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LAW AND GAY IDENTITY

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I INTRODUCTION

This article seeks to expose and analyse the fears and contradictions that have shaped gay identity in Australia. By understanding the complex history of discrimination against homosexuals, it is hoped that gay people will one day find an identity that is closer to their real civic existence and human dignity, and not one that is a response to society's insecurity in a world of competing social and political agendas. If the broader community, including its academic, legal and professional institutions, can learn from the gay experience, then it is more likely that in future the full legal stature and potential of all minorities will be realised.

My thesis is that since the Enlightenment¹ and the Industrial Revolution secular institutions such as the law have created a negative image of gay people that still causes them to be psychologically and socially alienated. Indeed, a centuries-long association of gays with criminality and deviancy appears to have created an enduring social stigma for them in Australia. Does the evidence indicate that the problems gay people have today are connected to certain underlying historical causes? While this is not an easy question to answer conclusively, I will argue that the burden and negative connotations of being gay remains a detrimental influence on the lives of people who are struggling to escape the shadow of the past.

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¹ According to Eric Voegelin, the 18th century Enlightenment 'released a movement of ideas which would shape decisively the political structure of the West.' During this period the sovereign nation-state became absolute as universal Christendom declined. Voegelin claims that a new search for the nature of man began in earnest: 'Within the sovereign national states, the intensity of national consciousness was noticeably increasing ... the search for a nature of man beyond the strife of the confessions expressed itself in the attempt to use the Stoic idea of nature as the basis for speculation on natural law ... [and] in the use of the new psychology of passions for determining the generic nature of man.' See Eric Voegelin *From Enlightenment to Revolution* (1975) 3-5.

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This essay will examine how and why legal sanctions were used as a blunt instrument against gay people, mainly for vested interests and social exclusion. While the Gay Liberation movement was successful at changing legal, political and medical norms, negative attitudes towards gay people have continued to ensure that they remain marginalised. The purpose of this essay, then, is to consider why a centuries-long stigma has locked gay people into a vicious circle, where social alienation, physical and mental illness have become almost an accepted part of life for gay people – a grim present and a bleak future, shaped by a past of ignorance and superstition.

In order to understand why gays today still feel marginalised and rebuffed I will assess primary source material, such as oral histories, as well as pertinent secondary sources. Part One will consider the origin of discrimination against homosexuals in Australia, from its genesis in the European Enlightenment to the late 20th Century. Part Two, based on oral histories, will demonstrate the causal connections between past injustices and the alienation of gays today, especially those living with HIV/AIDS.

II PART ONE: THE ORIGINS OF GAY DISCRIMINATION IN AUSTRALIA

The prosecution and cruel punishment of gay people during the Enlightenment shows how the law once treated a person defined as ‘homosexual’. Thus initially, in the early years of the Australian colonies, the deviant ‘homosexual’ label was thought to warrant the imposition of severe criminal sanctions.² So much so that in 1787, Arthur

² Australian statute law dealing with homosexual offences mirrored English statute law. Statute law in England, which prohibited ‘buggery’, and later ‘sodomy’, was first enacted in the Parliament of Henry VIII in 1533. The law was enacted by Henry as a way of removing political enemies who were often tried for treason. The Buggery Act (and other protestant laws) was briefly abolished during the reign of the Catholic Queen Mary. It was re-enacted during the Parliament of Elizabeth I in 1561 as the Sodomy Act 1561. For three hundred years the Act remained unaltered with until the death penalty was replaced with life imprisonment in 1861 (Offences Against the Person Act). The law was not commonly enforced until the 19th century when the ‘homosexual’ label gained widespread currency. All British law, including the Sodomy Act, applied in the dominions until the colonial legislatures enacted similar statutes. On the origins and development of English anti-sodomy legislation and its application across the Empire, see: Louis Crompton *Homosexuality and Civilization* (2003) 362-366. On Henry Labouchere’s amendment of 1885, which criminalized all forms of homosexual behaviour in the United Kingdom, see Antony Grey *Quest for Justice – Towards Homosexual Emancipation* (1992) 15-16. On the anti-sodomy law enacted by the Western Australian colonial government in 1865 see: Jill Bavin-Mizzi ‘An Unnatural Offence’ in Charlie Fox (ed) *Historical Refractions – Studies in Western Australian History XIV* (1993) 102-120. On provisions of the New South Wales Crimes Act 1900

Phillip, the first governor of NSW, said in a letter to the Colonial Secretary in London that sodomites like murderers, should be sent to New Zealand to be eaten by the natives.³ Soon after, in the colonies of New South Wales and Van Diemen's Land, the death penalty was applied to people convicted of homosexual acts.⁴ The punishment was later reduced to lengthy terms of imprisonment (often with a whipping⁵). As more convicts arrived at the penal colonies, the 'detestable intercourse', as Magistrate Robert Pringle described it, was becoming an 'odious' problem.⁶ By the mid 19th century, entrapment of homosexuals was not only public policy but, to the police, it was a public priority.⁷

Thus the homosexual had become a distinctly 'sexual individual ... something to be regulated and administered.'⁸ In Europe during this period our early modern understanding of sexuality was formed, with a heterosexual/homosexual binary at its core; and this modernist conception of sexuality would continue to shape public discourse about desire, intimacy and legality.⁹ The word 'homosexual', a secular invention, thus gave rise to a specific and identifiable person.¹⁰ Secular criminal laws and those who enforced them were, in effect, by criminalizing gays, protecting an institution – the family - that was at the heart of the modern secular state. As William H DuBay explains in his book *Gay Identity, The Self under Ban*:

(which were inspired by the Labouchere amendment to the UK criminal code) see: Ian Black, Peter Trebilco and Sue Wills *A Review of the 1976 Tribunal on Homosexuals and Discrimination* (1994) 37-76.

³ Governor Phillip to Lord Sydney, 28 February 1787, cited in Robert French *Camping By a Billabong – Gay and Lesbian Stories from Australian History* (1993) 5.

⁴ Ibid, 5-7.

⁵ It should be noted that the discretion to impose a whipping still existed in Western Australia until the Law Reform (Decriminalisation of Sodomy) Act 1989 (WA) was proclaimed in March 1990. Until then, section 181 of the Western Australian Criminal Code provided: 'Any person who – (1) has carnal knowledge of any person against the order of nature or (2) has carnal knowledge of an animal or (3) permits a male person to have carnal knowledge of him against the order of nature, is guilty of a crime and is liable to imprisonment with hard labour for 14 years *with or without a whipping*' (emphasis added).

⁶ *Norfolk Island – The Accounts of Robert Pringle Stuart and Thomas Begley Naylor* (1978) cited in French, above n 3, 17-18.

⁷ French, *ibid*, 20.

⁸ Tasmin Spargo *Foucault and Queer Theory* (1999) 16.

⁹ Ibid.

¹⁰ William Simon claims that '[t]he invention of the concept of the homosexual, the major focus of concerns for perversion in the late nineteenth century, made the sexual significant by making it a powerfully signifying aspect of character.' See William Simon *Postmodern Sexualities* (1996) 120.

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The creation of the gay role followed the development of medicine and psychiatry in the [nineteenth] century ... Public officials, doctors, jurists, and professors directed their attention to the new definition in dramatic moves that served to redefine the function of the family as an agency of the state. The gay role was born, not out of the religious prohibitions of ancient societies, but out of the secular needs of the modern state.¹¹

The creation of the homosexual label was therefore a construct of the wider political, social and economic upheavals of the Enlightenment and the Industrial Revolution. With the decline in authority of a universal and united Christian Europe the secular nation-state became legally absolute in its own right, no longer beholden to a higher law.¹² The modern state and its institutions – the parliaments, courts, ‘the people’ and the family - became components of the sovereign state; and the power of the state was absolute, as the *French Declaration of the Rights of Man and Citizen* proclaimed:

The source of sovereignty resides essentially in the nation; no group, no individual may exercise authority not emanating expressly therefrom.¹³

This process of secularisation changed the way people lived as well as the values (family, nationalism) and obligations (Protestant/capitalist work-ethic) that mainly governed their lives. As Marx explained, capitalism required a source of reliable labour thus making the family unit and heterosexuality central to the needs of the liberal-capitalist state.¹⁴ The laws concerning the family unit, such as property, marriage and divorce, were enacted to regulate human behaviour, ensuring the orderly functioning of the State.¹⁵

Public discourse and sensibility, shaped by the state’s secularised educational, academic and professional disciplines, ensured that certain legal norms were widely

¹¹ William H Dubay *Gay Identity – The Self Under Ban* (1987) 94.

¹² On medieval ‘higher law’ (the *ius naturale* and *ius commune*) see, generally, Kenneth Pennington *The Prince and the Law 1200-1600: Sovereignty and Rights in the Western Legal Tradition* (1993). See also HD Hazeltine ‘Roman and Canon Law in the Middle Ages’ in JR Tanner, CW Previte-Orton and ZN Brooke (eds) *The Cambridge Medieval History Volume V ‘Contest of Empire and Papacy’* (1926) 697-702. On natural law in Ancient Greece and Rome, Medieval Europe and the Enlightenment, see, generally, Ernst Bloch *Natural Law and Human Dignity* trans. DJ Schmidt (1988) 10-16, 17-25, 45-47, 61-63.

¹³ *The French Declaration of the Rights of Man and Citizen* article 3, reprinted in MR Ishay *The Human Rights Reader* (1997) 138-140.

¹⁴ On Marx and Marxian legal theory see, generally, Marett Leiboff and Mark Thomas *Legal Theories in Principle* (2004) 186-200.

¹⁵ See, generally, Michael McKeon *The Secret History of Domesticity – Public, Private, and the Division of Knowledge* (2007) 110-112; Dubay, above n 11, 61.

accepted.¹⁶ These European Enlightenment values were transported to the Australian colonies.¹⁷ The newly defined Australian 'homosexual' was not only a product of the State but was also seen as an 'enemy within'.¹⁸ The obvious consequence of this was that gay people went 'underground', where the space for homosexual people to meet was reduced to public places, such as parks, public toilets and beaches at night.

The 'beat' (public places) was the initial institution of gay culture.¹⁹ These *rendezvous* sites were recognised by the police as homosexual meeting places and were under constant surveillance.²⁰ In his book *The City of the Plain*, Garry Wotherspoon explains why the beats developed in the major cities:

Now while many people may find the notion utterly repugnant, it should be pointed out that if society denies access to legitimate meeting places for a minority, that minority simply develops its own meeting places, so often subverting the institutions of the dominant culture.²¹

As homosexuals were identified with crime and deviancy (ie., the furtive and nocturnal beats) the press fuelled this general perception with sensationalist stories, exemplified by three newspaper articles that will now be considered.

The title of the first article, in the *Perth Truth* in 1909, says it all: 'A Queenie in the Quod – Duo of Dirty Degenerates'.²² The report depicts a man being arrested in Russel Square at 11:30 pm. The reporter says: 'the case was such a disgustingly filthy one that it would be impossible to even hint at some of the evidence given.'²³ Negative newspaper reports such as this would ensure that gays remained ostracised

¹⁶ Dubay, above n 11, 80-95.

¹⁷ According to Louis Crompton: 'In Britain, Enlightenment thinkers [such as William Blackstone and Edward Gibbon] remained silent on sodomy law reform ... The silence of taboo held firm, national sentiment was hostile to change, and religious convictions still coloured legal thought.' See Crompton, above n 2, 528. On the conflict between conservative and progressive British Enlightenment values in the Australian colonies, see: Manning Clark *History of Australia – Abridged by Michael Cathcart* (1995) 134-139.

¹⁸ See, generally, *The Hidden History of Homosexual Australia* (written and directed by Con Anemogiannis) SBS Television (2004).

¹⁹ In Melbourne, for example, the beats date back to the 1860s. The first known to historians was a urinal on the corner of Swanson and Lonsdale streets. See: 'Queen City of the South – Melbourne Queer History Radio Series' <<http://melbqueerhistory.tripod.com/>> at 28 August 2007.

²⁰ Ibid.

²¹ Garry Wotherspoon *The City of the Plain* (1991) 68.

²² 'A Queenie in the Quod: Duo of Dirty Degenerates', *Perth Truth* (Perth), 27 November 1909, 4.

²³ Ibid.

from the community. And the sensationalist press coverage had changed little by the mid 20th century, with the 'homosexual act' as a *crime* being added to a new menace: those who socialised with those of their own kind. Intensified by post-war anti-communist ideology, the gay person, like the communist, came to be considered a threat to state security and public welfare.²⁴

Thus, as gay social groups became more noticeable to the mainstream, they became a concern to the authorities. And when gay public bars appeared in Sydney, Melbourne and Perth they were often raided by the police. A report in the *Perth Weekly News* in 1964 states:

There may be no organised vice rings in Fremantle, but without doubt some hotels, licensed 'dives', milk bars and coffee lounges are being used as bases by prostitutes and homosexuals. This despite the claim by Police Minister Craig in the Legislative Assembly this week that quick police action had disbanded congregations of homosexuals at the Port.²⁵

In the post-war period, gays in Australia became far more visible. Yet, as the *Weekly News* article shows, they were considered by the police to be a social 'vice' akin to prostitution. By 1969, following the demise of anti-communist hysteria, gays were classed as a 'social problem' by the mass media, exemplified by Geraldine Willesee's feature-length article entitled 'Homosexual' for *The Independent Magazine*:

Homosexuality must be talked about, not to condone it, but to cope with it. Like all problems, it cannot be solved, or coped with by ignoring or running away from it ...²⁶

The first two newspaper articles referred to above clearly indicate how the broader community throughout the 20th century were persuaded to regard homosexuality. The *Perth Truth* article in 1909 shows an extremely hostile attitude towards gays, who were labelled 'dirty degenerates'. Over fifty years on, as the *Weekly News* article reveals, gays had become an identifiable minority group requiring the police to disband them. Willesee's article in 1969, by contrast, reveals a shift in emphasis away from criminalizing and ostracising gays towards containing them as a 'social

²⁴ Graham Willett *Living Out Loud – A History of Gay and Lesbian Activism in Australia* (2000) 11-15.

²⁵ 'Vice Spots in Fremantle', *Weekly News* (Perth), 5 September 1964, 1.

²⁶ Geraldine Willesee 'Homosexual', *The Independent Magazine* (Perth), 24 August 1969, 2-3.

problem'. In this context, the violent brawls between gays and the police during the first Gay Mardi Gras in 1978 was a regrettable reaction to a largely *imposed* identity and criminality.²⁷

In the introduction I said that the evidence appears to indicate that a centuries-long association with criminality and deviancy has created an enduring social stigma for gays in Australian society. Part Two, informed by interviews with gay people, explains why gays in the 21st century remain considerably disadvantaged and alienated.

III PART TWO: GAY IDENTITY IN THE AGE OF LAW REFORM 1970-2007

In his book *The Self Under Ban*, DuBay makes the point that with most gay people the relationship with their family changes dramatically once they 'come out'.²⁸ The family unit, as an agency of the State, DuBay argues, is programmed to be homophobic.²⁹ The 'coming out' process also sees a radical change of milieu for gays, especially when they are in their late teens and early twenties. This fraught and problematic transition from dominant to minority culture and identity, which is often a fragmented process, takes many years and is accompanied by emotional upheaval.³⁰ This is not surprising since, as Ross Callaway, the first interviewee for this essay, says, the gay label has only been recently tolerated in society:

To be identified by one's sexuality alone was, thirty years ago, socially unacceptable in Western Australia.³¹

Also, he adds,

²⁷ On the first Mardi Gras see: Willett, above n 24, 138-141.

²⁸ DuBay, above n 11, 60-61.

²⁹ Ibid, 61.

³⁰ According to Erik Strommen: '[P]arental reaction is invariably negative, with the disclosure being perceived as a crisis by the family'. Strommen points out that the child is perceived 'as a stranger ... the parents [then] believe that they have somehow caused their child to become homosexual, and are therefore responsible for their child's new, alien identity.' This results in parents being 'plunged into an emotional and psychological crisis.' See, Erik Strommen, 'You're a What?: Family Member Reactions to the Disclosure of Homosexuality', in Linda Garnets and Douglas Kimmel (eds) *Psychological Perspectives on Lesbian and Gay Male Experiences* (1993) 250-251.

³¹ Interview with Ross Callaway, 13 Lacey Street, East Perth, 27th January 2007 (video on file with author).

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The homosexual label then excluded younger men like me who had yet to see themselves exclusively as such. Indeed the word 'gay' was not commonly used in Perth until the late 1970s and early 1980s. During this period most people used words such as 'homo, poof, queer, or camp'.³²

When gay people like Ross Callaway 'came out' in the 1970s they often sought new friends and companions. Callaway remembers going to the Shaftsbury Hotel, the first gay pub in Western Australia. 'It's a poofers' bar', his friend had warned him, 'but stick with me and you'll be alright.'³³ Callaway felt that he had found a sort of family at the Shaftsbury Hotel. For the first time, he was able to express his sexuality to others without fear of ridicule. The diversity of gay people there were like a secret society to him. But later the Shaftsbury's gay clientele were eventually forced to go elsewhere because, as Callaway recalls, by the mid 1970s, the new proprietor - an ex-policeman - had hired old mates to remove anyone known to be gay.³⁴

It is evident that gay men like Ross Callaway began to live on the fringes of society. Gay public bars were the main place for gays to meet each other. When a particular gay bar was shut down, they moved on to the next one. Typically the clientele of the gay pub was mixed: class backgrounds, occupations and social status were far more varied compared to mainstream social venues. Gay men, apart from their sexuality, often had little in common with one another.³⁵

From the 1970s, many gay men began to reveal their sexuality to family, friends and work colleagues. Callaway observed that most people he came 'out' to, especially if middle class, were shocked to learn that homosexual acts, 'against the order of nature', were illegal.³⁶ Yet, for gay men the threat of prosecution was very real. 'We all knew that if caught we could face up to 14 years in gaol, with or without a whipping. It was a bloody joke.'³⁷

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid. Callaway is referring to the Criminal Code 1913 (WA) s. 181: 'Any person who - (1) has carnal knowledge of any person against the order of nature or (2) has carnal knowledge of an animal or (3) permits a male person to have carnal knowledge of him against the order of nature, is guilty of a crime and is liable to imprisonment with hard labour for 14 years with or without a whipping'. Section 181 was amended by the Law Reform (Decriminalisation of Sodomy) Act 1989 (WA).

³⁷ Callaway, *ibid.*

In Australia, gay law reform occurred in an *ad hoc* manner, and, with the exception of Victoria, it always required a sympathetic state Labor government to enact amendments to criminal statutes.³⁸ In contrast to South Australia and New South Wales, other states like Western Australia and Tasmania took much longer to remove anti-gay laws.³⁹ Why this ‘bloody joke’ (as Callaway described the WA Criminal Code) continued to define gays as deviants and criminals will now be addressed. The purpose of the following paragraphs is to show why criminality and deviancy remained major aspects of gay identity, particularly in Australian states like Western Australia, whose parliaments were slow to enact law reform.

In Western Australia, after several failed attempts beginning in 1973, the Labor Party, which was elected in 1983, eventually tackled homosexual law reform in the late 1980s.⁴⁰ The lobbying strategies that were circulated to members of *Gay Law Reform*, such as Ross Callaway, advocated a cautious approach to law reform: working with the Labor Party to achieve their aims and identifying members of the Liberal-National opposition who might vote for the Decriminalisation of Sodomy Bill in the upper house. As a letter from *Gay Law Reform* to Ross Callaway in 1989 indicates, gay people understood the immensity of the task at hand.⁴¹ Conscious of homophobic sections of the public and media they adopted a ‘low key approach until the Bill [was] about to be introduced into Parliament’.⁴²

The Decriminalisation of Sodomy Act in WA was proclaimed in 1990 under Labor Premier Carmen Lawrence. While the Act granted most gay men sexual equality (for those over 21 years), its preamble ensured that certain negative social attitudes would remain:

³⁸ See, generally, Willett, above n 24, 148-166.

³⁹ *Ibid.*, 219-233.

⁴⁰ In Western Australia, first homosexual reform bill passed the Legislative Assembly in 1973. When the Bill reached the Legislative Council an honorary Royal Commission was established, which recommended repealing most of section 181 of the Criminal Code dealing with offences ‘against the order of nature.’ See: Western Australia, *Report of the Honorary Royal Commission Appointed to Inquire into and Report Upon Matters Relating to Homosexuality* 1974. By the time the report was finalised, the Court Liberal Government had been elected in the Legislative Assembly and it ignored the report. On this see Willett, above n 22, 227-228.

⁴¹ Letter from *Gay Law Reform* to Ross Callaway, 7 April 1989 (copy on file with author).

⁴² *Ibid.*

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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;

AND WHEREAS, the Parliament does not by its action in removing any criminal 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 ...⁴³

Until proclamation of the Lesbian and Gay Law Reform Act in 2002, gays were without protection under the state's Equal Opportunity Act; and young gay men, between 16 and 21 years, were criminalized.⁴⁴ The parliament also endorsed prevailing negative community sentiments. Therefore, most gay men in Western Australia today have experienced legal and social inequality first hand. How gay organizations, with the support of psychologists, had to, on the one hand, empower gay people, especially gay youth, whilst, on the other, also being mindful of the 1989 Act, will now be considered.

In order to tackle homophobia in Western Australia, organizations like the Gay and Lesbian Counselling Service became involved in community education programmes, with volunteer counsellors giving talks to high school students, even when the criminal code either prohibited all gay male sex or when it made sex between 16 to 21 year olds illegal.⁴⁵ According to Mark Woodman, a counsellor and trainer at GLCS, many counsellors, in order to discharge their duty of care, have had to ignore the criminal law in the past. How to manage the health and social issues, he tells me, was always the key priority for counsellors: 'This [service] isn't about pandering to anachronistic laws,' Woodman says emphatically. 'This is about people's lives, their self-identity, autonomy and freedom to live rich and fulfilling lives.'⁴⁶ However,

⁴³ Law Reform (Decriminalisation of Sodomy) Act 1989 (WA) repealed by Acts Amendment (Lesbian and Gay Law Reform) Act 2002 (WA) s. 86.

⁴⁴ Criminal Code 1913 (WA) s. 321A amended by Acts Amendment (Lesbian and Gay Law Reform) Act 2002 (WA) s. s.9; Equal Opportunity Act 1984 (WA) amended by Acts Amendment (Lesbian and Gay Law Reform) Act 2002 (WA) ss. 45-59.

⁴⁵ Interview with Mark Woodman, Brewer Street, East Perth, 20, August 2007.

⁴⁶ Ibid.

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Woodman did feel the tension between the law and GLCS service delivery most acutely at times:

In giving talks to schools, as part of our public speaking programme, we were [according to the 1989 Decriminalisation of Sodomy Act], 'proselytising', which was illegal. The question we faced was, do we mollicoddle to misguided laws or do we help isolated queer students?⁴⁷

Woodman views the WA Labor Government's law reforms in 2002 as a positive step forward, although, he says, the effects of these changes in terms of *substantive* equality will not be realised at least for another generation.⁴⁸ The stigma of being gay is still very real, with the homophobic preamble to the Decriminalisation of Sodomy Act a reminder that gays were treated with complete disdain until very recently.

With their priority on empowering gays, assessing suicide risks and educating the community about gay issues, services like GLCS were operating outside the institutions of the State in Western Australia. Woodman points out that Western Australia was so far behind the psychiatric profession, where homosexuality had been removed from the Diagnostic and Statistical Manual of Mental Disorders more than 30 years ago, that gays were, effectively, in a human rights no man's land.⁴⁹ What becomes clear is that contradictory mainstream ideological persuasions (ie., liberal, reactionary and left) were fashioning a confusing identity for gay people in this state (who were neither legally equal nor socially accepted). This occurred at a time when many gays were ill and fighting for their lives; and when gay professionals were trying to save young people from an epidemic that was, until the late 1990s, a certain death sentence.⁵⁰

Without doubt, as many gay professionals attest, the most disadvantaged and invisible group within the gay community are those people living with HIV/AIDS. How the

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ On the life and death of a 37 year old journalist with full-blown AIDS, who wrote about his condition for the UK *Guardian* newspaper in the mid 1990s, see: Oscar Moore *PWA – Looking AIDS in the Face* (1996).

stigma of AIDS has impacted on gay people will conclude the second part of this paper.

Before proceeding, it needs to be acknowledged that it is only recently that medical and psychological studies in Australia and the United States have revealed that gay-identifying people are more vulnerable to lifetime depression and suicidal thoughts. In one report, Australian medical researchers have recognized a trend: that chronic low-grade depression and HIV infection are inextricably linked.⁵¹ One researcher says:

It is not difficult to understand that gay men who have been stigmatized for much of their lives, and who have lived through the devastation of their community by HIV, may sometimes find themselves in a psychological state where they 'just don't care' about protecting themselves or others.⁵²

Clearly such reports suggest that the stigma of being gay has been compounded by another identity where illness and death are internalised by many gay men as the inevitable denouement of gay life. HIV infection thus becomes, for many in the sub-culture, a kind of self-fulfilling prophecy. Whereas gay men of Callaway's generation realised the threat of imprisonment was very real, gay men today are extremely aware of another threat that is associated with homosexuality: HIV/AIDS.

And what is everyday life like for those gay men who suffer HIV/AIDS? An HIV positive gay man I interviewed for this essay was keen for me to understand the complex problems that gay men with HIV experience in Australia. 'Bill' claims that HIV positive gay men are a sub-culture within the gay community.⁵³ Despite agencies like AIDS Councils and Positive Living Centres, gay men with HIV feel that they are on their own. The level of depression amongst positive people is very high with a good many of them 'out of it on drugs most of the time.'⁵⁴ Bill says that an HIV positive person often feels like a leper: 'most people don't know a positive person and

⁵¹ Michael Carter 'Low grade depression means gay men are more likely to have casual unprotected sex', *AIDS Map*, 9 September 2003 < <http://www.aidsmap.com/en/news/513F7A90-F018-4AC8-9A92-57D439A9E8F0.asp>.> at 2 February 2007.

⁵² Ibid.

⁵³ Telephone interview with an HIV positive man whose identity has been kept anonymous (Telephone interview, 21 August 2007). His pseudonym is 'Bill'.

⁵⁴ Ibid.

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are frightened by the virus.’⁵⁵ People who find out that a person is positive do not want anything to do with them. The legal responsibility, Bill says, ‘also puts everything on the positive person.’⁵⁶ He says that when unsafe sex does occur between men:

They often don’t know or don’t want to know what their HIV status is ...
They’re the ones living in denial.⁵⁷

Bill’s experience shows, in particular, the extent to which the deviant homosexual label appears to have been made worse by another burden based on illness and death. For those people with HIV/AIDS, being gay is not so much a question of ‘identity’ but instead a day-to-day existential struggle to continue living. One US study of HIV positive people describes their state of being in terms of ‘chronic sorrow’:

The term ‘chronic sorrow’ was originally used to describe the profound sadness in parents of mentally impaired children who mourned the loss of the ‘whole’ child, but has since been expanded to include chronic depression resulting from long term disability, ill health, or impairment. Broadly speaking, chronic sorrow is considered to be a ‘living loss that cannot be removed’, and is considered normative in situations that cause chronic stress or disability to the sufferer or caregivers.⁵⁸

The obvious questions that arise from Bill’s story and from the reports cited above are these: has progress been achieved? Are gay people really empowered? Has the gay stigma diminished or has it, as the evidence suggests, merely been reinforced in different ways?

IV CONCLUSION

To make sense of the continuing marginalisation and alienation of gays in Australia today, this essay attempted in part one to reveal a connection between discrimination against homosexuals in Australia to the wider political, social and economic upheavals that occurred in Europe during the Enlightenment, industrialisation and the

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Bronwen Lichtenstein, Mary Laska and Geoffrey Clair ‘Chronic Sorrow in the HIV-Positive Patient: Issues of Race, Gender, and Social Support’ *AIDS Patient Care and STDs*, volume 16(2) 2002, 28.

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French Revolution. With the secular state fully absolute by 1787 in the United States and 1793 in France (though in England this process occurred earlier, during the Reformation), it became imperative for laws that excluded the suppressed 'other' in all sovereign states that reflected family, national and capitalist work ethics, to be enacted and enforced. It was fundamental to the interests of the State for gays to be excluded from the human family.

The exclusion of homosexuals has continued into the new millennium as demonstrated in the second part of this paper, where oral histories (eg., Callaway, Woodman and 'Bill') clearly show how the current social standing of gays has been conditioned by conflicting social forces. Many gay men, like Ross Callaway, who 'came out' during the period of Australian liberalism in the 1970s and 1980s joined a subterranean world with a shared experience of alienation that, to this day, continues to result in major social adjustment problems, such as low-self-esteem, suicidal thoughts and high rates – compared to heterosexual people - of HIV infection. Also, criminal laws in states such as Western Australia made a person's transition from dominant to minority group identity and culture extremely difficult. The situation for many gay people, then, is paradoxical. While now legally freed from the 'closet' many remain trapped into a ghettoised minority group.

The stigma of being homosexual can only ever be really comprehended on a personal existential level; yet, as I said in the introduction, by understanding the complex history of discrimination against homosexuals, it is hoped that gay people may one day find an identity that is closer to their real human condition - not one that is a response to society's insecurity in a world of competing social and political agendas. This paper has not attempted to provide any solutions to the profound social problems that gay people still experience in society. It has merely attempted to expose the obvious historical connections between the present disadvantage experienced by gay people and past discrimination by the State that only ended recently. While no solutions have been put forward, I do, however, believe that it is one of the most important functions of society's academic, legal and professional institutions to educate the broader community about how and why complex social problems, such as homosexual discrimination, have arisen. These institutions have the ability to

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substitute community attitudes based on prejudice, fear and superstition, with enlightened reason and tolerance. It is the view of this writer that if these institutions can learn from the gay experience, then it is more likely that in future the full legal stature and potential of people in all minorities will be realised; at the same time, the standing of these institutions will be significantly enhanced, both domestically and internationally, as the gay stigma vanishes.