

# SexCrime

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Myke Dobber

## *A queer reading of the Tasmanian 'gay law reform debate'.*

*Family.* Lesbians, gays, bis and transgens hold some experiences in common. One possible candidate is the difficulty our families-of-origin have saying our names. Perhaps sisters, brothers, certainly parents, will choke on the words 'lesbian', 'bi', 'gay', 'transgendered'. They will adopt the most curious euphemisms, employ the most circuitous and convoluted sentences, to avoid saying 'the L/B/G/T word'.

It has proven popular, particularly in the context of the present public debate over 'the family', to speak of 'queer family', or 'chosen family', denoting the community we feel with those who share our sexuality. Like our families-of-origin, our chosen families will sometimes choke on certain words. My community here in Tasmania, for example, has tended to choke on my name, 'bi'.

What are the reasons behind families' hesitations? Denial? The hope that it's just a phase, maybe just an intellectual thing? The hope that you'll turn normal with time, that it's just a matter of you meeting the right girl or boy?

In April 1994, the UN Committee on Human Rights found parts of ss.122 and 123 of the Tasmanian *Criminal Code* to be contrary to Articles 17 and 2(1) of the International Covenant on Civil and Political Rights. A protracted and, on occasion, rather ugly public wrangle then ensued between Christian-oriented conservative groups, perhaps the most prominent of which has been a group called TasAlert, and pro-reform groups, the most notable being the Tasmanian Gay and Lesbian Rights Group.

The Tasmanian Gay and Lesbian Rights Group has been so named for the very good reason that that is precisely what it has been: an organisation devoted to the assertion of rights to equal treatment that lesbian and gay Tasmanians deserve by virtue of their being citizens. The organisation does not purport to represent either Tasmanian bis or the transgendered.<sup>1</sup> Clearly the Code provisions which criminalise anal sex between consenting adults in private, and most likely oral sex (the case law is unclear on the precise scope of the sections), directly impact upon and violate the human rights of both bi and transgendered Tasmanians. And yet the word 'bisexual' has not to my knowledge been mentioned once by any group in the public debate over decriminalisation; nor has the word 'transgendered' — not once.

There are some obvious reasons we might give for this absence. There is no public politically oriented bi group operating in Tasmania; nor, I understand, is there any longer a transexual or transgender group here. If the word 'bisexuality' has not been heard in the debate, it is, it might be said, because Tasmania's bis have been too apathetic to get up and say it themselves. And certainly there is some truth here — political mobilisation is important and to the extent that Tasmanian bis like myself have not jumped up and down and torn our hair out publicly, we have let both ourselves and the bi community down.

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But is apathy the whole story? Clearly not, as any queer can tell you. People do not rot in closets for year after painful, soul-destroying year, simply through apathy. There are mechanisms at work, some subtle and fluid, some rather more direct and brutal, which operate to keep the doors closed and keep queers in the dark. Sections 122 and 123 of the Tasmanian *Criminal Code* are of the direct variety, and affect lesbians, gays, bis and the transgendered. What laws of the subtle variety might one identify, laws that have the effect of keeping bi sexualities invisible? More broadly, why has the debate been characterised solely in the language of lesbian and (primarily) gay identity?

#### *UnderSpeak*

*'We're here, we're queer  
They made us march in the back!'*

*'We're here, we're queer  
They thought we were at the back but really we weren't!'*

Two chants adopted by bis at a recent  
US pro-queer demonstration

The suggestion that bis might be everywhere — and that 'everywhere' includes 'closeted in the lesbian and gay community' — is controversial for some lesbians and gays. We are used to thinking of orientation-bounded communities as hermetically sealed, insulated, distinct from an alternate determinate 'heterosexuality'.

*'Coming out to La Cage this weekend?' I continue to stare out the window while they talk, him and my gay friend. 'Well, I've got a lot of work this weekend, an assignment due Monday, so probably not.' Stare. 'I don't really get down to La Cage that much any more anyway, it's not really — I don't enjoy it that much.' 'Yeah, there's a lot of straights down there these days. You know? They don't know how to dance or party, so they come down to La Cage. Too many hets.' Stare. 'Yeah. Too many hets.' Stare.*

The 'safe and sealed' vision of lesbian and gay community grounds itself through the generation and circulation of mythologies regarding identity, one of which is the existence of an unproblematic, politically transparent het sexuality.<sup>2</sup> The myth of het desire to appropriate gay male style (after all, gays throw better parties) is one component of this machine.

*In the back of the car, eavesdropping on a conversation between a gay friend and another member of my community — who had obviously assumed I also was a gay male — a thought crystallised. Something that, despite my reading and writing and enthusiasm for gay law reform, had not until that moment impacted upon my political consciousness. The thought that I was invisible. Letters to the papers, interviews on television, political discussions with members of the Tasmanian Gay and Lesbian Rights Group, pro- and anti-reform pamphlets, even the names of the two phone info lines — in none of these places, nowhere in public space, did I find myself named. With lesbian isolationism on one side and the gay (male) law reform debate on the other, I seemed to have slipped through the epistemic cracks and disappeared entirely.*

And yet it is clear that the boundaries are constantly being ruptured. There are many bis as well as transgendered women and men closeted as lesbian or gay within the lesbian and gay communities; and gender operates to order all cross-gender relations in a patriarchy, not simply those involving some explicit sexual component (such as traditional het marriage). From this perspective, the word 'queer' is not so much an

innovation, a new politics that threatens the dissolution of boundaries, as a recognition of a quake which is already occurring.

The sealing of community, and the epistemologically prior sealing of identity, is not inevitable. On the contrary, it has to be fought for and defended. During the Tasmanian law reform campaign, 'queer' issues and words such as 'bi' began to appear in debate within the lesbian and gay communities, to be met by certain rhetorical figures and categories of argument. One argument which arose against using words like 'bi' and 'queer' and (on occasion, in some of the circles in which I moved) 'lesbian', was that public discussion about putative oppression/border-disputes within the community can be seen as 'letting the side down', generating division just when what 'we' really need is unity. Division is after all what 'they' want. Time and energy is being expended on circular and unproductive word games. Worse, speaking about bi sexualities is giving the homophobes a weapon against us. Speaking about a putative bi sexuality openly is 'admitting' that orientation is malleable, mutable, susceptible to change, and hence lending credence to or even legitimating the conversion therapy rhetoric of our conservative opponents.

Another argument raised is that the division between genders and orientations is so fundamental that there is no commonality; the best we can hope to do is 'sympathise' with each other's subject-positions. Gay men should stay out of feminism (perhaps, be 'friends of feminism'); bi women are essentially het women who invade lesbian subjectivity. Bis, like hets, like the transgendered, do not belong 'here' in the gay and lesbian community.

These arguments encourage bis committed to law reform to shut up about sleeping across gender boundaries. The silence of Tasmanian bis in the public debate is then not a simple absence of voice; this silence marks the presence of active anti-bi stereotypes and bi-ignorant political theory, which in turn generates bi-exclusive political praxis. The dynamic is not restricted to bi oppression, however.

#### **Relating bi invisibility and lesbian and gay oppression**

Dominant discourses which construct and deploy gay male experience and identity depend for their stability on the silencing of difference; in particular, upon a denial of cross-gender and cross-orientation flows of desire. Others have explored at length the mythologies which construct the determinate 'closet self' — here I offer only two brief examples.

One is the reading of any explicit identification with Christian religion, or sometimes indeed, with spirituality itself, as signifying 'internalised homophobia' (a rhetorical figure which, along with 'liberation', constitutes a staple of gay male activist discourse in Tasmania). Christianity is read as marker of a repressive heterosexist and patriarchal construction of sexuality, is read as denoting the closeted self. According to such a view, if you were really out, had a true, honest, integrated conception of your sexual orientation, you would reject Christianity and its inbuilt homophobia.

Another example is the common if only occasionally explicitly articulated belief that 'real' or deeper-level friendships cannot cross orientation boundaries. You cannot 'really' be friends with a het boy the way you can with a gay boy — they will never really understand, they can only sympathise, empathise. We, the gay community, are your real

family, we are your natural social group. Class, spirituality, politics notwithstanding, in so far as you are out, you are one of us.

*'I'm Out, therefore I am.'*

*The traditionalist homoactivist's epistemic regime is characterised by this delightfully compact Cartesianism. The corollary: if you're not Out, you're not In. Or (the bi version): if you're not Out, you don't exist.*

Similarly, while I am somewhat less qualified to offer a woman's perspective on these dynamics, there is a lesbian/lesbian-feminist discourse which, having invested itself heavily in the notion of an arborescent (fixed) identity, depends for stability on the denial of an authentic bi desire (or in the case of separatists, of cross-gender desire itself) and of gender crossover. On such a view, a lesbian is a woman who does not sleep with men. The definition is gender-exclusive, as distinct from a definition which is, for want of a better term, gender-specific, for example, 'I sleep with women'. The stakes in this debate over the definitions which are to bound lesbian community are high. The admission of an authentic bi subject-position would entail the collapse of the determinate closet and determinate out — the dykes and canals that direct the flows of desire.

What are the broader theoretical and practical political effects of such sexuality-sealants? An exhaustive analysis is not possible here; however, I might venture some tentative suggestions. First, this congealing of identities can operate to forestall feminist critique — of gay male behaviours, of lesbian-gay relations, of 'queer community'; most particularly, to forestall feminist critique of the way we do our activism, for example, gender dynamics within political groups. Second, they can operate to de-legitimate coalition, be it across orientation or across gender boundaries, representing it as politically unacceptable, dangerous or impractical. Third, they rigidify and reify 'acceptable' lesbian and gay behaviour (how, when, with whom and what we 'do sex', our spirituality, our friendships, our 'style'). Fourth, they operate to forestall the interrogation of 'heterosexuality' and the notion of the heterosexual gendered body, which is commonly represented as unitary, stable, uniform and unproblematic.

*The pink shirts police boundaries, domain desire, are the henchpeople of the heteropatriarchy, who, in purporting to lead us to freedom and liberation from a closet which their master discourses construct and reconstruct for us, rewrite linchpins of our oppression — specifically, radical gender and orientation binarity.*

'Bisexuality' is understood to threaten the very epistemological construct which makes (a particular mode of) lesbian and gay resistance possible: the construct of (determinate, directly accessible, 'real') identity.

### Queered jurisprudence and queer praxis

I would suggest that in fact the het-homo dyad is a symbiot, each component serving to stabilise the other.<sup>3</sup> There are two aspects of this binary relation I would point to in the context of the Tasmanian law reform debate. The first is that the oppression of lesbian and gay identities can be functionally related to the reification and stabilisation of normative majority-gender-located het sexualities. That is, a stable heterosexuality facilitates queer oppression; and also the reverse is true, that is, queer oppression serves to ensure a stable heterosexuality. The second, that the oppression of bi identities

can be functionally related to the reification and stabilisation of normative majority-gendered homo sexualities. That is, a stable homosexuality facilitates the erasure of bi sexualities; and also the reverse is true, that is, the erasure of bi sexualities operates to reify homo sexualities.

Activism in Tasmania has tended to adopt a model of politics based on legislative action and its concomitants — letter writing campaigns, marches, badge and t-shirt production, networking, penetrating bureaucracies. This differential privileging of legislative change proportionally devalues both personal experience (sexual activity across gender boundaries, gender identity across gender boundaries) and the political importance of the words we use (with the cry: 'but the sentences would be too long!'). By simplifying and condensing, it confirms the flows of desire that make possible a stable heterosexist, mono-gendered, patriarchal power-order — by providing it an Other to the Self, Dysfunctions to its Functions, Ibiologies to its Biologies, an Evil to its Good, a Falsehood to its Truth.

A rethinking of traditional liberal RightsSpeak-oriented political praxis is clearly warranted. Traditional schools of jurisprudence are of limited utility when attempting to frame and/or release queer desire. It is not enough for us as Different, as left, as legal professionals who purport to adopt a critical stance towards the institutions of which some of us form part, to fight for legislative change. We need to develop new modes of political action and new theoretical tools.

Law is power, and it flows through the cracks, percolates through the vast networks of social relations which form our oppositional transgressor communities and through the network of theoretical constructs which form our oppositional transgressor selves. The law is not unitary and determinate; on the contrary, it is radically dispersed, and its texts navigate the contours of our selves and sexualities. The law is organic, and it sprouts stable selves.

I advocate the development of a queered jurisprudence — that is, an account of power with a critical position with respect to the law that incorporates the feminist maxim 'the personal is the political', that adopts a critical stance towards gender relations, that is informed by developments in the so-called new humanities. Such a jurisprudence must be much more than simply a justification for anti-discrimination legislation, it must be capable of interrogating the relation between the law and queer bodies.

This task will necessarily involve analysis of the language which the queer communities deploy to bound themselves. The 'gay law reform debate' was named. With that choice of name, some selves congealed and others slipped into silence.

### References

1. The TGLRG is currently reviewing its stance towards these groups. It is my hope that a pro-actively inclusive approach will result.
2. I speak of 'het sexuality' rather than the more common 'heterosexuality' to highlight the political nature of sexual identity. In my usage, het is to heterosexuality as bi is to bisexuality and lesbian or gay is to homosexuality.
3. The notion of a het-homo dyad I expound at greater length in 'Hegemon: Tracing power through bodies of law', forthcoming, *Law/Text/Culture*.