

Chapter 3

HOMOPHOBIA IN *FIN DE SIÈCLE* COLONIAL QUEENSLAND

YORICK SMAAL AND CLIVE MOORE

Introduction

Queensland was created as a colony in 1859, two years before the death penalty was removed from offences relating to acts of male homosexuality in Britain. It was not until 1865 that capital punishment was removed from the statute books here. The death penalty for homosexual offences was an anachronism that had trailed over from an earlier era and owed more to biblical thinking and Christian moral philosophy than actual circumstances or enforcement. At the time of its abolition, a restructure of sexual and gender categories in Europe was well underway, although it would almost be a century-and-a-half before final law reform in Queensland in 1990 decriminalised consensual sex between adult males in private. Writing in 1994, Michael S Kimmel explains that homophobia:

[I]s more than the irrational fear of gay men, more than the fear that we might be perceived as gay ... Homophobia is the fear that other men will unmask us, emasculate us, reveal to us and the world that we do not measure up, that we are not real men ... Our fear is the fear of humiliation. We are ashamed to be afraid. Shame leads to silence ...¹

The homophobia of 100 years ago was much more than this. There were elements of biblical prohibition and of an anachronistic British justice system, but it was also an aspect of an antipodean

This is a preview. Not all pages are shown.

calling for the protection of young men and boys in the community, in what would be known at its peak in the 1950s, as the greatest menace facing Australia.⁶²

Conclusions

This chapter has shown how various institutions regulated and controlled the expression and practice of same sex desire between men in colonial Queensland, with a concentration of the *fin de siècle* years. In order to protect the dominance of the heterosexual gender matrix and male power, the mechanics of homophobic policy administered by these institutions changed over time, while the objective remained constant. The construction of homosexual men in early Australian society as morally bankrupt, mentally deficient and sexually dangerous, has justified contemporary forms of homophobia. Despite recently announced revisions to 58 federal laws which continue to discriminate against same-sex couples, the Commonwealth still refuses to countenance civil unions, gay marriage and the adoption of children by gay and lesbian couples. More sinister are the continued reports of physical violence towards gay men. The insidious and pervasive forms of homophobia traced in this chapter prevailed as medical science and the criminal law underwent further change in the 20th century. Homosexuality remained classified as a medical illness on the *Diagnostic and Statistical Manual* until the early 1970s, and criminal law reform, which was first achieved in South Australia, did not begin until around the same time. The task of removing homosexuality from the criminal statute books in every State and Territory took a quarter of a century to complete, with Tasmania the final jurisdiction to decriminalise same-sex activity between men in 1997. If we acknowledge that gender and sexuality are social constructions that vary over time, then the hangover of such a long, vociferous campaign against gay men will only be challenged when historians begin to unpick the antecedents of this fear and prejudice.

Notes

- 1 Michael S Kimmel, 'Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity', in Harry Broad and Michael Kaufman (eds), *Theorising Masculinities* (Thousand Oaks, CA: Sage Publications, 1994), p 214.

- 2 The most pertinent work on the formation of homosexual identity and subculture in Australia between the end of convictism and the rise of modern homosexual subculture includes Clive Moore, *Sunshine and Rainbows: The Development of Gay and Lesbian Culture in Queensland* (Brisbane: University of Queensland Press, 2001); Clive Moore and Bryan Jamison, 'Making the Modern Australian Homosexual Male: Queensland's Criminal Justice System and Homosexual Offences, 1860-1954', *Crime, History and Societies*, Vol 11, No 1 (2007), pp 27-54; Clive Moore, 'The Frontier Makes Strange Bedfellows: Masculinity, Mateship and Homosexuality in Colonial Queensland', in Garry Wotherspoon (ed), *Gay and Lesbian Perspectives III: Essays in Australian Culture* (Sydney: Department of Economic History with The Australian Centre for Gay and Lesbian Research, University of Sydney, 1996), pp 17-44; Clive Moore, 'That Abominable Crime: First Steps Towards a Social History of Male Homosexuals in Colonial Queensland, 1859-1900', in Robert Aldrich (ed), *Gay Perspectives II: More Essays in Australian Gay Culture* (Sydney: Department of Economic History with the Australian Centre for Gay and Lesbian Research, University of Sydney Press, 1994), pp 115-148; Yorick Smaal, 'Coding Desire: The Emergence of a Homosexual Subculture in Queensland, 1890-1914', in Yorick Smaal and Belinda McKay (eds), *Queer Queensland*, Special Issue, *Queensland Review*, Vol 14, No 2 (2007), pp 13-28; Yorick Smaal, 'More than Mates?: Masculinity, Homosexuality, and the Formation of an Embryonic Subculture in Queensland, 1890-1914', MPhil Thesis, University of Queensland, 2004; Anne-Marie Collins, *Women and Policing: Uncertain Histories*, PhD Thesis, Griffith University, 1997; Robert French, *Camping by a Billabong: Gay and Lesbian Stories from Australian History* (Sydney: Blackwattle Press, 1993); Robert Aldrich, *Colonialism and Homosexuality* (London: Routledge, 2003), esp pp 217-245; Bruce Baskerville, '"Agreed to Without Debate": Silencing Sodomy in Colonial Western Australia, 1870-1905', in Robert Aldrich and Garry Wotherspoon (eds), *Gay and Lesbian Perspective IV: Studies in Australian Culture* (Sydney: Department of Economic History with The Australian Centre for Lesbian and Gay Research, University of Sydney, 1998), pp 95-115; Walter J Fogarty, '"Certain Habits": The Development of a Concept of the Male Homosexual in New South Wales Law, 1788-1900', in Robert Aldrich and Garry Wotherspoon (eds), *Gay Perspectives: Essays in Australian Gay Culture* (Sydney: Department of Economic History, University of Sydney, 1992), pp 59-76; Walter Fogarty, 'New Light on Beauchamp Indecent Connection: Notions of the Development of the Homosexual in New South Wales Law, 1888-1900', BA Honours Thesis, University of New South Wales, 1989; Adam Carr, 'Policing the "Abominable Crime" in Nineteenth Century Victoria', in David L Philips and Graham Willett (eds), *Australia's Homosexual Histories: Gay and Lesbian Perspectives V* (Melbourne: Australian Centre for Lesbian and Gay Research and the Australian Lesbian and Gay

- Archives, 2000), pp 27-40; Jill Bavin-Mizzi, "'An Unnatural Offence': Sodomy in Western Australia from 1880 to 1900', *Studies in Western Australian History*, Vol XIV (1993), pp 102-120.
- 3 Anthony Fletcher, *Gender, Sex and Subordination in England, 1500-1800* (New Haven: Yale University Press, 1995); Randolph Trumbach, 'London's Sodomites: Homosexual Behaviour and Western Culture in the Eighteenth Century', *Journal of Social History*, Vol 11 (1977), pp 1-33; and, 'England' in Wayne R. Dynes (ed), *Encyclopedia of Homosexuality*, Vol One, (New York: Garland, 1990), pp 354-358.
 - 4 Raymond Evans and Bill Thorpe, 'Commanding Men: Masculinities and the Convict System', in Clive Moore and Kay Saunders (eds), *Australian Masculinities: Men and their Histories*, Special Issue, *Journal of Australian Studies*, Vol 56 (1998), p 19.
 - 5 Victor J Seidler, *Rediscovering Masculinity, Reason, Language and Sexuality* (London: Routledge, 1989), pp 12-13.
 - 6 Evans and Thorpe, 'Commanding Men', p 19.
 - 7 Clive Moore, Just Mates: Masculinity and Sexuality in Colonial Australasia, Unpublished manuscript, 2002, p 5.
 - 8 Garry Wotherspoon, 'A Sodom in the South Pacific: Male Homosexuality in Sydney, 1788-1809', in Graeme Aplin (ed), *A Difficult Infant: Sydney before Macquarie*, (Kensington, New South Wales: New South Wales University Press 1988), p 98; Aldrich, *Colonialism and Homosexuality*, p 218.
 - 9 Of most relevance is the work of Michel Foucault and his ideas on the constructions of power and the 'repressive hypothesis'. Michel Foucault (trans Robert Hurley), *The History of Sexuality*, Vol I, *An Introduction*, (New York: Random House, 1986), pp 6-7, 17-35.
 - 10 Enclosure No 5, CJ LaTrobe to The Right Hon Earl Grey, HM Principal Secretary of State for the Colonies, Melbourne, Port Philip, 31 May 1847, in Ian Brand [commentary and notes], MN Sprod (ed), *The Convict Probation System: Van Diemen's Land 1839-1854: A Study of the Probation System of Convict Discipline; Together with CJ La Trobe's 1847 Report on its Operation, and the 1845 Report of James Boyd on the Probations Station at Darlington, Maria Island* (Hobart: Blubber Head Press, 1990), p 147.
 - 11 CJ LaTrobe to The Right Hon Earl Grey, in Sprod (ed), *The Convict Probation System*, p 149.
 - 12 Evans and Thorpe, 'Commanding Men', p 19; Robert Hughes, *The Fatal Shore: A History of the Transportation of Convicts to Australia, 1787-1868* (London: Collins Harville, 1987), pp 264-272; For contemporary accounts see *Report from the Select Committee on Transportation together with the Minutes of Evidence, Appendix, and Index*, 3 August 1838, in *Irish University Press Series of British Parliamentary Papers, Crime and Punishment and Transportation*, Vol 3 (Shannon, Ireland: Irish University Press, 1968-1971), pp 15-16; 19, 24-26; CJ LaTrobe to The

82 HOMOPHOBIA: AN AUSTRALIAN HISTORY

Right Hon Earl Grey, in Sprod (ed), *The Convict Probation System*, pp 147-160.

- 13 Hughes, *The Fatal Shore*.
- 14 Russell Ward, *The Australian Legend* (Melbourne: Oxford University Press, 1958), pp 99-100.
- 15 Dennis Altman, 'The Myth of Mateship', *Meanjin*, Vol 46, No 2 (1987), pp 163-172.
- 16 Wotherspoon, 'A Sodom in the South Pacific', pp 97-99.
- 17 French, *Camping by a Billabong*, pp 43-46.
- 18 'Beat' is a colloquial term for public places used for sexual procurement frequently enough to be known both by dedicated users and often the police.
- 19 Moore, *Sunshine and Rainbows*, pp 31, 70; Smaal, 'Coding Desire', p 17.
- 20 Baskerville, "'Agreed to Without Debate'", pp 104-105.
- 21 Lesbians, unlike gay males were never under threat of criminal prosecution, however, in many ways they faced something of a double penalty: first for being women in a substantially male-oriented culture; and second for being women in a rampant masculinist capitalist society. At the end of the 19th century there is some evidence of the emergence of a lesbian side to the subculture. In *Sunshine and Rainbows*, Moore argues that women, because they achieved their gender status primarily through their relationships with men, were slower to reach the newer independent status now designated as lesbian, which emerged early in the 20th century. We agree with Elizabeth Kennedy, Madeline Davis and George Chauncey that the nature of capitalism and patriarchy meant that there are class and ethnic differences in the timing of the development of different sections of the male/female homosexual subculture. Elizabeth Lapovsky Kennedy and Madeline D Davis, *Boots of Leather, Slippers of Gold: The History of a Lesbian Community*, (New York: Routledge, 1993); George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940*, (New York: Basic Books 1994).
- 22 Philip to Lord Sydney, 28 February 1787, *Historical Records of New South Wales*, I/II, pp 52-53.
- 23 *An Act to Consolidate and Amend the Statute Law of Queensland Relating to Offences Against the Person* (29 Victoriae, No 11), [13 September 1865].
- 24 *An Act to Consolidate and Amend the Statute Law of Queensland*, s 62.
- 25 *Ibid*, s 63.
- 26 *Ibid*, s 64.
- 27 John Vockler, Sir Samuel Walker Griffith, BA Honours Thesis, University of Queensland, 1953, p 320; James Thomas, 'Griffith at Work (1893-1903): A Snapshot', in Michael White and Aladin Rahemtula

(eds), *Sir Samuel Griffith: The Law and Constitution* (Sydney: Lawbook Company, 2002), p 204.

- 28 Vockler, Sir Samuel Walker Griffith, p 322.
- 29 *The Criminal Code Act, 1899* (63 Vic No 9), ss 208 , 209.
- 30 *Ibid*, s 210.
- 31 *Ibid*, s 211.
- 32 Moore and Jamison, 'Making the Modern Australian Homosexual Male', p 5; Fogarty, "'Certain Habits'", pp 67-68; Carr, 'Policing the "Abominable Crime"', p 38; Also see FB Smith, 'Labouchère's amendment to the Criminal Law Amendment Bill', *Historical Studies*, Vol 17, No 67 (1976), pp 165-173.
- 33 *An Act to make Further Provision for the Protection of Women and Girls, the Suppression of Brothels and Other Purposes*, 14 August 1885 (48 & 49 Victoria Cap 69).
- 34 For example, 1919 in Victoria. See Carr, 'Policing the "Abominable Crime"', pp 38-39.
- 35 Sections 336 and 337, *The Criminal Code Act, 1899* (63 Vic No 9).
- 36 Sections 336 and 337, *The Criminal Code Act, 1899* (63 Vic No 9).
- 37 For the purpose of this chapter, a definitive charge is one that can be positively ascertained as relating to homosexual behaviour between men.
- 38 Australian Bureau of Statistics, *Population by Sex, State and Territories, 31 December 1788 Onwards* (Cat No 3105.0.65.001), Australian Historical Population Statistics, 2006, <www.abs.gov.au>, (accessed 7 February 2008).
- 39 We acknowledge that these figures include male children and are not wholly accurate.
- 40 Fogarty, "'Certain Habits'", pp 59-60.
- 41 *Ibid*, p 65.
- 42 *Ibid*, p 65.
- 43 Moore and Jamison, 'Making the Modern Australian Homosexual Male', pp 42-49; Smaal, *More than Mates?*, pp 40, 65; Carr, 'Policing the "Abominable Crime"', pp 29, 33-34; Collins, *Women and Policing*, pp 92-93; Moore, *Sunshine and Rainbows*, p 111; Libby Connors, 'Two Opposed Traditions: Male Popular Culture and the Criminal Justice System in Early Queensland', in Aldrich (ed), *Gay Perspectives II*, p 89; Commentary by Moore and Carr in, *The Hidden History of Homosexual Australia* [video-recording] (Sydney: SBS, 2005); Aldrich, *Colonialism and Homosexuality*, pp 223-224.
- 44 Yorick Smaal, ch 3, 'Homosexuality and the Law', in *On the 'Homo-front': Homosexuality in World War II Queensland*, PhD Thesis, University of Queensland, in progress.
- 45 Angus McLaren, *Twentieth Century Sexuality: A History* (Oxford: Blackwell Publishers, 1999), p 90; Jeffrey Weeks, *Coming Out: Homosexual*

84 HOMOPHOBIA: AN AUSTRALIAN HISTORY

Politics in Britain from the Nineteenth Century to Present (London: Quartet Books, 1990), p 23.

- 46 McLaren, *Twentieth Century Sexuality*, p 90; Weeks, *Coming Out*, p 23; RW Connell and GW Dowsett, "'The Unclean Motion of the Generative Parts': Frameworks in Western Thought on Sexuality", in RW Connell and GW Dowsett (eds), *Rethinking Sex: Social Theory and Sexuality Research* (Melbourne: Melbourne University Press, 1992), pp 49-75; Foucault, *The History of Sexuality*, pp 43, 53-73; Moore, *Sunshine and Rainbows*, pp 8-15; George Chauncey, 'From Sexual Inversion to Homosexuality: Medicine and the Changing Conceptualisation of Female Deviance', *Salmagundi*, 58-59 (1982-1983), pp 114-146.
- 47 George Robb, 'The Way of the Flesh: Degeneration, Eugenics and the Gospel of Free Love', *Journal of the History of Sexuality*, Vol 6, No 4 (1996), p 589; Andrew Markus, *Australian Race Relations* (Sydney: Allen and Unwin, 1994), p 1.
- 48 Chauncey, 'From Sexual Inversion to Homosexuality', pp 142-143.
- 49 For example, see Richard von Krafft-Ebing [Harry E Wedeck, trans], *Psychopathia Sexualis: A Medico-Forensic Study* (New York: G Putnam's and Sons, 1965), pp 358-359; Karl Heinrich Ulrichs [Michael A Lombard-Nash, trans] *The Riddle of 'Man-Manly' Love: The Pioneering Work of Male Homosexuality* (Buffalo: Prometheus Books, 1994), pp 36-41.
- 50 Chauncey, 'From Sexual Inversion to Homosexuality', p 119.
- 51 *Ibid*, p 118.
- 52 Weeks, *Coming Out*, p 27.
- 53 Foucault, *The History of Sexuality*, pp 66-67.
- 54 *Ibid*, p 43.
- 55 Thomas Stevenson (ed), *The Principles and Practice of Medical Jurisprudence by the late Alfred Swaine Taylor, Volume Two* (London: J and A Churchill, 1883), p 459.
- 56 Michael L Satlow, "'They Abused Him Like a Woman': Homoeroticism, Gender Burring, and the Rabbis in Late Antiquity', *Journal of the History of Sexuality*, Vol 5, No 1 (1994), pp 1-3; Collins, *Women and Policing*, p 60. Ngairé Naffine also suggest that there is a strong connection between female bodies and feminised men and argues that men who are sexually penetrated by other men are relegated to the position of the female. These men are outlawed to prevent the erosion of the male power base in the public realm. See Ngairé Naffine, 'The Body Bag', in Ngairé Naffine and Rosemary J. Owens (eds), *Sexing the Subject of Law* (Sydney: Law Book Company Information Services, 1997), p 91.
- 57 Collins, *Women and Policing*, p 60.
- 58 *Ibid*, p 60.

- 59 *R v John Lowry* in Briefs, Depositions and Criminal Cases Heard in Sittings in Brisbane, 1 February 1907 to 28 February 1907, Queensland State Archives, SCT/CC183.
- 60 Stevenson, *The Principles and Practice*, p 461.
- 61 *Ibid*, p 459.
- 62 Aldrich, *Colonialism and Homosexuality*, p 238; Garry Wotherspoon, 'The Greatest Menace Facing Australia: The State of NSW during the Cold War', *Labour History*, No 56, (May 1989), pp 15-28.