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Denying Equality:

An analysis of arguments against lowering the age of consent for sex between men

(Short title: Denying Equality)

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ABSTRACT

This paper takes a human rights approach to lesbian and gay oppression and critically explores the arguments used to oppose equality in the debates about the age of consent for sex between men. A thematic analysis of Hansard and newspaper reports produced in Britain during the 1990s showed that opponents of the amendment to equalise the age of consent countered with three key arguments laying claim to ethical principles overriding the principle of equality. These were: (1) Principles of right and wrong take precedence over equality; (2) Principles of democracy take precedence over equality; (3) Principles of care and protection take precedence over equality. Two additional arguments (the health risks of anal intercourse, and escalating demands for gay rights) are also outlined. Our findings are discussed with reference to debates on other lesbian and gay rights issues, and we consider the ways in which we might best counter these arguments.

Key words: age of consent; equality; gay men; human rights; rhetoric

Denying Equality:

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The notion of equality for all has long been enshrined in international human rights documents. The first article of the Universal Declaration of Human Rights (United Nations General Assembly, 1948) unequivocally states that “all human beings are born ... equal in dignity and rights”, and is immediately followed, in the second article, by the words “everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, property, birth or other status”. The European Convention and other regional treaties include similar statements.

A human rights approach to lesbian and gay issues takes as its starting point the fundamental principle that human rights are “a form of moral rights in being the rights of all people at all times and in all situations” (Cranston, 1962, p. 49) and that these universal and inalienable rights comprise first and foremost the right to life, and second, any rights which maintain the existence and quality of that life (e.g. civil, social, and economic rights) for all people independent of individual differences such as class, race, sex, sexual orientation, religion, and (dis)ability (Donnelley, 1993). Whether or not such rights are embodied in laws, treaties and declarations, a human rights perspective is dedicated to addressing equality issues for *all* people, including lesbians and gay men, as *human beings*.

Equality is a fundamental principle of human rights and, qua principle, it is widely supported, as our own research shows (Ellis, 2002; Ellis et al., in press). Despite

this ‘in principle’ support, however, the human rights of lesbians and gay men are violated internationally and in no country of the world do lesbians and gay men currently have equal human rights with heterosexual persons (see Amnesty International, 1997). Although the European Convention of Human Rights might offer some protection for lesbians and gay men in Europe, the European Commission and Court have notably failed to support applications which accord to lesbians and gay men the ‘right to marry and found a family’, for example in ruling that the British government did not violate the right to family life in denying the Malaysian partner of a Malaysian-English gay couple a work permit in the UK, or in declining the claim of a Dutch lesbian couple to be granted full parental rights over their son (see van der Veen et al., 1993/1998).

Given widespread support for human rights *in principle*, how, *in practice*, do people construct arguments which deny human rights to some people? The ‘age of consent’ debates, recently at the forefront of political debate and media coverage around lesbian and gay issues in the United Kingdom, offers a compelling case study of the ways in which arguments can be constructed to support discrimination and inequality.

The age of consent was first created in 1885, out of a concern over child prostitution, and prohibited sexual intercourse with women under the age of 16 (Waites, 1998). This same act made (male) homosexuality illegal for the first time in Britain, by stipulating that ‘gross indecency’ between males (in both private and public) be considered a criminal offence, punishable by two years imprisonment (Hyde, 1970; Mason & Palmer, 1998). Although the term “gross indecency” has never been defined in statute, in practice the common law prohibition of ‘buggery’ or ‘sodomy’ has been applied to all homosexual acts between males (Slater & Mason, c.1994).

In 1957, the Wolfenden Committee recommended the decriminalisation of male homosexual practices (DCHOP, 1957). The 1967 Sexual Offences Act (England and Wales), which finally put the Wolfenden recommendations into law, decriminalised consensual sexual practices in private places between adult males, with the exception of anal intercourse (which remained illegal for both heterosexuals and homosexuals). Although the 1967 Sexual Offences Act (partially) decriminalised homosexuality, it simultaneously discriminated against (male) homosexuals by setting the age of consent at 16 for heterosexual sex and 21 for (male) homosexual sex, therefore constructing a discriminatory age of consent (Smith, 1994; Waites, 1998). This discriminatory age of consent has been seen by proponents of change as a human rights issue - in particular, about the rights of all men (gay, straight, bisexual, and unlabelled) to be afforded equal status under the law.

In the early 1990s, a series of campaigns, led predominantly by Stonewall, were mounted to challenge the discriminatory age of consent (Smith, 1995; Waites, 1998). After considerable debate in the House of Commons², the age of consent for male homosexual sex was reduced from 21 to 18, and anal intercourse was decriminalised for consenting adults over the age of 18. However, an age distinction remained in place, and attempts to achieve an equal age of consent with heterosexuals (of 16) failed.

Subsequently, a case was brought before the European Court in respect of the unequal age of consent (*Euan Sutherland v. UK*). The Sutherland case was heard in the European Court, and on 1 July 1997, the European Human Rights Commission ruled that

no objective and reasonable justification exists for the maintenance of a higher minimum age of consent to male homosexual, than to heterosexual,

acts and that the application discloses discriminatory treatment in the exercise of the applicant's rights to respect for private life under Article 8 of the convention (ILGA, quoted in Krickler, 1998, p. unknown).

requiring the UK to bring its age of consent laws in line with its obligations under the European Convention (McKelvey, 1998).

In June 1998 in the House of Commons, Labour backbencher Ann Keen tabled an amendment (new clause 1) to the Crime and Disorder Bill which advocated the reduction of the age of consent for sex between men from 18 to 16 – the same as the age of consent between a man and a woman. In the House of Commons the clause was overwhelmingly supported (336 to 129). A month later in the House of Lords, the decision was reversed – again by an overwhelming majority (290 to 122). In 1999, a revised version of the amendment, in the form of the Sexual Offences (Amendment) Bill, was tabled and supported in the House of Commons (313 to 130) but opposed in the House of Lords (222 to 146). Consequently, the British law continued to maintain a different age of consent for sex between males compared with that for heterosexual sex. Finally, in November 2000 (the 100th anniversary of the death of Oscar Wilde, famously tried and imprisoned for 'gross indecency'), Britain's Speaker of the House of Commons announced that the government would override the dissenting House of Lords and send a bill to equalise the age of consent to the Queen for her royal assent. This move realised in UK law, the resolution of the European Parliament (1994) that all member states equalise all age of consent laws (Sanders et al., 1997). Consequently, the UK Legislation is now in line with most other European countries, where the age of consent for homosexuality is equal to that of heterosexuality (see AVERT, 2001).

As with other attempts to secure civil and human rights (e.g. for women and for racial and ethnic minorities, see Tomaševski, 1998), lesbian and gay rights activists campaigning for the right to marriage (e.g. see Zicklin, 1998), for domestic partner benefits (e.g. see Spielman & Winfeld, 1996), and for the right to serve in the military (e.g. see Wyman & Snyder, 1997) frequently based their campaigns on the issue of equality, or equal rights for all. Similarly, in the UK age of consent debate, the key principle advanced by those in favour of lowering the age of consent (1994, 1998, and 1999 debates) was a human rights argument based on equality. Throughout the campaign in the UK, gay and lesbian lobbying groups, and civil and human rights organisations, prioritised the principle of equal rights and the removal of discrimination. In particular, their focus was on arguing for an *equal* age of consent, rather than on the *lowering* of the age of consent, the latter of which seemed to be paramount to the campaigns of the opposition. Consequently, the public campaign of these groups was mobilised on arguments of equality: "The case for equality" (Stonewall, 1998); "Write for the right to equality" (Stonewall, 1999); "Outrage! Backs equality at 16" (Outrage!, 1999); "Liberty welcomes equalisation of the age of consent" (Liberty, 1999).

The equality argument was also echoed in the Houses of Parliament by proponents of change - indeed, according to one of the bill's opponents, "equality" was "a leitmotif throughout the debate" (Lord Quirk). Members supporting the amendment referred continually to their commitment to equality: "Equality is the only worthwhile and sustainable position" (Edwina Currie); "I believe in the fundamental principle that we are all equal before the law" (Chris Smith); "This debate is about equality"; and that "the Bill is not about family policy, sexually transmitted diseases, health education or homosexuality and whether we approve of such practices. It is a Bill about human rights

and equality under the law” (Lord Warner). (all quotes extracted from Hansard, the official transcripts of Parliamentary debates).

The equality argument is based on a human rights perspective (Donnelley, 1993), a central tenet of which is that of non-discrimination (see United Nations General Assembly, 1948). Not surprisingly, then, the equality argument has been seen as a powerful political tool in fighting for social change. Nonetheless, in relation to the age of consent, it was opposed by many MPs, Lords, journalists, and letter-writers, and was eventually defeated by a House of Lords vote.

Whilst lesbian and gay rights issues have been discussed across the social sciences, few have empirically explored the arguments tabled to argue for or against equality. The purpose of this paper, therefore, is critically to explore the arguments used to oppose equality in relation to this issue, with a view to identifying ways in which we might best challenge these arguments. As others (e.g. Meyers, 1994) have suggested, by examining the discourses used by parliamentarians and by the public with regard to lesbian and gay issues, it may be possible better to develop strategies for the advancement of civil and human rights for lesbians and gay men.

Situated within the broader tradition of rhetorical analysis (e.g. see Billig, 1996; Potter, 1996), this paper contributes to the existing literature exploring the construction of racist, sexist and heterosexist arguments across a range of contexts including interviews and focus groups (Kitzinger and Thomas, 1995; Speer and Potter, 2000; Wetherell and Potter, 1992), talk shows (e.g. Clarke, 1999, 2002), Hansard reports (e.g. Epstein et al., 2000), and the print media (e.g. Myrick, 1998; Williams, 1996-97). In these analyses, the aim is not to engage with, or to seek to ‘disprove’, the argumentative

claims with which we are in disagreement, but rather to develop a better understanding of their rhetorical nature.

Analysing the Texts

Our analysis is based on Hansard (from both the House of Lords and House of Commons) from the 1994, 1998, and 1999 parliamentary debates on the homosexual age of consent, and newspaper clippings from the major British daily broadsheet newspapers (The Daily Telegraph, The Guardian, The Independent, and The Times), the tabloid newspapers (e.g. The Daily Mirror; The Sun) and gay press (e.g. Pink Paper; Axiom News), covering the period of the 1998 and 1999 debates. Analysis relied upon organising sections of the data into recurrent themes (Campbell and Schram, 1995), allowing the data themselves to suggest names for the themes, and using direct quotations to illustrate the kind of data classified within each theme (as advocated by Kissling, 1996 and Breakwell, 1995). This form of analysis may be characterised as either ‘thematic’ (comparable to the ‘thematic analysis’ of Kitzinger and Wilmott, 2001) or as a form of ‘discursive analysis’ (of the type reported in Plumridge et al., 1997 or Weaver and Ussher, 1997). We have here avoided engaging with epistemological issues about the status of the data (i.e. whether or not the people we quote actually ‘believe’ what they say; what their words do or do not tell us about their ‘attitudes’, etc.; but for cogent discussions of epistemology in relation to content, thematic/biographical and discursive analysis, see Wilkinson, 2000). Although the sources of data differ substantially in purpose, style, and audience, our aim was simply to identify the key arguments used to oppose the equalisation of the age of consent, and to understand how,

in the face of apparently widespread support for ‘equality’ and human rights in general, equality in relation to same-sex sex for young men is systematically opposed.

Our analysis showed that opponents of the amendment countered with three key arguments which laid claim to ethical principles overriding the principle of equality: (1) Principles of right and wrong take precedence over equality; (2) Principles of democracy take precedence over equality; (3) Principles of care and protection take precedence over equality. Two further arguments were also widely used, the first relying on allegations about the health risks of male homosexual sex, the second relying on allegations about the gay movement’s escalating demands for ever more rights (with the age of consent being a ‘thin end of the wedge’, or the beginning of a ‘slippery slope’). These arguments are explored in detail in the next section of the paper.

Arguing against Equality

We will now illustrate the employment of each of these five arguments in relation to the age of consent debate, and discuss how these map onto the arguments employed in previous debates on lesbian and gay issues. Although we have treated each of these five categories as discrete, they are to a large extent intertwined, and many contributors to the debate used more than one argument. Full references for the data extracts are available from the authors by request.

(i) Principles of right and wrong take precedence over equality; There can be no ‘equality’ between normality and abnormality, moral probity and sin.

Primarily employing a Judeo-Christian moral framework, opponents of change employed moral arguments to advance ethical objections to the proposal for an equal

age of consent. Typically, two moral arguments were employed as attempts to discredit the argument of equality.

First, those opposed to the lowering of the age of consent argued that “there is no equality between homosexual and heterosexual intercourse” (Andrew Robathan), and therefore “there is no requirement on any government to give equal treatment to normal and abnormal behaviour” (J. Hereford). Lord Selsdon makes a clear distinction between: “good, clean, healthy sex between a man and his wife” which is “the ultimate expression of love and affection” and homosexuality which is “carnalis copula contra naturam. It is against nature; it is unnatural”.

Second, the argument that God denounces homosexuality was also invoked. For example, the Lord Bishop of Winchester stated that “some forms of sexual fulfilment are intrinsically better and more in accord with God’s will” and therefore it does not follow that all forms of sexuality should be granted equal status. Similarly, others claimed that homosexuality is “unnatural: it is a perversion; and it is repeatedly and firmly condemned in holy scripture” (Lord Ashbourne), and that “the New Testament...is equally strong in its denunciation of what the Bible states is ... abnormal practice and perversion” (Rev Ian Paisley).

As is the case here, rhetoric around homosexuality as ‘sinful’, ‘morally wrong’, ‘sick’, ‘unnatural’ or ‘deviant’ is well established in both psychological and public discourse and, indeed, has been employed in other contexts in which lesbian and gay rights have been opposed.

Although homosexuality is seldom viewed as an illness today (Kitzinger, 1996), and few people in either the USA or the UK appear to consider it unnatural, perverted, or sinful (see Herek, 1994; Ellis et al., in press), this argument is still commonplace

when opposing lesbian and gay rights. It is argued that the protection of gays and lesbians undermines morality (Samar, 1994), and any effort to put homosexuality on an equal plane with heterosexuality is typically seen as subversive (Smith, 1994). Those who use these arguments commonly employ what Jacobs (1993) calls the “scourge rhetoric”, conveying disapprobation for homosexuality, and drawing on moral (often biblical) discourses to assert the intrinsic evil of lesbians and gay men.

Those opposed to equality also draw on discourses around what is ‘natural’ or ‘normal’ (MacKinnon, 1992; see also Tiefer, 1997). In post-Christian Europe, much of the opposition to lesbian and gay rights has centred around claims that the legitimisation of homosexuality through the granting of (‘special’) rights, will result in the demise of the (heterosexual, two-parent, nuclear) family, seen as the foundation of morality and society as we know it (e.g. see MacKinnon, 1992). In the UK, the campaigns of Mary Whitehouse and the Thatcher government, which led to the institution of Section 28 of the Local Government Act³, were designed to address the alleged “declining morals” of British society (Adam, 1995). Similarly, in the recent French campaign to achieve legal recognition for gay couples, opponents of change denounced the move as “the death of the family” and “licensed debauchery” (Bremner, 1999), and in the 1986 local elections Peter Murphy (Conservative Chairman for Tottenham) claimed that “the council’s pro-lesbian and gay rights policy was ‘part of a Marxist plot to destabilise society as we know it’” (Smith, 1994, p.187).

Arguments around normality and abnormality, moral probity, and sin serve as ‘rationalisations’ for maintaining inequality (see Tiefer, 1997), and are difficult to counter with substantial evidence. They are predominantly used to provide a means to deny lesbians and gay men equality.

(ii) Principles of democracy take precedence over equality; the majority of the population opposes any lowering of the age of consent.

Grounded in the notion of democracy, majoritarian arguments were employed to oppose an equal age of consent. Statistics allegedly supporting these claims were frequently employed. For example, it was repeatedly argued that “at least 80 per cent of the population is against legalising gay sex for 16 year-olds” (T. Domeng); and that “opinion polls suggest that between three fifths and three quarters of people in this country do not want the age of consent to be reduced” (Andrew Robathan). Others, employed broad sweeping statements about majority opposition, claiming that “people do not want it. Parents do not want it....” (Earl Ferrers); and that “...the public at large do not want the age of consent lowered to 16” (Baroness Young).

Proponents of this position, then, draw on majoritarian arguments, to claim that what the 'majority' wants is what is in the best interests of society as a whole.

Homosexuals, on the other hand, were represented as a “tiny dissident minority” whose demands “that the other 95 per cent or 99 per cent must accept and treat as equal” (Lord Jakobovits) were entirely illegitimate. Other debates over lesbian and gay rights in the United Kingdom have likewise employed majoritarian arguments. For example, in arguing for the institution of Section 28, the Conservative party offered opinion polls as ‘conclusive’ evidence for the necessity of the section and to argue that the public supported the need for legislation (Smith, 1994).

This line of reasoning relies on the argument that what the (real, perceived, or claimed) majority wants, is what should prevail, and this principle is elevated to the status of a democratic right overriding the principle of equality.

(iii) Principles of care and protection take precedence over equality: Young men are immature and vulnerable and need the protection of the criminal law.

Rhetoric around young (adolescent) men as vulnerable and in need of being protected by society were also frequently employed to deny gay men equality with heterosexuals. Older (homosexual) men were presented as necessarily predatory, evoking a proliferation of debates around the need to protect young people (e.g. “My overwhelming concern ...is the protection of young people”, Baroness Young; “Our priority is to protect the vulnerable”, Alun Michael; the Bill is “above all a child protection issue” Baroness Blatch).

Throughout the data, there were numerous protestations that equalising the age of consent would result in the abuse of teenage boys by older (homosexual) men. For example, claims that “the Home Secretary is bulldozing through a paedophiles’ charter” (Daily Telegraph, 26/1/99), or “... granting a charter for unnatural sexual practices with young boys” (H. Thomson) were commonplace, and suggestions were made that lowering the age of consent would result in young boys “being led or forced into doing something they do not want to do” (L. Stafford); or “of being befriended and abused by older, homosexual men” (Lord Annaly).

The other key argument evoked here was the notion of teenage boys as immature. Some claimed that “sixteen is an extremely formative age....at 16, young people ... are unsure about themselves” (Earl Ferrers), and that “those extra two years may well save [a boy] from becoming involved in a homosexual relationship which he might bitterly regret later in life” (Lord Gray of Contin). Claims about gender differences, especially the idea that girls are more mature than boys, were advanced

specifically in support of taking a discriminatory position on heterosexual and homosexual sex. For example, Lord Annaly claimed that “young men mature physically and emotionally rather later than girls.... by keeping the homosexual age of consent at 18, time is allowed for adolescent boys to mature and be in a better position to decide their sexuality”.

Rhetoric around the need to protect young men (in this case, those aged 16-18 years) relies on the mobilisation of the image of homosexuality as essentially predatory, and the construction of young men as helpless and vulnerable children, the majority of whom are open to corruption (Smith, 1994). In debates around lesbian and gay rights, anti-discrimination laws have typically been equated with ‘child molesting’ and ‘gay recruiting’ (Button et al., 1997; MacKinnon, 1992), hence the normalisation of the image of the vulnerable young man who is threatened with perversion by the older male homosexual seducer (Smith, 1994). In the US, Anita Bryant’s campaign equating anti-discrimination proposals with ‘child-molesting’, ‘boy prostitution’, and ‘gay recruiting’, was responsible for the ban on open homosexuals teaching in public schools in some US states (Diamond, 1995), and for proposed anti-discrimination measures being overturned in others (Adam, 1995).

Concerns around the need to ‘protect’ children, have also centred around the idea that legitimising homosexual behaviour encourages role models harmful to children, who are necessarily seen as impressionable (Samar, 1994; see for example, La Haye, 1995). In the United Kingdom, Section 28, serves to ensure that children are not exposed to discourses presenting homosexuality in a favourable light until ‘true’ sexuality has been carefully nurtured (Smith, 1994). Consequently, opponents of the

recent bid to repeal Section 28 adopted this theme, suggesting that the “law must be preserved to protect schoolchildren” (Daily Telegraph, 8/2/00).

In summary, principles of care and protection have frequently been prioritised in issues concerning equality for lesbians and gay men, including the age of consent for sex between males. Like arguments around moral probity, these are rhetorically persuasive, in that they evoke moral panic (see Goode & Ben-Yehuda, 1994) by employing unsubstantiated claims that (all) children are in ‘real’ danger of being corrupted. They elicit support by relying on the evocation of societal outrage around child sexual abuse, whilst at the same time promoting the notion of homosexuality as the only ‘true’ form of sexual expression.

(iv) Health Risks

The alleged health risks of a homosexual lifestyle, in particular, rhetoric around promiscuity, AIDS/HIV and other sexually transmitted diseases were also employed in these debates. Opponents of change claimed that “homosexual HIV infections rose by 11 per cent from 1995 to 1996 after the age of consent was lowered to 18 in 1994” (D. Holloway), and that “homosexual practices carry great health risks to young people” (Baroness Young).

Typically, (male) homosexuality was constructed primarily (or even solely) as comprising anal intercourse, and consequently, rhetoric around health risks relied on truth claims about medical risks surrounding this practice. For example, claims were made that “homosexuality is largely associated with the dangerous practice of anal intercourse, frequent changes of partner and the spread of HIV, hepatitis B and gonorrhoea” (A. Rogers); “...sarcomas, lower bowel damage” (P. Watson); and with “

...HIV infection and other sexually transmitted diseases” (The Daily Telegraph, 19/6/98).

Rhetoric around homosexuals as promiscuous, and homosexuality as ‘unhealthy’ and responsible for the spread of sexually transmitted diseases has been widely employed by those wishing to exclude lesbians and gay men from human rights. For example, Dr. Paul Cameron’s (Family Research Institute, Colorado) pamphlet on *Same Sex Marriage* claims that “the evidence is... strong that gays disproportionately contract more disease, especially AIDS and the various forms of hepatitis” (Cameron, 1997). Disease rhetoric is strategically employed to oppose equality so that homosexuality is represented as a threat to society as a whole (Smith, 1994), in the same way that around the turn of the century, Jews were widely regarded as tuberculosis carriers and therefore a threat to society (Smith, 1994).

(v) Wedges and Slippery Slopes

Finally, the equalisation of the age of consent was also presented as "the thin end of the wedge" (Gerald Howarth; Baroness Young) in that it would initiate requests for further extensions of human rights to lesbians and gay men, such as “the right to homosexual marriage... the right to adopt and foster children... the repeal of Section 28” (Lord Stallard; also Baroness Young and Edward Leigh). Others claimed “we may accept that we lower the age of consent to 16 now, but in practice it gives the green light to 14 year-olds, and we are going down a slippery slope” (Lord Habgood)

These arguments have also been widely adopted in campaigns against other lesbian and gay rights issues – for example, with the claims, that granting such rights opens the floodgates to affirmative action programmes (Samar, 1994). Underlying this

line of argument is the construction of lesbian and gay rights as “special rights”, as opposed to human rights (Button et al., 1997). For example, in the ballot for anti-discrimination laws in Oregon (1988), those opposed to the proposed laws attempted to convince voters that gays and lesbians were “demanding something beyond basic legal protections enjoyed by other groups of citizens” (human rights) and “demanding special excessive privileges” (Diamond, 1995, p.253). These claims were exemplified in the video, *Gay Rights, Special Rights* (see Segrest, 1995), which argues that lesbians and gay men do not constitute a bone fide ‘minority’ group - defined in terms of “immutable characteristics” (such as skin colour), a “history of discrimination”, and political powerlessness. Defining homosexuality as a sexual choice or lifestyle of (largely) wealthy white men with allies in Congress, the video works to suggest that gay people do not need protection and that any demands for rights could be only for ‘special rights’ giving them even more power and privilege. Proponents of this position either do not perceive lesbians and gay men as having suffered discrimination, or view such discrimination as justified, in that homosexuality is an objectionable ‘chosen behaviour’ (Button et al., 1997; Schacter, 1994). In effect they are diversionary arguments, shifting the focus away from human rights.

Arguing Back

As we have seen, the arguments used to oppose the lowering of the age of consent for sex between men are familiar arguments, which also have been employed in other contexts to oppose lesbian and gay rights. In arguing against human rights and equality, those opposed to change employed two types of arguments: moral arguments (based on frameworks other than human rights) and ‘fact’ based arguments (or ‘truth’ claims)

about the age at which young men are sufficiently mature to make informed choices about their sexuality, or the health implications of anal intercourse. Collectively, these arguments represent a coherent and effective strategy for opposing equality.

Although proponents of change initially argued for the lowering of the age of consent on grounds of human rights and equality, in arguing back against the opposition they resorted to providing counter-evidence to the opposition's claims (e.g. see Smith, 1994) (perhaps because these are easy to argue against in that they can easily be refuted by available evidence [Samar, 1994]). For example, in responding to claims that homosexuality is "unnatural" and therefore should not be accorded equal rights, Lord Plant asserted that "most of human civilization is achieved by artifice, by struggling against the natural, not by equating the natural with the morally good", and he pointed to "drug therapies", "aeroplane travel" and "grand opera" as instances of "unnatural" human achievements which mean that "the claim that homosexuals should be treated differently from heterosexuals on the ground of the alleged unnaturalness of their practices as very dubious". Claims that homosexuality is immoral or sinful were challenged with the counter-claim that people "are entitled to campaign for those opinions ... [but] not entitled to insist that their prejudices be written into British law" (Edwina Currie), and that "in the past, the same thing has been said about practices such as divorce and contraception, and we do not now make laws banning them" (Edwina Currie).

With regard to majoritarian arguments, some supporters of equality claimed a division in public opinion between "the over-55s" (in favour of retaining a discriminatory age of consent) and the "overwhelming majority of 15 to 24 year olds favouring the lowering of the age for homosexual consent" (Lord Warner). Citing

national opinion polls, Lord Ponsonby claimed that “young people do not want the protection which this House may seek to give them” and the Earl of Clancarty likewise claimed that “the vast majority of young people would certainly support this Bill”. Others simply argued that “basic rights and freedoms should [not] be decided on the basis of majoritarianism or the outcome of opinion polls” (Lord Lester of Herne Hill), or that “if in 1967, our predecessors in the House had waited for a consensus of public opinion ... we would still have total criminalisation of homosexual behaviour” (Neil Kinnock)

In opposition to the claim that the age of consent discrimination was necessary to protect young men, it was argued that the law did not protect young men, but rather, inhibited them from seeking advice and support from individuals and organisations (Ann Keen, Edwina Currie, Mr Watson, and others). For example, Edwina Currie argued that “a law that keeps people silent and means that they are unable to lodge a complaint is not a protective shield.... It is a gag, and it is likely to leave them much more open to abuse, pressure, harassment, blackmail, and extortion”. Where arguments were made about exposing young boys to abuse by predatory older men, proponents of change offered counter-arguments suggesting that “overwhelmingly the problem of abuse is the problem of abuse by older men of younger women” (Chris Smith); and that sexual abuse “happens ... with young girls, yet no one would advance that as a reason for raising the age of consent” (Tony Blair).

Similarly, counterclaims put forward in response to the opposition’s arguments about medical risk, included that “criminalisation of homosexual activity may inhibit health education and healthcare” (BMA – Edwina Currie); and that “the present criminality of homosexual relationships can limit health promotion activities” (Neil

Kinnock). Others provided parallels with heterosexuality: “when we see a heterosexual couple, we do not instantly think of gonorrhoea; we see people trying to form a long-term relationship, caring about each other and falling in love” (Edwina Currie) - and, in any case, as Lord Annan pointed out “all sexual activities present a health hazard. I shall not weary the House with a list of diseases which occur in heterosexual intercourse”.

Occasionally, the language of human rights was invoked in challenging the opposition. For example, drawing explicitly on the language of human rights, Earl Russell made the point that:

“I do not believe that public opinion is the answer to a human rights issue. Human rights are not to be taken away simply because the majority does not want them. In fact, it is where the majority does not want human rights that they are most needed. [...] We cannot divide human rights; they are for all of us. It is those whose behaviour we dislike most whose human rights we must champion most strongly”.

However, most of the counter-arguments advanced in attempting to equalise the age of consent were not in fact based on human rights arguments, but rather involved lengthy and diversionary debates about whether sexuality really is fixed by the age of 16, or whether homosexuals are or are not more prone to contracting AIDS or hepatitis (cf. Ellis, 1999). By engaging in a counter-arguments approach, then, the human rights argument becomes buried among the plethora of other arguments and counter-arguments.

Most problematically though, in countering the ‘slippery slope’ arguments, proponents of equality in the age of consent found themselves arguing against “opening

the floodgates of social change” (Lord Williams of Mostyn). Lord Quinton, for example, who supported the equalisation of the age of consent, reports being “moved for a moment by the statement [...] that if we are in favour of equality for the two orientations, then homosexual marriages ought to be endorsed as well as heterosexual ones”. He describes this argument as “ridiculous” and dismisses it with the claim that:

“the entering into of a contract between a male and a female who set up a loving relationship of some sort is done with the likelihood of producing children for whom they are going to be responsible. A homosexual couple - two males or two females - will not do that [...] so there is a perfectly good reason for not having such marriages; that is, there is no particular need to contractually tie the two partners together in the interests of innocent third parties who come into existence as a result of their relationship”

In so doing, Lord Quinton (and others) actively undermine the human rights argument on which their campaign for change is based.

Human rights discourse occupies a privileged moral position in democratic states and should be rhetorically powerful. However, the human rights argument employed in the age of consent debates was often not heard, and when it was heard was specifically attacked. Instead of maintaining their own agenda (one promoting equality and human rights), proponents of change addressed the opposition’s agenda. In allowing the opposition to set the agenda, heteronormativity remains unchallenged, compounding the very problem we seek to overcome.

Moreover, in presenting their human rights argument, proponents of change placed undue emphasis on the notion of ‘equality’, which resulted in the conflation of the concepts of ‘equity’ and ‘civil rights’ (also associated with equality) with that of

human rights. In prioritising the notion of ‘equality’, rather than ‘human rights’, the distinction between human rights and other types of equality became lost. Since discourses around ‘equity’ and ‘civil rights’, entail different assumptions about what constitutes equality, co-opting the term equality proved disadvantageous for advancing a pro-lesbian and gay human rights position. In so doing, those opposed to equality were able to hijack the debates with arguments around morality, democracy, care and protection, and health, and to by-pass the real issue, which is one of justice (or human rights) versus oppression (Dean, 1994).

A human rights perspective has been seen as very important in pursuing justice for lesbians and gay men (Kaplan, 1997), and indeed it has been central to the achievement of equal (human) rights for lesbians and gay men internationally, in the political and legal arenas. The purpose of a human rights approach is to oblige governments to change the structures that perpetuate the denial of equal rights (cf. Tomaševski, 1998). It is therefore important that we develop effective strategies to argue for lesbian and gay rights, by prioritising the notion of human rights; by highlighting that human rights are universal, inalienable, and indivisible; and by clearly illustrating how issues such as the age of consent *are* human rights issues.

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² The UK parliamentary system is two-tiered, comprising the House of Commons (parliament of members elected by the voting public) and the House of Lords (Parliament of non-elected persons, such as former MPs and notary members of the public). For Bills to be passed into UK law, they must first be endorsed by a majority vote in the House of Commons and then ratified by the majority in the House of Lords.

³ Section 28 of the (UK) Local Government Act states that a local authority shall not “intentionally promote homosexuality or publish material with the intention of promoting homosexuality” or “promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship” (Trade Unionists Against Section 28, 1989, p. 27).