of sexual orientation labels, sexual attraction, sexual fantasy, and sexual behavior<sup>954</sup>. In their sample, there was a substantive cohort (about 80%) of participants who revealed highly consistent reports of other-sex-only attraction, fantasy, and behavior. Similar consistency between measures of sexual identity labelling, sexual attraction, sexual behavior, and romantic experiences was also identified in a more recent sample of 38 sexual-minority emerging adults in the United States<sup>955</sup> as well as among heterosexual and sexual-minority emerging adults in the third wave of the National Longitudinal Survey of Adolescent Health (Add Health; Savin-Williams, Joyner, & Rieger, 2012). Lastly, research with a young population in Thailand (ages 15–21;

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<sup>954</sup> (Ellis, Robb, & Burke, 2005)

<sup>955</sup> (ages 17–22; Glover et al., 2009)

mean age = 18) evidenced strong correlations between measures of sexual orientation labels and sexual attraction,  $r = .64$  for women;  $r = .79$  for men<sup>956</sup>.

Despite finding general consistency among the multiple measures of sexual orientation, all of these studies also identified notable subset of participants with variations between domains of sexual orientation and identity. For example, Ellis et al. (2005) found that despite less than 3% of their male and female population reported a sexual-minority orientation label, 10% of men and 13% of women reported some same-sex attraction, 20% of men and 25% of women reported at least occasional same-sex fantasies, and, among participants with sexual experience, almost 13% of men and 8% of women reported at least some same-sex sexual experience. Furthermore, in a study with Turkish university students (ages 17–43; mean age = 21), three dimensions of sexual orientation (sexual desire, sexual behavior, sexual orientation label) were significantly, but only moderately, correlated<sup>957</sup>. Indeed, 73% of the participants in this study who indicated past or current same-sex attraction identified as heterosexual. Lastly, in a stratified sample of about 4,000 men in New York city (no ages reported), Pathela, Blank, Sell, and Schillinger (2006) found that 12% of men reported having had sex with a man in the previous year but not a women. Similar to the results found by Eskin et al. (2005), 73% of the men in Pathela et al.'s (2006) study who reported having sex with a man in the previous year identified as heterosexual.

Overall, these results point to a general correspondence between dimensions of sexual orientation and identity among sexual-minority and heterosexual-identified emerging adults. However, all of the studies also revealed that these dimensions do not always perfectly correspond with each other and that inconsistency between domains is particularly notable for young women. Despite frequently including populations spanning adolescence, emerging adulthood, and adulthood, these studies have not indicated whether consistency between dimensions varies with age. One of the implications of this research underscores the value of adopting a multidimensional view of sexual orientation and identity such that assessments or understandings of sexual orientation and identity that rely exclusively on measures of sexual attraction, behavior, or identity labeling likely do not accurately reflect other dimensions of the participant's personal and interpersonal sexual experience.

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<sup>956</sup> (van Griensven et al., 2004).

<sup>957</sup>  $r_s = .24-.37$  (Eskin, Kaynak-Demir, & Demir, 2005)

## **Exclusivity Within Dimensions of Sexual Orientation and Sexual Identity**

In addition to research that has identified variations between dimensions of sexual orientation and identity, another important contribution of contemporary studies of sexual orientation and identity among emerging adults is the identification of patterns of (non)exclusivity within dimensions of sexual orientation and sexual identity. As described in the previous section, correspondence between sexual identity labels and reports of sexual attraction, fantasy, behavior, and romantic experience is not always absolute. This occurs when participants report varying degrees of same-sex versus other-sex attraction, fantasy, and behavioral or romantic experience. As such, these data not only reveal variation between dimensions but also that a substantive proportion of heterosexual and sexual-minority youth report nonexclusive patterns of sexual attraction, fantasy, and behavior as well as romantic experience. Indeed, research has revealed that, particularly among same-sex identified youth, there is a greater prevalence of nonexclusive patterns of same-sex attraction than exclusive patterns of same-sex attraction.

In a sample of over 1,000 adults in the United States (75% between the ages of 18–35)<sup>958</sup>, not only found evidence for participant identification with intermediary identity labels (i.e., mostly heterosexual, bisexual, and mostly gay/lesbian), but also that participants who selected exclusive identity labels (i.e., heterosexual and gay/lesbian) frequently indicated nonexclusive patterns of sexual attraction and behavior. Indeed, 52% of gay-identified men and 61% of lesbian-identified women indicated some current other-sex attraction and/or current or past other-sex behavior. These findings also revealed that nonexclusivity was more common in relation to sexual attraction than behavior. Furthermore, women were more likely to select nonexclusive identity label than men; however, reports of nonexclusivity in attraction or behavior did not differ between the women and men who did identify with a nonexclusive identity label. Glover et al. (2009) also found more polarized reports among males than females with regard to sexual identity labels and sexual attraction, again suggesting more frequent non-exclusivity among same-sex-oriented young women than young men. Interestingly, among an adult sexual-minority sample<sup>959</sup> of both men and women, Floyd and Bakeman (2006) found that individuals who self-identified during adolescence were less likely to have had

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<sup>958</sup> Vrangalova and Savin-Williams (2012)

<sup>959</sup> (ages 18-74, average age in the mid-30s)

heterosexual partners than those who self-identified during emerging adulthood, thus suggesting that earlier identification with a same-sex identity may be associated with more exclusive patterns of sexual behavior.

Other recent research has purposely set forth to identify patterns of nonexclusivity within heterosexual populations. In a sample of 243 heterosexual-identified college students (ages 18-33, mean age 23), Vrangalova and Savin-Williams (2010) found that 79% of their female sample and 43% of their male sample indicated at least a small amount of same-sex attraction and 53% of women and 22% of men reported at least some fantasizing about members of the same sex. Among those who were sexually experienced, 14% of women and 4% of men reported a same-sex sexual partner. In total, 84% of heterosexually identified women and 51% of men indicated some same-sex attraction, fantasy, or behavior. Lower numbers of same-sex attracted heterosexual-identified college students (mean age 22) were identified in Hoburg et al.'s (2004) study: close to 30% of women and 19% of men reported some same-sex sexual/physical preference. Among their second sample (528 heterosexually identified college students; mean age of 19), 16% of women and 5% of men reported same-sex fantasies while 7% of women and 4% of men reported same-sex behavior<sup>960</sup>. Among heterosexual-identified adolescents and young adults in Thailand, 10% of men and 12% of females reported same-sex attraction<sup>961</sup>. In a recent study of public same-sex kissing among heterosexual-identified college women, Yost and McCarthy (2012) also found that 33% of their participants reported having “made out” with another woman at a party.

In sum, the vast majority of adolescents, emerging adults, and adults who experience same-sex attractions, fantasy, and behavior also experience other-sex attractions, fantasy, and behavior. Similarly, but with less pervasiveness, a notable proportion of individuals who primarily experience other-sex attractions, fantasy, and behavior also experience same-sex fantasy and behavior. These patterns are particularly evident for young women, and much of this research has evidenced these findings within college populations; however, it is unknown whether non-exclusivity is particularly pronounced for emerging adults. These findings complement those that have identified discrepancies between dimensions of sexual orientation and identity by further supporting movement away from more essentialist conceptualizations of sexual orientations and identity and toward multidimensional and complex understandings of these concepts. Furthermore, this recent body of research

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<sup>960</sup> (Hoburg et al., 2004)

<sup>961</sup> (van Griensven et al., 2004)

encourages the legitimization of bisexuality despite dominant cultural models that continue to privilege dichotomous perspectives of sexual orientation.

## **Stability in Dimensions of Sexual Orientation and Labelling**

Recent longitudinal research has also been able to address issues of stability over time in participants' self-ascribed sexual orientation labels and their reports of various dimensions of sexual orientation. Most evidence points toward general stability in sexual orientation labels and across dimensions of sexual orientation. For example, in a 6-year longitudinal study with a sample of almost 14,000 U.S. youth (aged 12–25), Ott, Corliss, Wypij, Rosario, and Austin (2011) found that overall sexual orientation label changes were uncommon, but that women were more likely to report shifts in orientation labels than men and that sexual-minority participants were more likely to report shifts than heterosexual participants. Interestingly, these results also indicated that emerging adults (18–21 years old) were equally likely to change their sexual orientation label as adolescents (12–17 years old).

Further evidence of general stability in sexual identity was revealed in an analysis of Add Health data from Wave 3 (aged 18–24) and Wave 4 (aged 24–38), with the highest rates of stability among the “100% heterosexual” men and similar reports of stability between the 100% heterosexual and the 100% homosexual participants<sup>962</sup>. Bisexual individuals were the most likely to indicate shifts between Wave 2 and Wave 3 (more often toward heterosexuality rather than homosexuality), and all shifts that occurred were most frequently to an adjacent identity category. Women were also more likely than men to subscribe to a nonexclusive identity label and report shifts over time. Slight shifts in reported sexual attraction were also identified in a birth cohort of approximately 1,000 New Zealand youth assessed in the 1990s at age 21 and 26<sup>963</sup>. A small group of men (1.9%) moved away from reporting an exclusive heterosexual attraction and 1% moved toward it. More women reported moving away from an exclusive heterosexual attraction (9.5%), but a similar percentage to the men reported moving toward it (1.3%).

Evidence of slightly more pervasive shifts in sexual orientation labels and reports of sexual orientation dimensions emerged in a sample of 762 U.S. adults (aged 36–50) who completed retrospective questionnaires assessing three dimensions of sexual orientation and self-identification at 5-year intervals (starting with 16–20 years<sup>964</sup>).

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<sup>962</sup> (Savin-Williams et al., 2012)

<sup>963</sup> (Dickson, Paul, & Herbison, 2003)

<sup>964</sup> (Kinnish et al., 2005).

They found that two thirds of the participants reported some kind of shift across the three dimensions of sexual orientation. Heterosexual women were more likely to change in sexual fantasy and romantic attraction than heterosexual men and lesbian-identified women were more likely than gay-identified men to shift their orientation label and reported romantic attraction, sexual fantasy, and sexual behavior. Bisexual men and women were equally likely to have shifted sexual orientation labels.

In studies exclusively examining sexual minority youth and adults, patterns of sexual orientation label changes and diverging reports of sexual orientation components have also emerged. In a 10-year longitudinal study with 79 sexual-minority women (between the age of 18–25 at the beginning of the study), Diamond (2008) reported that 67% of women changed sexual orientation labels at least once, most frequently moving toward a bisexual or unlabeled identity. In a study with 164 sexual minority youth from New York city (aged 14–21), Rosario, Schrimshaw, Hunter, and Braun (2006) identified patterns of change over 1 year in sexual orientation labels, with male participants reporting more change than female participants.

Overall, this research indicates that among heterosexual and sexual-minority populations, reported shifts in sexual orientation and/or self-identification are not particularly frequent, but do occur, especially for sexual-minority participants and women. These shifts typically involve slight adjustments from one adjacent label to another and, in emerging adulthood, most frequently include moving away from an exclusive heterosexual or homosexual identity and toward a bisexual or intermediary identity label. Regarding when these shifts take place, they can be expected between adolescence and emerging adulthood, as well as during and after emerging adulthood. As such, instability in reports of sexual attraction, fantasy, and behavior as well as sexual identity labels is prominent in, but not limited to, emerging adulthood.

## **Sexual Identity Labels**

Another contemporary scholarly discussion surrounds the role and applicability of traditional sexual orientation labels in the lives of contemporary emerging adults. Savin-Williams (2005) has argued that in response to the restrictions imposed upon them by traditional sexual orientation labels, youth have refused to allow themselves to be limited by the confines of the traditional categories and instead opted to adopt non-traditional labels or relinquish labels altogether. Indeed, adolescents and emerging adults (aged 15–22, mean age 19) who participated in focus groups indicated that attraction (cognitive and physiological) and relationship interest were

the two most important components of sexual orientation and that sexual behavior and self-identification were not necessarily relevant<sup>965</sup>. The potential for orientation labels to change and the lack of centrality of a sexual orientation identity in one's life were reasons offered for the lack of importance of a sexual orientation label.

Among sexual minority youth (aged 14–21), Glover et al. (2009) found that despite making use of traditional sexual orientation labels in closed-response survey questions, about one third of their participants did not rely on traditional labels in open-ended responses asking them to describe their sexual orientation in their own words. Furthermore, their research indicated that variability and transitions in the use of traditional labels for young women may be a result of the labels not accurately reflecting their attractions. Diamond's (2008) emerging and young adult sample of sexual minority women, of whom a subset rejected a traditional sexual orientation label, indicated that doing so was not only the result of uncertainty, but also a purposeful rejection of sex-based orientations, the desire to reflect an openness to change, and because none of the traditional labels accurately represented their experiences.

Nonetheless, similar, a study with late adolescents in California found that when offered the option to select a traditional orientation label from a list of options, the vast majority of non-heterosexual youth identified as gay, lesbian, or bisexual (70%; Russell, et al., 2009)<sup>966</sup>. The remaining adolescents selected "Questioning" (13%), "Queer" (5%), or chose to write in a label (10%) that mostly frequently represented a more fluid or flexible identity or an ambivalence or resistance to labels. Overall, it is clear that traditional sexual orientation labels do not resonate with all contemporary adolescents and emerging adults for a variety of reasons, perhaps most notably the restrictiveness of the terms. However, whether out of ease or actual identification with the term, the majority of emerging adults are willing to subscribe to a traditional sexual orientation label when given the option and that the label they choose frequently corresponds with other dimensions of their sexual orientation.

### **How many subgroups are there?**

A naturally resulting question from the rejection of traditional sexual orientation labels by contemporary youth is whether or not there is a way to offer more labels to more accurately represent individuals' lived experiences. There is growing evidence that subdividing traditional sexual orientation groups and offering

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<sup>965</sup> (Friedman et al., 2004)

<sup>966</sup> Glover et al. (2009)

alternative sexual-orientation labels reveal unique groups of people who possess unique sexual profiles. For example, Weinrich and Klein (2002) found evidence for a 10-group model based on separately clustering men's and women's responses to the 21-item Klein Sexual Orientation Grid<sup>967</sup>. This model included three subgroups of bisexual adults in addition to heterosexual and gay/lesbian orientations.

Worthington and Reynolds (2009) also identified additional "types" of sexual orientation and identity in their sample of 2,300 adults (aged 18–89; mean age 33) based on cluster analyses of participants' orientation to females, orientation to males, heterosexual identity, and Lesbian/Gay/Bisexual (LGB) identity. They identified three distinct subgroups of bisexual men and women and two distinct subgroups of heterosexual women and gay men, for a total of 12 groups. The three female bisexual subgroups differed based on male versus female orientation and level of LGB identity. The three male bisexual groups differed based on a slightly higher orientation toward females over males or a moderately higher orientation to males over females coupled with a higher LGB identity. The two gay male groups differed based on a higher heterosexual versus LGB identity. The two heterosexual female groups differed based on both orientation to women and a higher heterosexual versus LGB identity.

Research allowing individuals to self-identify with "in-between" labels has also revealed between-group differences. For example, Thompson and Morgan (2008) found that among college women (aged 18–29; mean 19), those who identified as "mostly straight/heterosexual" reported significantly higher same-sex attraction and fantasy than exclusively heterosexual-identified counterparts and significantly lower same-sex attraction and fantasy than their bisexual-identified counterparts. Furthermore, although they resembled their heterosexual counterparts with regard to sexual relationships, when indicating their ideal sexual relationships, they again were significantly different from, and in-between, their heterosexual and bisexual counterparts. In a sample of U.S. adults (75% were between 18 and 35; mean age was 29), Vrangalova and Savin-Williams (2012) found support for a five-category model that incorporated "mostly heterosexual" and "mostly gay/lesbian" into the traditional three-category model (heterosexual, bisexual, and gay/lesbian). Furthermore, participants who selected the mostly heterosexual and mostly gay/lesbian labels were distinctive in measures of sexual attraction and sexual partners in a pattern that suggested a continuous distribution of sexual orientation

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<sup>967</sup> (Klein et al., 1985)

based on two distinct dimensions (same-sex and other-sex orientation). Interestingly, in an analysis of Wave 3 and Wave 4 of Add Health data, the most common sexual identity after “100% heterosexual” was “mostly heterosexual” and when participants indicated a change in their sexual identity from Wave 3 to Wave 4, it was most frequently to “mostly heterosexual<sup>968</sup>”. However, in an analysis of Wave 3 Add Health data (aged 18–27, mean age = 22), Loosier and Dittus (2010) found no differences in the number of same-sex relationships partners for mostly heterosexual youth when compared to heterosexual youth nor for mostly gay/lesbian youth when compared to gay/lesbian youth. The mostly heterosexual and mostly gay/lesbian youth did differ from bisexual youth.

It is obvious from current research that a two-category (heterosexual or gay/lesbian) or three-category (heterosexual, gay/lesbian, or bisexual) classification of identity does not fully resonate with contemporary youth. These recent studies have revealed that when given multiple options, adolescent, emerging adult, and adult participants will frequently subscribe to intermediary and alternative identity labels, especially “mostly heterosexual.” It remains unclear whether a particular preference for alternative sexual identity labels exists during emerging adulthood, and if so, what these alternative labels actually represent to emerging adults. Continued investigation into shifting meanings of identity labels among contemporary youth is necessary.

## **Intersecting Identity Development Processes**

Sexual identity is just one of many identity domains undergoing transformation during emerging adulthood. Recently, scholars have begun to investigate how sexual identity (particularly sexual minority identity) intersects with other domains of identity, such as gender identities, racial or ethnic minority identities, and religious identities. These burgeoning areas of research will be briefly reviewed in the following section.

First, despite ongoing recommendations to consider gender identity and gender ideology as relevant, but distinct, aspects of sexual identity development (e.g., Shively & DeCecco, 1977; Striepe & Tolman, 2003), few researchers have offered studies that do so. Striepe and Tolman (2003) noted the importance of recognizing that questioning or rejecting conventional gender ideologies has implications for the salience of sexual identity development among both sexual minority and

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<sup>968</sup> (Savin-Williams et al., 2012)

heterosexual adolescents. Because researchers have found that gender-related attitudes generally become more flexible from adolescence into emerging adulthood<sup>969</sup>, it is possible these changes facilitate or correspond with explorations of dimensions of sexual orientation and identity during this developmental period as well. Interestingly, McDermott and Schwartz (2012) found that among emerging adult college students, sexual-minority men indicated greater distress than heterosexual men with regard to questioning their gender role ideologies, perhaps because sexual-minority men are forced to question their roles as men in society because they do not fit into dominant heterosexist perceptions of masculinity due to their sexual orientation.

Gender identity has a similarly complex and dynamic relationship with sexual identity development during emerging adulthood. Despite historical connotations between sexual identity and gender identity, researchers have identified numerous combinations of gender and sexual identities among adults who self-identified within the transgender spectrum<sup>970</sup>. Furthermore, although significant subset of participants maintained traditional gender and sexual identity labels in their study, “transgender” and “genderqueer” were the most common gender identity labels with “pansexual” and “queer” as the most common sexual orientation labels. Even though gender identity and sexual identity need not vary in predictable patterns, these domains of identity are not completely unrelated. For example, Diamond, Pardo, and Butterworth (2011) emphasized that experiences of sexual desire and behavior are contingent upon an appraisal of one’s own and one’s partner’s gender status and that awareness and exploration of multiplicity and fluidity of either gender identity or sexual identity frequently leads to an awareness of flexibility in the other domain as well.

In addition to connections between gender and sexuality, researchers are currently exploring connections between race or ethnic identity and sexual identity. For example, several recent studies have examined the experiences of African American (e.g., Goode-Cross & Good, 2009), Latino (e.g., Jamil, Harper, & Fernandez, 2009), and Asian/Asian American (e.g., Narui, 2011) sexual minority adolescents and emerging adults. These studies have suggested that ethnic identity and sexual identity development processes are generally independent (Jamil et al., 2009) that certain contexts facilitate either sexual or ethnic identity development, but not both

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<sup>969</sup> (e.g., Davis, 2007; Marcell, Eftim, Sonenstein, & Pleck, 2011)

<sup>970</sup> (e.g., Kuper, Nussbaum, & Mustanski, 2012)

(Narui, 2011), and choices to make a racial identity more central to one's definition over a sexual minority identity are based on appraised risk of rejection<sup>971</sup>.

Intersections between a sexual minority identity and religious identity are another burgeoning area of research. In a recent study, five hundred and twenty-six 18- to 24-year-old men who have sex with men, who participated in a longitudinal mixed-methods study revealed how positive and supportive aspects of a religious identity could be maintained while either reframing or rejecting negative religious messages about same-sex sexuality, thus enabling the coexistence of both a sexual minority and religious identity (Kubicek et al., 2009). Dahl and Galliher (2012) described similar results in a qualitative study with 8 adolescent and 11 emerging adults. Their sexual-minority-identified participants also acknowledged negative religious messages that led some participants to seek alternative more accepting religious or spiritual identities that incorporated the positive qualities of their religious experiences growing up but were less negative with regard to their sexual minority orientation and identity. Schachter (2004) has described this process of navigating multiple identities with conflicting ideologies "identity configurations."

Emerging adulthood offers a unique period of the life course where young men and women are often released from restrictions that accompany living with parents to a time where they can maintain flexible commitments and focus on exploring alternative identities in domains such as sexuality, gender, religiosity, and ethnicity or race<sup>972</sup>. Researchers are just beginning to identify intersections between these domains of identity to understand how processes of sexual identity development intersect and diverge from those in other identity domains. Notably, when conflicts between values emerge, reconciling these differences with regard to one's personal and social identities can be particularly challenging and requires ongoing negotiation.

## **Conclusions and Future Directions**

Recent scholarship has seen an increased focus on recognizing and accounting for the complexities and multidimensional nature of sexual identity development among both heterosexual and sexual-minority individuals. This recognition is evident through the numerous theoretical discussions regarding how to measure and define sexual orientation and identity, the multiple models proposed to study sexual identity development among various populations, and the burgeoning empirical literature

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<sup>971</sup> (Goode-Cross & Goode, 2009).

<sup>972</sup> (Arnett, 2004)

assessing developmental trajectories, consistency between and exclusivity within dimensions of sexual orientation and identity, stability of sexual orientation dimensions and identity, and issues of sexual identity labelling and categorization. Scholarship drawn primarily from the past 10 years that addresses or includes emerging adult populations suggests that this increased attention to diversity within and between groups in their personal understanding, lived experiences, and developmental trajectories is warranted; the vast majority of studies have revealed multiple instances of incongruence between dimensions of sexual orientation and sexual identity as well as instability leading into and continuing after emerging adulthood. Furthermore, trajectories of development are divergent in sequence and timing and no single set of identity labels fully resonates with contemporary emerging adults.

Indeed, what appears to unify heterosexual and sexual-minority emerging adults with regard to sexual orientation and identity is complexity, variation, and flexibility, much like the high variability that characterizes emerging adulthood in general<sup>973</sup>. For example, there is a cohort of sexual minority youth who transition into emerging adulthood having already developed a highly integrated sexual-minority identity. There is also a cohort of emerging adults who are just starting to explore same-sex interests and may continue to do so into young adulthood. There is also a cohort of emerging adults who subscribe to two or more different sexual orientation labels and another cohort who will maintain the same sexual orientation label throughout emerging adulthood and beyond. Some emerging adults will resist labelling their sexual orientation altogether. Even though this kind of variation can take place in adolescence and adulthood, emerging adulthood offers a particularly fertile and forgiving milieu for negotiating experiences of instability and transition<sup>974</sup>.

In particular, the pervasiveness of nonexclusively in sexual attraction, fantasy, and behavior among sexual-minority emerging adults is one of the more significant contributions of recent research in this field. It is highly important to legitimize nonexclusive patterns of sexual orientation, given that conventional cultural models of sexual orientation continue to stigmatize nonexclusive same-sex attraction and behavior as a “transitional” orientation or identity. Recognizing the prevalence of other-sex attraction and behavior among primarily same-sex-oriented emerging adults as well the prevalence of same-sex attraction and behavior among primarily other-sex-oriented emerging adults is particularly important during this

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<sup>973</sup> (Arnett, 2006; Waters et al., 2011)

<sup>974</sup> (Arnett, 2004)

developmental period because internal and external pressures to resolve negotiations of instability as one head into adulthood may unnecessarily challenge or silence these common experiences.

These patterns of nonexclusively, variation between domains, and instability in sexual orientation and identity are especially prominent for young women. In studies of both heterosexual and sexual-minority populations, most have identified higher rates of inconsistency and change among emerging adult women than men, though both genders exhibit flexibility in sexual orientation and identity. Scholars have suggested that sexual fluidity may be especially pronounced among women because of women's partner-centered orientation whereby their identities are constructed and maintained within the context of relationships<sup>975</sup>. These gender differences may also be the result of lower sensitivity to stigma and internalized homonegativity among women<sup>976</sup>.

## **Limitations and Future Research**

Despite the recent inroads made toward better understanding sexual orientation and sexual identity development during emerging adulthood, a number of important scientific inquiries are lacking. One of the major limitations of the current body of literature is a specific focus on emerging adulthood. Although many studies include emerging adults in their sample, they are infrequently the focus of studies or analysed separately from adolescents or older adults. When data do focus exclusively on emerging adults, the samples are most often college students, an issue common to studies of emerging adulthood in general<sup>977</sup>. Given the lack of studies either describing emerging adult populations or comparing emerging adults to adolescents or to young adults, it becomes difficult to assess the particular developmental issues facing emerging adults as they navigate the transition from adolescence to adulthood with regard to their sexual orientation and identity. Studies that focus on describing emerging adults' sexual orientations and identities during this developmental period and in comparison, to other developmental periods will benefit our understanding of both emerging adulthood as a discrete developmental period and sexual identity and orientation throughout the life span.

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<sup>975</sup> (Peplau & Garnets, 2000)

<sup>976</sup> (Balsam & Mohr, 2007)

<sup>977</sup> (Arnett, 2006)

Another limitation in this body of research is that a lack of consistency in defining sexual orientation makes studies difficult to synthesize<sup>978</sup>. Although this is not a limitation specific to research on sexual identity and sexual orientation in emerging adulthood, greater consistency in measurement would facilitate comparisons across developmental periods as studies could be compared and aggregated to ascertain a more complete representation of the diversity and uniformity of experience. As described in this review, multidimensional conceptualizations of sexual orientation and sexual identity are currently understood as the most accurate ways to understand and assess sexual orientation and sexual identity development. Several new sexual orientation labels have also emerged as meaningful in categorizing individuals into sexual orientation or identity groups. Systematic use and continued refinement of these concepts and terms would greatly benefit this area of research.

There is also an ongoing need for this body of research to pay greater attention to the sociohistorical context of development. Contemporary sexual minority youth<sup>979</sup>, and likely heterosexual emerging adults, are subject to different social discourses with regard to their sexual orientation and identity than youth from 10, 20, and 30 years ago. Furthermore, despite the inclusion of some international research in this review, information about emerging adults' sexual identity and orientation primarily comes from the United States. In addition, U.S. populations continue to be comprised of predominantly European American participants from middle to high socioeconomic backgrounds (if indicated). Sexual-minority participants also tend to primarily be recruited from sexual-minority community centers, events, clubs, or listservs, resulting in a reduction of diversity in these samples. Greater international diversity in samples is needed as are continued efforts to reach diverse and varied populations within the United States.

The fourth area of expansion of research that would greatly benefit this field of study would be further investigation into how sexual identity intersects with other personal and social identities. Given the dynamic and reciprocal influences between sexual orientation/identity development and gender ideology/identity development during emerging adulthood, further research is needed to clarify these connections. In particular, attention to the ways that emerging adulthood as a period of the life course facilitates and restricts exploration and change in these domains would be beneficial as well as further assessing associations between gender identity and sexuality. There have also been some inroads with regard to intersections between sexual

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<sup>978</sup> (Savin-Williams, 2006).

<sup>979</sup> (D'Augelli, 2012; Hammack, Thompson, & Pilecki, 2009; Savin-Williams, 2005)

minority and ethnic or racial minority identity as well as religious identity, yielding valuable information about the ways that concessions in each domain must be navigated to configure disparate social pressures and ideologies associated with maintaining each identity. Continued research investigating these dual identities and others (such as political and vocational identities) as well as how sexual identity interacts with other life decisions (such as work, marriage, and family) would help further our understanding of how the domain of sexual identity influences and is influenced by other domains of identity.

In addition to the studies reviewed in this article, scholars have identified a number of other important considerations with regard to sexual orientation and identity development in emerging adulthood. These include a variety of interpersonal and social influences on sexual orientation and identity development, sexual-minority emerging adults' experiences with discrimination as well as social support and collective action, and numerous physical and psychological health-related outcomes associated with various sexual orientation identities. A number of clinical implications for professionals working with emerging adults surrounding issues of sexual orientation and sexual identity have also been identified. The focus of this article was to present an overview of existing scholarship concerning developmental processes related to sexual orientation and identity among contemporary emerging adults and to provide suggestions for how this field can move forward. In summary, this body of research suggests that increased attention to diversity within and between sexual identity groups is warranted but also reveals notable patterns and meaningful categories of sexual orientation and identity that can be instrumental for researchers to make sense of the ways that individuals of different age groups, cohorts, sexual orientations, and sexual identities may resemble and differ from one another.

## **APPENDIX**

### **THE ANTI-HOMOSEXUALITY BILL, 2023**

#### **MEMORANDUM**

##### **1. Principles of the Bill**

The object of the Bill is to establish a comprehensive and enhanced legislation to protect the traditional family by—

(a) prohibiting any form of sexual relations between persons of the same sex and the promotion or recognition of sexual relations between persons of the same sex.

(b) strengthening the nation's capacity to deal with emerging internal and external threats to the traditional, heterosexual family. This legislation further recognizes the fact that same sex attraction is not an innate and immutable characteristic.

(c) protecting the cherished culture of the people of Uganda, legal, religious, and traditional family values of Ugandans against the acts of sexual rights activists seeking to impose their values of sexual promiscuity on the people of Uganda.

(d) protecting children and youth who are made vulnerable to sexual abuse through homosexuality and related acts.

(e) i

(f) Defects in existing law

(g) This proposed legislation is designed to address the gaps in the provisions of other laws in Uganda, for example the Penal Code Act, Cap. 120. The Penal Code Act, Cap. 120 has no comprehensive provision catering for anti-homosexuality. It focuses on unnatural offences under section 145 and lacks provisions for penalising the procurement, promoting, disseminating literature and other pantographic materials concerning the offences of homosexuality. As a result, there is need for a legislation to enhance offences relating to homosexuality and clear provisions for charging, investigating, prosecuting, convicting and sentencing of offenders.

(h) This legislation seeks to supplement the provisions of the Constitution of the Republic of Uganda and the Penal Code Act, Cap. 120 by criminalizing same-sex sexual acts and related acts.

### 3 REMEDIES

The Bill seeks to:

- a) prohibit marriage between persons of the same sex;
- b) prohibit and penalize homosexual behavior and related practices;
- c) prohibit the promotion of homosexuality; and
- d) protect and provide assistance and payment of compensation to victims of homosexuality.

## **THE ANTI-HOMOSEXUALITY BILL, 2023**

### **ARRANGEMENT OF CLAUSES**

#### *Clause*

#### **Part I—Preliminary**

1. Interpretation

#### **Part II—Prohibition of homosexuality**

2. The offence of homosexuality
3. Aggravated homosexuality
4. Attempt to commit homosexuality
5. Protection, assistance and payment of compensation to victims of homosexuality
6. Consent of the victim
7. Confidentiality

#### **Part III—related offences and Penalties**

8. Aiding and abetting homosexuality
9. Conspiracy to engage in homosexuality

10. Procuring homosexuality by threats, etc
11. Detention with intent to commit homosexuality
12. Brothels
13. Same sex marriage
14. Promotion of homosexuality

#### **Part IV—mIscellaneous ProVIslons**

15. Special powers of court
16. Extradition
17. Regulations

#### **Schedule**

#### **Currency point**

#### **A Bill for an Act**

#### **ENTITLED**

#### **THE ANTI-HOMOSEXUALITY ACT, 2023**

An Act to prohibit any form of sexual relations between persons of the same sex; prohibit the promotion or recognition of sexual relations between persons of the same sex; and for related matters.

#### **BE IT ENACTED by Parliament as follows:**

#### **Part I—PrelImInary**

#### **1. Interpretation**

In this Act, unless the context otherwise requires—

“authority” means having power and control over other people because of your knowledge and official position; and shall include a person who exercises religious, political, economic or social authority;

“child” means a person below the age of eighteen years;

“court” means a chief magistrates court;

“currency point” has the value assigned to it in the Schedule to this Act;

“disability” means a substantial limitation of daily life activities caused by physical, mental or sensory impairment and environment barriers resulting in limited participation;

“felony” means an offence which is declared by law to be a felony or if not declared to be a misdemeanour is punishable without proof of previous conviction, with death or with imprisonment for three years or more;

“HIV” means the Human Immunodeficiency Virus;

“homosexual” means a person who engages or attempts to engage in same gender sexual activity;

“homosexuality” means same gender or same sex sexual acts;

“Minister” means the Minister responsible for ethics and integrity;

“misdemeanour” means any offence which is not a felony;

“serial offender” means a person who has previous convictions of the offence of homosexuality or related offences;

“sexual act” includes—

- (a) physical sexual activity that does not necessarily culminate in intercourse and may include the touching of another’s breast, vagina, penis or anus;
- (b) stimulation or penetration of a vagina or mouth or anus or any part of the body of any person, however slight by a sexual organ;
- (c) the unlawful use of any object or organ by a person on another person’s sexual organ or anus or mouth;
- (d) “sexual organ” means a vagina, penis or any artificial sexual contraption;

“touching” includes touching—

- (a) with any part of the body;
- (b) with anything else;
- (c) through anything;

and in particular includes touching amounting to penetration of any sexual organ, anus or mouth;

“victim” includes a person who is involved in homosexual activities against his or her will.

## Part II—homosexuality and related Practices

### **2. The offence of homosexuality**

(1) A person commits the offence of homosexuality if the person—

- (a) penetrates the anus or mouth of another person of the same sex with his penis or any other sexual contraption;
- (b) uses any object or sexual contraption to penetrate or stimulate the sexual organ of a person of the same sex;
- (c) touches another person with the intention of committing the act of homosexuality;
- (d) holds out as a lesbian, gay, transgender, a queer or any other sexual or gender identity that is contrary to the binary categories of male and female.

(2) A person who commits an offence under this section is liable, on conviction, to imprisonment for ten years.

### **3. Aggravated homosexuality**

(1) A person commits the offence of aggravated homosexuality where the—

- (a) person against whom the offence is committed is below the age of eighteen years;
- (b) offender is a person living with HIV;
- (c) offender is a parent or guardian of the person against whom the offence is committed;

(d) offender is a person having authority or control over the person against whom the offence is committed;

(e) victim of the offence is a person with disability;

(f) offender is a serial offender; or

(g) offender applies, administers or causes to be used by any man or woman any drug, matter or thing with intent to stupefy or overpower him or her so as to enable any person to have unlawful carnal connection with any person of the same sex.

(2) A person who commits the offence of aggravated homosexuality shall be liable, on conviction, to imprisonment for ten years.

(3) Where a person is charged with the offence under this section, that person shall undergo a medical examination to ascertain his or her HIV status.

#### 4. Attempt to commit homosexuality

(1) A person who attempts to commit the offence of homosexuality commits an offence and is liable, on conviction, to imprisonment for two years.

(2) A person who attempts to commit the offence of aggravated homosexuality commits an offence and is liable, on conviction, to a term of imprisonment for ten years.

#### 5. Protection, assistance and payment of compensation to victims of homosexuality

(1) A victim of homosexuality shall not be penalised for any crime committed as a direct result of his or her involvement in homosexuality.

(2) A victim of homosexuality shall be assisted to enable his or her views and concerns to be presented and considered at the appropriate stages of the criminal proceedings.

(3) Where a person is convicted of homosexuality or aggravated homosexuality under this Act, the court may, in addition to any punishment provided, order the person to pay compensation to the victim, of an amount which, in the opinion of the court is just, having regard to the physical, sexual or psychological harm suffered by the victim, the degree of force used, medical and other expenses incurred by the victim as a result of the offence;

(4) The order referred to in subsection (3) shall be deemed to be a decree under the Civil Procedure Act, and shall be executed in the manner provided under that Act.

6. Consent of a victim of homosexuality

Consent of the victim to homosexuality shall not be a defence under this Act.

7. Confidentiality

(1) At any stage of the investigation or trial of an offence under this Act, a law enforcement officer, prosecutor, judicial officer, medical practitioner, and any party to the case, shall recognise the right to privacy of the victim.

(2) For purposes of subsection (1), proceedings of the court in cases involving children and other cases where the court considers it appropriate, shall be conducted in camera.

(3) Any editor, publisher, reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer or director of a film in case of the movie industry, or any person utilising trimedia facilities or information technology who publishes or causes the publicity of the names and personal circumstances or any other information tending to establish the victim's identity without authority of the victim or court, commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points.

Part III—related offences and Penalties

8. Aiding and abetting homosexuality

A person who aids, abets, counsels or procures another person to engage in acts of homosexuality commits an offence and is liable, on conviction, to imprisonment for two years.

9. Conspiracy to engage in homosexuality

A person who conspires with another to induce another person of the same sex by any means of false pretence or other fraudulent means to permit any person of the same sex to have unlawful carnal knowledge of him or her commits an offence and is liable, on conviction, to imprisonment for two years.

10. Procuring homosexuality by threats

(1) A person who—

(a) by threat or intimidation procures or attempts to procure any woman or man to have any unlawful carnal knowledge with any person of the same sex;

(b) by false pretences or false representations procures any woman or man to have any unlawful carnal connection with any person of the same sex,

commits an offence and is liable, on conviction, to imprisonment for five years.

(2) A person shall not be convicted of an offence under this section upon the evidence of one witness only, unless that witness is corroborated in some material particular by evidence implicating the accused.

#### 11. Detention with intent to commit homosexuality

A person who detains another person with the intention to commit acts of homosexuality with him or her or with any other person commits an offence and is liable, on conviction, to imprisonment for two years.

#### 12. Brothels

(a) A person who keeps a house, room, set of rooms or place of any kind for purposes of homosexuality commits an offence and is liable, on conviction, to imprisonment for seven years.

A person being the owner or occupier of premises or having or acting or assisting in the management or control of the premises, induces or knowingly causes any man or woman to resort to or be upon such premises for the purpose of being unlawfully and carnally known by

(b) any man or woman of the same sex whether such carnal knowledge is intended to be with any particular man or woman, commits an offence and is liable, on conviction, to imprisonment for one year.

#### 13. Same sex marriage

(a) A person who purports to contract a marriage with another person of the same sex commits the offence of homosexuality and shall be liable, on conviction, to imprisonment for ten years.

(b) A person commits an offence if that person conducts a marriage ceremony between persons of the same sex and shall, on conviction, be liable to imprisonment for a maximum of ten years for individuals.

14. Promotion of homosexuality

(1) A person who—

- (a) participates in production, procuring, marketing, broadcasting, disseminating, publishing of pornographic materials for purposes of promoting homosexuality;
- (b) funds or sponsors homosexuality or other related activities;
- (c) offers premises and other related fixed or movable assets for purposes of homosexuality or promoting homosexuality;
- (d) uses electronic devices which include internet, films, mobile phones for purposes of homosexuality or promoting homosexuality; or
- (e) who acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices;

commits an offence and is liable, on conviction, to a fine not exceeding five thousand currency points or imprisonment for a term not exceeding five years, or both.

(2) Where the offender is a corporate body, a business, an association or a non-governmental organization,

- (a) the director, proprietor or promoter shall be liable, on conviction, for the offence under sub section (1); and
- (b) the court shall, on conviction of the offender, order the cancellation of the certificate of registration.

Part IV—Miscellaneous

**15. Special powers of court**

(1) The court shall, in determining whether to impose a sentence of imprisonment for any related offences under this Act, have regard to the need for rehabilitating the person and may, order the Minister to facilitate the rehabilitation of that person in the length of the period of the sentence.

(2) In assessing the need for rehabilitation, the court shall have regard to—

- (a) evidence of past conduct and behaviour of the offender;
- (b) character of the offender; and

(c) criminal record.

(3) A magistrate court, may if satisfied that a child is likely to engage in acts of homosexuality, upon application by any person, issue a protection order.

(3) Where the protection order is issued in respect of a child, the magistrate court may issue appropriate order for the child as it deems necessary

## **16. Extradition**

A person charged with an offence under this Act shall be liable to extradition under the existing extradition laws.

## **17. Regulations**

The Minister may, by statutory instrument, make regulations for better carrying out the provisions of this Act.

## **SCHEDULE**

s.1.

### **CURRENCY POINT**

One currency point is equivalent to twenty thousand shillings.

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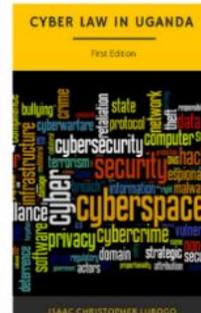
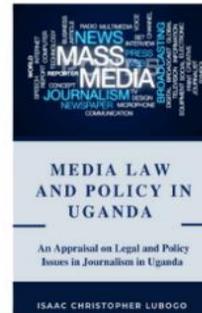
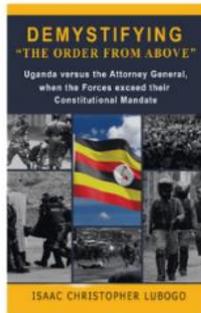
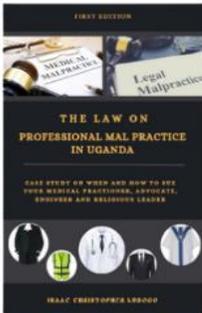
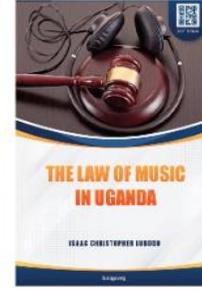
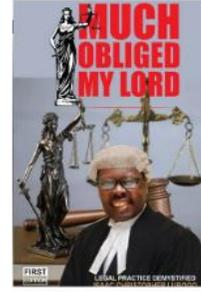
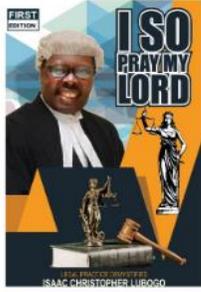
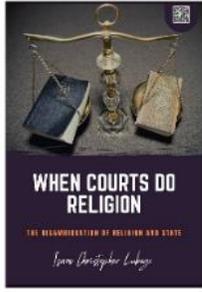


*Isaac Christopher Lubogo*

A PONTIFF AND ERUDITE LEGAL GARGANTUAN



LEGAL TECH AND INTELLECTUAL INTELLIGENCE EMPOWERING THE FUTURE OF JUSTICE AND THE LEGAL INDUSTRY

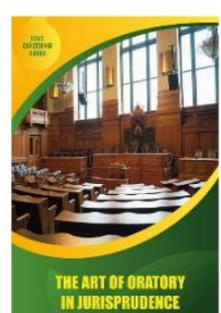
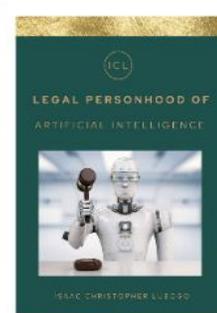
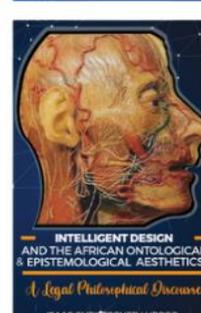
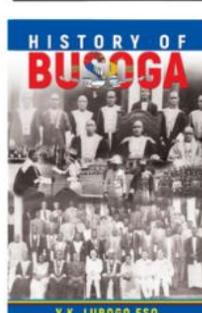
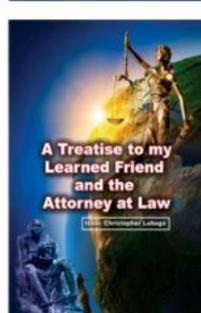
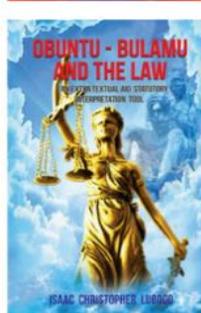
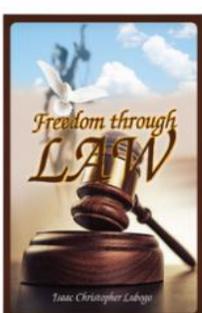
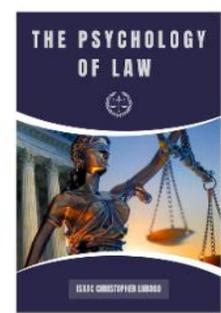
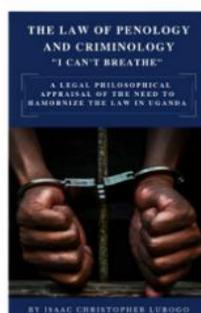
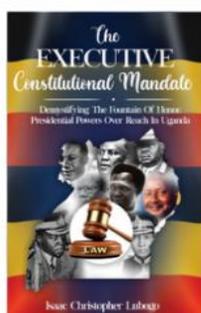
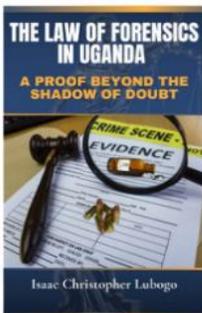
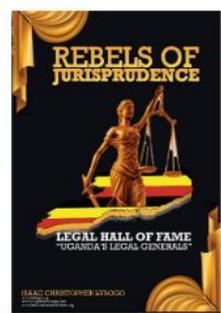
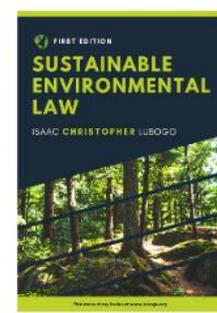
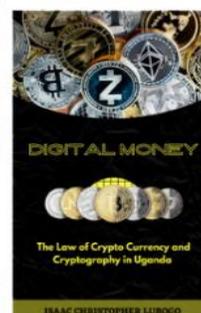
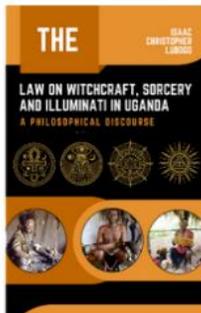
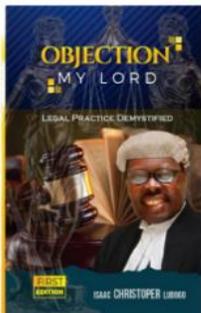
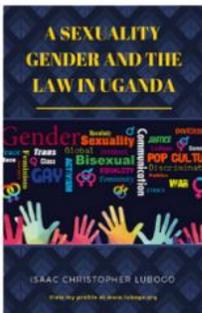


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STAY FOCUSED  
STAY HUMBLE  
STAY HUNGRY

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# WINNER OF THE MUCH COVETED LEGAL RESEARCH AWARD IN AFRICA



*Isaac Christopher Lubogo*

**A PONTIFF AND ERUDITE LEGAL GARGANTUAN**



**AFRICA LEGAL  
TECH & INNOVATION  
AWARDS 2022**

LEGAL-TECH AND ARTIFICIAL INTELLIGENCE SHAPING  
THE FUTURE OF JUSTICE AND THE LEGAL INDUSTRY

“

The Strix, in the Mythology of Classical antiquity was a bird of ill omen, the product of metamorphosis, that fed on human flesh and blood. It's also referred to witches and related malevolent folkloric beings.

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