‘THE SLIPPERY–DIP TO THE DEVIL’: THE UNITING CHURCH AND THE DECRIMINALISATION OF HOMOSEXUALITY IN VICTORIA AND NSW

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In 1968 a survey was conducted to discover, among other things, whether church attendance affected Australians’ attitudes to the decriminalisation of homosexuality. The survey questioned 1,045 informants over the age of sixteen from all over Australia, and found that only twenty percent of the strong, seventeen percent of the moderate, and twenty–one percent of the infrequent church–goers favoured decriminalisation. The numbers favouring decriminalisation were consistently small; only thirty–three of the people who never went to church were in favour.

These attitudes are not surprising in themselves. What is surprising is that a year earlier, in 1967, the Presbyterian General Assembly of NSW had resolved ‘that homosexual behaviour between two consenting adults in private should no longer be a criminal offence’, and had asked ‘that the appropriate authorities be advised accordingly’. The NSW Methodist General Conference also called for a re–examination of the law; possibly following the suggestion of the Reverend Ted Noffs of the Wayside Chapel, who claimed in 1966 that homosexual men were afraid to come forward for medical treatment because of the law.

For a brief moment, before the Stonewall Riots in New York in 1969; before the formation of the Campaign Against Moral Persecution in 1970; before the publication of Dennis Altman’s *Homosexual: Oppression and Liberation* in 1972, churches led the movement for gay and lesbian rights in Australia, a history that has since been lost.

Of course, it was not that simple. The support of churches for decriminalisation did not equate with the acceptance of homosexuality. But the role of the Uniting Church and its predecessors in the decriminalisation debates does challenge the widely accepted view of the churches as morally conservative monoliths, invited by parliament and society to participate in debates about sexuality in order to preserve the status quo and protect the heterosexual nuclear family. This is the role that some churches and religious groups play, witness the Festival of Light and the Catholic Archbishop George Pell, but there is another history.

**The Decriminalisation of Homosexuality in Australia**

The history of criminal sanctions against (male) homosexuality in Australia is a mixed one. The Australian law followed the English law, which since the nineteenth century had recognised two crimes in sexual activity between men: assault with an intent to commit buggery (which was later changed to anal intercourse); and the offence of gross indecency. Sexual activity between women was not criminal. In Australia the description of the crimes varied: for example, the New South Wales *Crimes Act* condemned ‘the abominable crime of buggery’; while the Western Australian *Criminal Code* made ‘the carnal knowledge of another person against the order of nature’ an offence.

No matter what the description, the legislation followed the English pattern, which meant that when the United Kingdom decriminalised homosexual acts between consenting adults in private through the *Sexual Offences Act 1967* (UK), a mere decade after the Wolfenden Committee recommended it, reconsideration of the Australian criminal law followed.

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1 This phrase was actually used by an Anglican, the Very Rev. Lance Shilton, but I could not resist it. Rosalind Reines, ‘Homosexuals “born and not made”’, *Sydney Morning Herald*, 14 May 1984, 5.
6 Section 79.
7 Section 181.

As the time taken indicates, achieving decriminalisation was a difficult task. The story of decriminalisation was different in each state and in no state was it a story of the social acceptance of homosexuality and the recognition of the rights of homosexual people after a campaign by homosexual people themselves. Surprisingly enough, the only state where this story might be applicable is Tasmania. In the other states chance and the coming of AIDS prompted decriminalisation, and the parliaments that passed the decriminalisation legislation made it clear that they were not supporting homosexuality.

South Australia, the first state to decriminalise male homosexuality, suffered from a kneejerk reaction to the murder of University of Adelaide law lecturer Dr George Duncan. Duncan was murdered on 10 May 1972, adopted as an annual commemoration date by the South Australian Campaign Against Moral Persecution (CAMP) in 1973. It was believed that Duncan had been killed by Vice Squad police acting as agents provocateurs entrapping homosexual men. The Duncan murder became a cause celebre, and within eleven weeks a bill for ‘An Act to amend the Criminal Law Consolidation Act 1935–1971, and for other purposes’ was introduced by Liberal Country League member Murray Hill. The bill was passed, but with an amendment that meant that ‘a private, consensual homosexual act committed between two men over the age of twenty—one’ would merely be a defence in court. Arguments in favour of decriminalisation included a suggestion that witnesses to the Duncan murder would then be more likely to come forward, and that decriminalisation would enable homosexual men to seek help. The human rights of homosexual people were not mentioned, although Duncan’s murder had shocked Adelaide.

A decade later the argument that decriminalisation would allow homosexual men to seek help had been given an added force by the coming of AIDS. In August 1989 the National HIV/AIDS Strategy was released, and decriminalisation legislation in Western Australia later that year and in Queensland in 1990 were in response to the proposal that ‘State Governments review legislation, regulations and practices which impede HIV education and prevention programs’. Neither state wanted their concern about AIDS to be mistaken as an acceptance of homosexuality. The Western Australian legislation began with a long and stern preamble:

> Whereas, the Parliament does not believe that sexual acts between consenting adults in private ought to be regulated by the criminal law;
> And whereas, the Parliament disapproves of sexual relations between persons of the same sex;
> And whereas, the Parliament disapproves of the promotion or encouragement of homosexual behaviour;

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8 With surprising ease, when it was decided that a House of Representatives motion that homosexual acts should not be ‘subject to the criminal law’ was applied to the Territory. Emma Henderson, ‘Of Signifiers and Sodomy: privacy, Public Morality and Sex in the Decriminalisation Debates’, *Melbourne University Law Review* 20 (1996): 1024.
9 Crimes (Sexual Offences) Act 1980 (Vic).
10 Crimes (Amendment) Act 1984 (NSW).
12 Criminal Code and Another Act Amendment Act 1990 (Qld).
13 Criminal Code (Amendment) Act 1997 (Tas).
16 Ibid., 174.
17 Ibid., 161, 173.
And whereas, the Parliament does not by its actions in removing any penalty for sexual acts in private between persons of the same sex wish to create a change in community attitude to homosexual behaviour;
And whereas, in particular the Parliament disapproves of persons with care supervision or authority over young persons urging them to adopt homosexuality as a lifestyle and disapproves of instrumentalities of the state so doing;
Be it therefore enacted...19

Apart from furthering the myth of ‘homosexual proselytising’, the preamble ensures that no one could mistake the decriminalisation of homosexual acts as support for homosexuality.

This concern with proselytising and the desire not to support homosexuality explains why decriminalisation did not give homosexual activity legal equality with heterosexual activity. The Northern Territory, South Australia and Western Australia prohibit male homosexual activity in public, which can include ‘with more than one other person present’20 or a place visible from a public place, including a car.21 There is an unequal age of consent between homosexual and heterosexual conduct in New South Wales, the Northern Territory, Queensland, and Western Australia. The age of consent for women in these jurisdictions is sixteen, while men must be twenty–one to consent to homosexual sex in Western Australia, and eighteen in New South Wales, the Northern Territory and Queensland. And homosexual relationships have only recently been recognised as ‘domestic partnerships’ in New South Wales and Victoria, and are recognised nowhere else in Australia.

The Churches’ Response
As the Australian law was influenced by the English law, so the Australian churches were influenced by the response of the English churches to the 1957 Wolfenden Report.22 The Church of England’s support of the Wolfenden committee was widely reported in Australian newspapers, to the consternation of some members of the Church of England in Australia, who argued that it ‘reflected the “excessive humanitarianism prevalent in Britain to–day, including the revoking of the death penalty”’.23

In the late 1960s and early 1970s a variety of reports on homosexuality, all recommending decriminalisation, were released by the churches that would later make up the Uniting Church. In 1969 the Presbyterian Church in New South Wales released a report entitled The Responsibility of the Church, which argued that the church had no right to impose morality on the legal system; the national General Assembly of the Presbyterian Church then made a statement in 1970 that supported law reform,24 a decision reported on the front page of the Sydney Morning Herald as ‘Church declares stand on deviates’.25 Among the reasons given for this stand were the fact that the ‘law discriminate[d] unfairly against the homosexual as compared with the adulterer, fornicator and lesbian’ and that the law might encourage the seduction of children by men who would prefer adult contacts but who imagined that child seduction was less risky. Finally, the argument was made that sending a convicted homosexual to jail was ‘as therapeutically useless as incarcerating a sex maniac in a harem’.26 The church did not want its support for decriminalisation to be confused with an acceptance of homosexuality as ‘normal’.

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19 Law Reform (Decriminalisation of Sodomy) Act 1989 (WA).
20 Criminal Code (NT) s 126.
22 Malcolm Cowan, “‘Knowing’ Sodom? Australian Churches and Homosexuality”, in Gay and Lesbian Perspectives III: essays in Australian culture, ed. Gary Wottonspoon (Sydney: Department of Economic History, University of Sydney, 1996), 212.
23 For example, Archdeacon T. C. Hammond, reported in ‘Church in two minds on vice’, Sun–Herald (Sydney), 27 May 1956, 15.
24 ‘Church attacks sex law’, Australian, 16 September 1970, 1.
Even so, some church members opposed the Church’s statement, including the Rev. Campbell who declared ‘that man was an animal of violent passions which had to be restrained by law’.27

In 1974 the Presbyterian Church of Victoria recommended decriminalisation in Victoria.28 In 1975 the Methodist Department of Christian Citizenship followed.29 The Rev. John Westerman said that Methodist policy saw homosexuality as a natural condition, and not one that should be subject to the law.30 Thus by the time the Uniting Church was created in 1977 it had a history of supporting homosexual law reform that the Church could call upon in the debates about decriminalisation in Victoria and New South Wales in the 1980s.

Victoria

When the Uniting Church was formed the reports and resolutions from the former denominations made up some of the work passed on to the social justice workers of the new church. In Victoria the new Division of Social Justice created the Taskgroup on Homosexuality in 1979, a support and education group that also became involved in the decriminalisation debate.31 The Division supported the decriminalisation of homosexual acts based on the reports of its predecessors, and forwarded news of its support to the Victorian Government.32

In 1980 the Hamer Liberal Government in Victoria introduced into Parliament a bill to amend the Crimes Act, three years after the Premier had first promised to reform what the Age referred to as ‘the State’s harsh homosexual laws’.33 The bill kept only one ‘unnatural’ offence — bestiality, and made male prostitution an offence for the first time, ‘thus solving one problem of the St Kilda police, who often pick up apparently female prostitutes only to find that they are actually male’.34 The bill had wide-ranging support, including from the Victorian branch of Women Who Want to be Women, who did not approve of homosexuality, but did not believe that homosexuals should be imprisoned.

There was some opposition to the bill, from ‘Melbourne’s so-called “Bible-belt”;35 from the National Party; and from elements in the Catholic Church. To placate Liberal members opposed to the decriminalisation of homosexuality the bill was amended to make it an offence to solicit for ‘immoral sexual purposes’ in a public place, an amendment the Age editorial writers found ridiculous.36 It was then passed and Victoria became the second state in Australia to decriminalise homosexuality.37

When members of the Uniting Church heard about their Division’s support for decriminalisation there was some concern, and letters in opposition were written to the Church’s newspaper, Church and Nation.38 Arguments against decriminalisation were couched in terms of the biblical prohibitions, but many letters betrayed a more visceral opposition to homosexuality on the part of their writers. For the most part, though, even those people who found homosexuality ‘disgusting’ argued that ‘[n]o compassionate person should object to decriminalisation of homosexual acts’.39 Rev. Stuart Reid, who worked in the Division of Social Justice and who made educative visits around the state, believes:

we got through some of those resolutions in the early days because people hadn’t really got to grips with the issue. It was all right to decriminalise, we

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27 ‘Church declares stand on deviates’.
28 ‘Churches back sex law reform’ Age (Melbourne), 10 April 1975, 13.
29 Cowan, ““Knowing” Sodom?”.
30 ‘Churches back sex law reform’, Age (Melbourne), 10 April 1975, 13.
32 Church and Nation, 17 December 1980, 3.
36 “But what is “immoral sex”? Age (Melbourne), 16 December 1980, 13.
37 Tom Ormonde, ‘Liberals cross the floor on sex bill’, Age (Melbourne), 12 December 1980, 5.
38 For example letters from (Mrs) M. Pullen and Leonard Bluff, Church and Nation, 28 January 1981, 16.
39 Letter to the editor, J. B. Longthorn, Church and Nation, 28 January 1981, 16.
could keep it out there, but the actual discussion in the early days of the place of gays in the Church hadn’t really been raised.40

This appears to have been the attitude not only within the Church, but also within society in general. The doom–mongers predicted that the decriminalisation of homosexuality was only the first step on the slippery slope to acceptance of homosexuality as ‘a perfectly moral and natural condition of the human kind’.41 The Victorian bill was passed, according to statements made by the government, because it was believed that it would end the discussion around homosexuality. Men would be free to have sex in private without fear of the law. What more could they want?

New South Wales

The Uniting Church’s support of decriminalisation in New South Wales was a little more controversial. New South Wales’s churches have always been more conservative than those in Victoria. David Marr has wondered whether the same God is speaking on either side of the Murray.42 It was in New South Wales that Uniting Church minister Rev. Fred Nile founded the Festival of Light in 1973 to ‘foster alternatives to permissiveness and immorality in the arts and media’.43 New South Wales was also the state with the largest number of continuing Presbyterians after the creation of the Uniting Church. It could be expected that those people who did join the Uniting Church in New South Wales would be the more liberal church members; but the Sydney Methodists, who had no continuing denomination to join, were also more conservative than Methodists in other states.44

The activities of Nile alone suggest that the expectation of a liberal Uniting Church was not fulfilled. Nile was elected to the Legislative Council in 1981 with over nine percent of the primary vote.45 Luckily for him, he entered the Council in time to debate the Crimes (Sexual Assault) Amendment Bill presented by Labor member George Peterson. As David Marr writes:

The atmosphere was all the crazier for the election to the Legislative Council at the poll just past of the brawling preacher Fred Nile. This was the issue that gave Nile his head start in politics. Fighting homosexuals was his first crusade. In hard political terms his vote in the upper House never mattered but he set the standard of ferociously uninhibited debate and his fascination with sodomy gave the proceedings a peculiar pungency.46

Later Nile was threatened with contempt of parliament if he set up a Mothers’ Embassy outside the house of Premier Neville Wran.47 His career, and that of the Festival of Light, has continued to be closely involved with debates about homosexuality in New South Wales.

Rather than supporting the Festival of Light, the New South Wales Synod of the Uniting Church followed the Presbyterians and Methodists by supporting decriminalisation. In 1981 the Secretary of the Board for Social Responsibility sent a statement to the Sydney Morning Herald supporting the Crimes (Sexual Assault) Amendment Bill. This statement was challenged by the Festival of Light and a clarification was issued to all ministers, deaconesses and lay pastors in the Church, drawing their attention to ‘the fact that the statement is directed only to the question as to whether homosexual acts in private between consenting adults should be cause for criminal charges’.48 The Board for Social Responsibility was saying nothing about the morality of homosexuality, only its legality. This distinction did not save the Board from fierce criticism from church members in letters to the church paper, with the very occasional letter of praise.49

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40 Interview, 5 November 1999.
45 Thompson, Religion, 117.
46 Marr, The High Price of Heaven, 164.
47 Rose Dunn, ‘MPs worry gay bill to be used to jail people’, Sydney Morning Herald, 17 May 1984, 2.
48 Executive Committee of the Council of the New South Wales Synod, 114/81E 1(i).
49 See, for example, Uniting, 12 May 1982, 26 May 1982, 23 June 1982.
In 1982 the issue was raised again and the Synod of New South Wales followed Victoria in resolving that the Synod ‘considers that the Crimes Act should be amended to provide that homosexual relationships between consenting adults in private not be a criminal offence’. The same recommendation explained that the Synod felt that a ‘homosexual lifestyle’ was inconsistent with ‘that of a mature Christian’. This resolution again prompted a flurry of letters. ‘Where does it end?’ asked one writer, answering his own question with the obviously unbelievable ‘Lesbian ministers [and] unrepentant prostitutes’.

In 1984 Premier Neville Wran introduced a private members bill to decriminalise homosexuality. The Sydney Morning Herald reported that the Uniting Church, alone among the major religious bodies in New South Wales, was not opposed to the bill. The Herald described the Church’s attitude as ‘ambivalent’. This article led to more letters to the church paper, both in favour and against the bill, as well as petitions to the Board of Social Responsibility and members of parliament. The arguments of the letters were predictable. Those against decriminalisation argued that it would make homosexuality morally acceptable. One writer was appalled that acceptance might be the outcome of this legislation when ‘the perversion is regarded as one of the worst of sins, not only distorting and corrupting society but bringing about its own destruction’. How homosexuality ‘brought about its own destruction’ the writer did not explain. He went on to argue that ‘there is indication that anyone tempted to indulge may well lose their desire for the opposite sex and become a victim of sexual perversion and in turn a transmitter’, which suggests that far from bringing about its own destruction homosexuality actually brings about its own reproduction. Those in favour of decriminalisation usually argued that ‘by not wishing to imprison [homosexuals] we are not condoning their acts’. There was one exception: Don Dudgeon, convener of Cross–Section, a support group for homosexuals within the Uniting Church. Rather bravely, given Church attitudes, Dudgeon wrote:

I can never see the logic of those thousands of people who see my homosexuality as a sin and yet they do not bat an eyelid at divorce. It also puzzles me that the Uniting Church can accept the ordination of women as quite natural when most of the other churches deny women that right by the ‘clear authority of the Bible’. Reverend ladies and divorcees please don’t take offence. I love and accept you. Just love and accept me too.

The minimalist arguments made by most church members in favour of decriminalisation had a secular counterpart. Lex Watson, a member of the Homosexual Law Reform Commission, told the Sydney Morning Herald that if homosexuality was decriminalised:

The last thing that is going to happen is that the gay community will come out on the streets waving banners. Most people will just be relieved that homosexuality is no longer a public issue and that they can go on leading their lives in private.

In the end the Crimes (Amendment) Act was passed by sixty–six votes to twenty–two. It is unlikely that the opposition of many of the New South Wales churches or the support of the Uniting Church made a difference. New South Wales was merely somewhat belatedly following South Australia and Victoria. Sex between men was no longer a crime.

50 Minutes of the Sixth Annual Meeting of the New South Wales Synod, 7 to 13 October 1982, 366/825 (4).
51 366/825 (2(b)).
52 Uniting, 22 December 1982, 10.
53 Alan Gill, ‘Churches gear up to fight Wran’s gay bill’, Sydney Morning Herald, 5 May 1984, 3.
54 ‘Parishes call for strong policy on homosexuality’, Uniting, 29 August 1984, 3.
57 Susan Wyndham, ‘For some, the law change has come years too late’, Sydney Morning Herald, 19 May 1984, 5.
Conclusion

The conservative predictors of doom were right. The struggle for gay and lesbian rights did not end with decriminalisation. Some members of the gay community in New South Wales continued to take to the streets with banners, despite Lex Watson’s reassurance. In 1980 Michael Barnard had argued that:

The homosexual militant is not content with due and measured tolerance he or she must now have acceptance in the fullest sense; homage must be paid to their homosexuality as a perfectly moral and natural condition of the human kind...if the homosexual and the heterosexual stand equal before the law, why should not the homosexual, as a matter of simple equality, demand rights to homosexual marriage, to the adoption of children, to the full propagation of homosexual ‘education’ in schools and the like?  

The general tone of Barnard’s article was hysterical, but his prediction was accurate. Both New South Wales and Victoria now recognise same-sex relationships, and the argument is made, frequently, that homosexuality is ‘moral and natural’.

The conservatives within the Uniting Church were also right. Members of the Church did move from arguing that homosexuality should not be a crime to arguing that neither should it be seen as a sin. The writer who suggested that decriminalisation would result in lesbian ministers was equally accurate in his prediction. The Uniting Church now has three openly lesbian ministers, one of whom launched the Sydney Gay and Lesbian Mardi Gras in 1998; as well as a number of other ministers who, if they have not actually come out of the closet, have at least opened the closet door. The Church that had been content to argue for justice for homosexuals in society found itself challenged to provide them with justice within the Church. As the Anglican Dean of Sydney, the Very Rev. Lance Shilton, said in 1984, decriminalisation was ‘the slippery-dip to the devil’ — and I, for one, am very glad of it.

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59 Rev. Dr Dorothy McRae–McMahon, Rev. Dr Jenny Byrnes and Rev. (Deacon) Con Taylor. Dr McRae–McMahon launched the 1998 Mardi Gras.
60 Rosalind Reines, ‘Homosexuals “born and not made”’, Sydney Morning Herald, 14 May 1984, 5.