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One of the functions of the Wolfenden Committee, established by the British government in 1954, was to review the law and practice relating to homosexual offenses. While its recommendations eventually led to the partial decriminalization of same-sex sexual acts between men, Leslie J. Moran's essay focuses on how the "homosexual" and his "offences" were defined by the committee. He finds that while the terms had no legal history, the committee "discovered" the meaning of homosexuality as sexual identity, as sexual acts, and ultimately as a knowledge of the (male) body produced by authorized speakers. Thus, a new category of legal wrong was invented in order that it might be decriminalized. Moran argues that in so doing the committee revealed the incoherence of its own knowledge about homosexuality. As a result, that knowledge became vulnerable as a site of contestation.

The Homosexualization of English Law

Leslie J. Moran

ON THE first of November 1953 the editor of the *London Sunday Times* directed the attention of readers to "A Social Problem." The specific topic was male homosexuality. The problem was said to be evidenced in a dramatic growth in the number of prosecutions and convictions of men for buggery, gross indecency, and the offence importuning of male persons. The editorial noted that trial agendas were said to be "packed full of cases of indecent assault and gross indecency between men." The judiciary had spoken of the shock and indignation of having to deal with "gang[s] of homosexuality." In response to this, on August 24, 1954, the British government inaugurated a review of the criminal law and the penal system to be conducted by a committee, later known as the Wolfenden Committee after its chair, Sir John Wolfenden. Its assignment was to consider the law and practice relating to homosexual offenses and the treatment of persons convicted of such offenses by the courts, and the law and practice relating to of-

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fenses against the criminal law in connection with prostitution and solicitation for immoral purposes.[1] An immediate and enduring problem that dominated the review was the meaning of the phrase "homosexual offences." On the one hand, the committee found that the term was neither defined by the government ministers who had set the agenda for the committee nor already known within the law; it neither referred to a particular named offense nor to a discrete category of criminal offenses known to English or Scottish law.[2] Nor was the task of the committee assisted by the contemporary enactment of a wider general legal category of "sexual offences." While the Sexual Offences Act of 1956 (4&5 Eliz.2 c.69) purported to bring together all of the existing offenses in England and Wales relating to the sexual, it did not organize those offences by way of a division between heterosexual and homosexual offenses.

On the other hand the phrase "homosexual offences" was deployed as an organizing category by the committee and by many of the organizations[3] and individuals who contributed to the review. This drew attention to the fact that the term already had a certain legibility and currency, at least within popular discourse, and certain specialist official discourses, if not formally within the law. However, the repeated citation of the phrase did not appear to resolve the difficulties over its meaning. In an early draft of its final report the committee commented that

> at every stage we have been driven to face the question of terminology. From the literature of the subject, from the memoranda submitted to us, from our conversations with witnesses, and from our own discussions, it has become clear that an accepted terminology is an essential precondition to any useful discussion of this tangled and complicated matter.[4]

As such "homosexual offences" appeared to be not so much a phrase that had no meaning but more a phrase that had many different and problematic meanings. The repeated use of "homosexual offences" seems to have sustained and compounded the committee's problems regarding the meaning of the phrase.

In the final instance, the problem of the meaning of "homosexual offences" plays an important role as the enigma in need of resolution at the heart of the Wolfenden review. It is thus important to recognize that the phrase forms part of the mechanics that promoted a great proliferation of speech about homosexuality in general and about "homosexual offences" in particular that dominated not only so much of the proceedings before the committee but also its own deliberations and its final report. The phrase also has a significance beyond the

Wolfenden investigations. "Homosexual offences" appeared not only in the committee's reform proposals but, as a result of the enactment of some of those reforms in the 1967 Sexual Offences Act (15&16 Eliz.2 c.60), now also has formal significance in the law. More specifically, its use in the 1967 act is the first formal appearance of the word "homosexual" in English law.[5] As such it installs a very specific idea of the body by way of its intergenital relations in the law. It is a sexed and gendered body. This "homosexual" does not refer to genital relations between women but only to those between men. In this context the Wolfenden review has particular importance, as it provides a snapshot of the process whereby this already sexed and gendered "homosexual" comes to be imagined as the "homosexual" of law. This essay is concerned with plotting the emergence of that "homosexual." The analysis will first consider how the enigma of "homosexual offence" was formulated by the committee and will then follow the committee's deliberations whereby the riddle was resolved.

The Enigma of "Homosexual Offences"

One important formulation of the enigma is to be found in the committee's consideration of the conjunction of the words "homosexual" and "offence," which, they noted, was particularly problematic: "It is important to make a clear distinction between homosexual offences and homosexuality. . . . Homosexuality is a sexual propensity for persons of one's own sex. Homosexuality, then is a state or condition, and as such does not, and cannot come within the purview of the criminal law."[6] While the word "offences" referred to acts designated as criminal and thereby within the general agenda of the review, the addition of "homosexual" rendered that problematic. "Homosexual" seeks to define the wrongful acts by way of "homosexuality," a term that refers to a "state or condition." Homosexuality was not and never had been illegal. As such, they concluded, it was not an object of concern of either the law in general or the criminal law in particular. But the conjunction of "homosexual" and "offences" brought together in one phrase a term that appeared to be primarily a reference to matters outside the law and thereby outside the legal interests of the committee, with another term that referred to an object firmly within the purview of their investigations. The enigma was that in the combination of terms, "homosexual offences" threatened to name an object that was unintelligible within the law and thereby outwith the committee's agenda.

The committee followed two strategies in their attempts to un-

derstand and resolve the relationship between "homosexual" and "offence." The first pursued the meaning of "homosexual offences" by analyzing its association with "homosexual acts" and "homosexuality." The second strategy was to name "homosexual offences" by producing a list of those offenses.

The Homosexuality of "Homosexual Offences"

The attempt to discover the meaning of "homosexual offences" through a consideration of the relation between "homosexual offences," "homosexual acts," and homosexuality led the committee to address the causes and nature of homosexuality. This brought them up against the limit of their agenda: How could the committee consider homosexuality when the law had no interest in that state or condition?

They found the solution to this problem in the terms of reference that dictated the parameters of the review, which directed the committee to consider not only the law and practice relating to homosexual offenses but also the treatment of persons convicted of such offenses. It was in the context of the treatment of offenders that they found that the questions of the nature and origins of homosexuality already had a currency within the legal system. Therefore it was legitimate for the committee to engage with that general domain of knowledge through which such questions might be asked and answered, and with the numerous submissions that addressed the question of the nature and causes of homosexuality.[7]

The management of this material and its application to the task at hand were, for much of the review, delegated to two psychiatrists sitting on the committee, Drs. Desmond Curran and Joseph Whitby. On behalf of the committee they formulated an analysis of the homosexuality of acts and offenses by way of an exegesis that flowed from two propositions. The first was that not all homosexuals indulge in homosexual acts. The second was that not all those who engage in homosexual acts are homosexuals. Their analysis produced interesting results.

The analysis of the first proposition began with the category of overt homosexual behavior. While Dr. Curran accepted that the level of participation in homosexual acts by homosexuals might vary, he concluded that in the final instance total abstinence from such acts would be extremely rare.[8] He reached this conclusion on the basis that few would abstain from the most common homosexual act: homosexually motivated masturbation.[9] Thus the review rejected the first proposition as it applied to overt homosexual behavior. It was to pro-

ceed on the basis that all homosexuals indulged in overt homosexual acts.

However, this did not exhaust the consideration of the first proposition. The matter was complicated by the introduction of a new dimension—the concept of latent homosexuality. This threatened to problematize the conclusion that all homosexuals indulged in homosexual behavior in two respects. First, homosexuality now could be something absent or invisible, a mere potential for presence and visibility. Likewise, the homosexual act was rendered problematic, as an act might now be an act of homosexuality even though it did not appear to be an overtly sexual act. Thus homosexual acts might take many forms. For example, the experts suggested that latent homosexuality might be expressed in poor relations with a wife, in a completely unsuccessful heterosexual love affair, in neuroses of various kinds, or in psychopathic manifestations.[10] In the first instance the invisibility of both homosexuality and homosexual acts associated with latent homosexuality threatened to make it more difficult to support the conclusion that all homosexuals engaged in homosexual acts. However, latent homosexuality did not so much disturb Dr. Curran's conclusion that all homosexuals indulged in homosexual acts but rather reinforced and elevated the importance of that conclusion by creating the possibility of discovering homosexuality in acts that had heretofore been thought to be outside the boundaries of the sexual. Thus the homosexuality of individuals who had fallen outside that category of identity might be produced.

The introduction of the distinction between overt and latent homosexual acts draws attention to some important features of homosexuality. Here homosexuality is shown to be not just a self-evident quality of certain acts or individuals but an effect of interpretation. While it may be a practice of self-definition, it is also shown to be a practice of reading and naming an individual's actions that is undertaken by others. Through these practices of naming, others may give the name "homosexual" to a person's behavior even though that person has neither defined himself or his acts as homosexual, nor had any awareness of the possibility of his or their homosexuality. Finally, through the concept of a latent homosexuality, homosexuality is liberated from any discrete notion of sexual (genital) acts.

The addition of latent homosexuality and its effects to the discussion generated some concern. W. C. Roberts, the secretary of the committee, expressed his concern over the notion of latent homosexuality in a handwritten marginal note to his redraft of the report's general chapter on homosexuality in the following terms: "The difficulty about a homosexual is that according to some psychos [*sic*] we're all homo-

sexuals on this definition." The problem appeared to be that the idea of latent homosexuality in general and of the sexuality of nonsexual acts in particular threatened to transform homosexuality and homosexual acts from an ontological essence peculiar to a distinctive, exceptional, and aberrational class of persons, whose identity was made manifest in a strictly limited range of gestures or acts, into an ontological category that was universal and the norm. In turn this threatened not only to increase the importance of Dr. Curran's original conclusion that all homosexuals engage in homosexual acts but also to render it less important, as it appeared to explain less about the distinctive and peculiar nature of homosexuality and homosexual acts.

While in the final report the Wolfenden Committee accepted the idea of latent homosexuality, the members also demonstrated a determination to limit the great homosexualizing potential that was found to be associated with the concept. While they concluded that the existence of latent homosexuality was a validly drawn inference, they also commented that it was to be limited in two ways. First, in general latent homosexuality was an inference that could only be drawn in specific circumstances by certain individuals—for example, after a formal examination made by a specialist such as a doctor, who had been trained to discover the symptoms of a homosexual component. Second, while certain signs might be read by laypersons as self-evident proof of latent homosexuality, the committee wished to limit the number of such signs. Several examples from which homosexuality might be inferred were given: an individual's outlook or judgment; a persistent and indignant preoccupation with the subject of homosexuality; and participation in certain occupations, particularly those that called for service to others or services that were of great value to society, such as teachers, clergy, nurses, and those interested in youth movements and the care of the aged. By these mechanisms the committee could recuperate and reinstall the idea that homosexuality was an ontological essence peculiar to a distinctive, exceptional, and aberrational class of persons, whose identity was made manifest in a strictly limited range of gestures or acts. In turn this might help to recover the importance of the conclusion that all homosexuals engage in homosexual acts, which suggests that the act is a manifestation of a specific identity.

Having thus suggested that homosexual acts, either overt or latent, were necessarily a manifestation of homosexuality, Drs. Curran and Whitby proceeded to explore the second proposition: that not all those who indulge in homosexual acts are homosexuals. They concluded that on many occasions homosexual offenses (and thereby homosexual acts) were committed by individuals who were not predominantly homosexual. They offered various examples of same-sex acts

that were not the acts of homosexuals, including situational homosexuality, adolescent activities, and the acts of "certain primitive types who wanted sex and were indifferent as to whether the partner was male or female."[11] The committee's final report added other examples:

> some of those whose main sexual propensity is for persons of the opposite sex indulge, for a variety of reasons, in homosexual acts. It is known, for example, that some men who are placed in special circumstances that prohibit contact with the opposite sex (for instance in prisoner of war camps or prisons) indulge in homosexual acts, though they revert to heterosexual behaviour when opportunity affords; and it is clear from our evidence that some men who are not predominantly homosexual lend themselves to homosexual practices for financial or other gain.[12]

Having discovered that all homosexual acts, both overt and covert, were the acts of homosexuals, this evidence appeared to suggest that some homosexual acts might be the manifestation of neither overt nor latent homosexuality. Drs. Curran and Whitby attempted to capture this emerging paradox in their conclusion that neither social reputation nor even legal conviction were sound criteria for what might be called the percentage of homosexuality in a given case or the Kinsey rating of that case.[13] Their analysis appeared to suggest that a homosexual act, and thereby a homosexual offense, might be not only the overt or latent manifestation of homosexuality but also the manifestation of bisexuality or heterosexuality.

Various attempts were made to express this complex state of affairs. One example is to be found in a draft of Chapter 3 of the report: "Where we refer, in this report to a 'homosexual,' we mean a person in whom this propensity exists and not a person who indulges in homosexual acts. . . . A person who indulges in homosexual acts is not necessarily 'a homosexual.'"[14] While the definition of homosexuality as a "propensity" expresses the idea that the homosexuality of homosexual acts may be both overt and latent, this connection is rendered problematic in the further observation that a person who performs a homosexual act is not necessarily a homosexual. In a later draft of the same chapter we find another formulation: "in this enquiry with the law relating to homosexual acts, the adjective homosexual as applied to such acts will be used indifferently whether or not those who engage in them are by nature or disposition of the exclusively homosexual type."[15] Although this definition attempts to preserve the nexus between sexual identity and sexual act, if only in the suggestion that temporary or transient homosexuality will result in transient or aberrational homosexual acts, at the same time it also suggests that there is no necessary connection between the sexual identity that is used to

name a category of unlawful act and the sexual identity of the person that performs the act. These attempts to explain the homosexual of "homosexual acts" and thereby the homosexual of "homosexual offences" seem to suggest that it cannot be explained as a reference to the sexual identity of the one who performs the act or offense. Again, as the analysis proceeds toward its object, that object threatens to disappear; the homosexuality of homosexual offenses appears to refer to no sexual identity at all.[16]

Listing "Homosexual Offences"

A second major attempt to explore the meaning of "homosexual offences" occurred in the context of attempts to list such offenses. Several lists are to be found in the papers submitted to the committee.[17] The final report of the Wolfenden Committee had two lists of "homosexual offences," one referring to England, the other to Scotland. In England, "homosexual offences" incorporated the following: buggery, attempted buggery, assault with intent to commit buggery, indecent assault on a male by a male, indecent assault on a female by a female, acts of gross indecency between men, procuring and attempts to procure acts of gross indecency between males, persistent soliciting or importuning of males by males for immoral purposes (where the immoral purposes involve homosexual behavior), and offenses involving indecency contained in by-laws (where the offenses involve acts of indecency between persons of the same sex).[18] The list for Scotland differed from the list for England in that it made no reference to buggery but did include references to sodomy.[19] It also included offenses that were absent from the English list, in particular the Scottish common law offense of lewd and libidinous practices and behavior between males, which has no equivalent in England.

These two lists differ in various ways from other lists of "homosexual offences" found in memoranda submitted to the committee. In general the lists in the final report of the Wolfenden Committee are more expansive. For example, they include an offense that is notably absent from most others presented to the committee: genital acts between women.[20] This is in sharp contrast to the lists of offenses produced by the central government; both the Home Office and the Scottish Home Department had commented that homosexual acts between women were not criminal offenses. Second, the Wolfenden lists are more expansive in that they include a potentially extensive range of offenses (by-laws) created by town, city, and regional governments. Third, they show a sensitivity to jurisdictional differences between Scotland and England that are notably absent from the memoranda

submitted by the Home Office and the Scottish Home Department. In particular they take note of the distinction between buggery (a term of English law) and sodomy (a term of Scottish law) and of the existence of offenses in Scotland that have no equivalent in England.

The committee provided no overt explanation of the common denominator that joined these offenses together under the title of "homosexual offences." However, the papers of the committee's deliberations offer some evidence of the factors that informed its production. The issue was addressed by Drs. Curran and Whitby, who noted that the phrase "homosexual offence" already had currency as a rubric for a list of offenses: "Taylor, a prison medical officer . . . stated that in his experience [homosexual offenses] can be divided into four main groups namely (1) indecent assaults on boys under the age of 16, (2) importunity [*sic*], (3) buggery, and (4) gross indecency."[21] Drs. Curran and Whitby concluded that this classification had certain virtues. First, it was simple. Second, if the majority of cases appearing in the criminal statistics could be brought under this scheme, it would also have the virtue of intelligibility.

While the catalogue of wrongs found under the heading "homosexual offences" in the Wolfenden final report might be explained by reference to the criteria used by the prison medical officer, it differs in various ways. For example, it appears to have a greater intelligibility, incorporating a wider range of offenses. In particular the list includes all indecent assaults by men against men and by women against women as well as a wider range of lesser offenses. However, this still tells us little about the factors that brought the offenses together under this common rubric.

An attempt to formulate a statement of the common denominator is to be found in a letter by Dr. Curran attached to a draft of the chapter on general considerations relating to homosexual offences. He suggested that

> at least the majority of offences would I think fall into the general statement "a meeting between two or more male persons during which the genital organs of one party are deliberately brought into contact with or pressure against any part of the body of another or wilfully exhibited or inspected with intent (admitted or reasonably presumed) to obtain sexual excitement."[22]

This definition of "homosexual offences" has interesting characteristics. Of particular note is the absence of any reference to the sexual identity of the participants and to women. Furthermore, while this definition might explain the presence of some of the offenses on the list, it is problematic with regard to most of them. At best it would ap-

pear to be directly relevant to only two of the offenses named: gross indecency and importuning. The definition of gross indecency is to be found in Section 11 of the Criminal Law Amendment Act of 1885 (48&49 Vict. c.69):

> Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour.

As it is an offense exclusive to men, such behavior would appear to fall within Dr. Curran's definition of "homosexual offence." Further, the word "indecency," while undefined in the 1885 act, is a term in law that might include genital contact or display.[23] However, it is important to note that Section 11 does not itself define the illegal act as a homosexual offense but as an act that is an outrage on decency.[24] Nor is this section to be found in a statute whose main focus is sexual relations between men, for as is described in its preamble, the purpose of the act is "to make further provision for the Protection of Women and Girls, the suppression of brothels, and other purposes." The 1885 legislation is thus primarily concerned with cross-sex relations in general and cross-sex prostitution in particular. The naming of gross indecency as a "homosexual offence" would appear to be at best a post-hoc classification.

The incorporation of the offense of importuning in the committee's list is more problematic still. Importuning is defined in Section 32 of the Sexual Offences Act of 1956: "It is an offence for a man persistently to solicit or importune in a public place for immoral purposes." The section itself does not specify the sex of the object of the accused's soliciting or importuning. The reduction of the offense to behavior between men is unique to English law and an effect of English police practice and judicial interpretation, which the history of the statutory provision suggests is far from either the necessary or inevitable meaning of the terms of the prohibition.

The incorporation of other offenses into a list of "homosexual offences" presents even greater difficulties. Both buggery and sodomy are problematic. Contrary to expectations generated by the rubric of "homosexual offence," neither buggery nor sodomy is exclusive to male-to-male intercourse. In England and Wales buggery is made an offense by virtue of Section 12(1) of the Sexual Offences Act of 1956: "It is a felony for a person to commit buggery with another person or with an animal." By virtue of the paragraph heading, buggery is an un-

natural offence. Section 44 of the act further defines buggery in giving a meaning to the phrase "sexual intercourse": "Where, on the trial of any offence under this Act, it is necessary to prove sexual intercourse (whether natural or unnatural), it shall not be necessary to prove the completion of the intercourse by the emission of seed, but the intercourse shall be deemed complete upon proof of penetration only." As such buggery is a wrongful act that may be performed by one man with another, by a man with a woman, and by a human with an animal. In Scottish law the definition of the criminal act of sodomy differs from this in that it does not include acts of unnatural intercourse between a man and a woman. These acts are not an offense in Scotland. The common incorporation of bestiality in the definition of these two offenses also draws attention to the fact that neither offense is sex/gender (or species) specific.[25] Similarly, the laws that define acts of indecent assault on a man or a woman do not limit these wrongful acts to situations where the wrongdoer is the same sex as the object of the assault. Section 14(1) of the Sexual Offences Act of 1956 merely declares that "it is an offence . . . for a person to make an indecent assault on a woman."[26] Section 15(1) states that "it is an offence for a person to make an indecent assault on a man." Furthermore, while the Wolfenden Committee did not give details of the by-laws that might fall under the rubric of "homosexual offences," they did note that these laws, made by town, city, and regional governments for the "good rule and government" of their areas, provide penalties for indecent behavior that are neither sex, sexuality, nor gender specific.[27]

These factors draw attention to the fact that in order for Dr. Curran's definition of "homosexual offences" to work as an explanation of the factors that connect the items listed, much has to be ignored and forgotten. In particular it is necessary to forget that the most common overt homosexual act, solitary masturbation with homosexual fantasies, has never been criminalized.[28] It is necessary to forget that most of the offenses on the list are equally applicable to heterosexual relations and might equally be described as "heterosexual offences." It is necessary to pass over the jurisdictional idiosyncrasies of England and Wales on the one hand and Scotland on the other, thereby erasing the cultural and historical differences in their practices of criminalization. It is necessary to ignore the fact that Dr. Curran's definition cannot explain the absence of any reference to sexuality in a definition that purports to name a category of offenses by way of a particular sexuality. It is necessary to disregard the general absence of women from the definition of both homosexuality and "homosexual offence." Nor can his definition explain the one reference to wrongful acts between women in the final Wolfenden list of "homosexual offences." It is necessary to

forget that when viewed in terms of sexuality in general or more specifically in term of the binary of hetero- and homosexuality, as a reference to genital acts performed with the opposite sex versus those performed with the same sex, the criminal calendar appears to be absurd and incoherent.

The production of a list of "homosexual offences" is an attempt to install a new configuration within the law. This citation of "homosexual" appears to be a reference to a complex process of selection and reorganization that works to create a new coherence and incoherence in the law by filling in gaps between wrongs that otherwise have little or no connection and separating out offenses that had previously been proximate to each other. It partially reorganizes elements of the law by means of selection and addition, producing dramatic rearrangements, making drastic new connections, and censoring knowledge of previous practices, histories, and cultural differences. It is by this process that "homosexual offences" is made to appear as a category that makes sense in law. It is also by this process that the traces of other, earlier ways of making sense of prohibitions are now to become part of a new nonsense or a new unintelligibility. To be a success, the phrase "homosexual offences" depends upon and seeks to install a certain amnesia in the law and demands a certain forgetfulness by those who cite the term.[29]

Forgetfulness is also a theme to be found in the earlier analysis of homosexuality, homosexual acts, and "homosexual offences" conducted by way of the proposition that not all those who indulge in homosexual acts are homosexuals. As the analysis demonstrates, in using the phrase "homosexual offences" it is necessary to forget that the "homosexual" in that term is not necessarily a reference to the sexual identity of the actor made manifest in the wrongful act. At best it might be said to be a mere reference to the fact that both parties who perform an act that attracts a penalty are of the same (male) sex. Furthermore, the analysis of the proposition that not all homosexuals indulge in homosexual acts draws attention to the importance of recognizing that the citation of "homosexual" is not so much the use of a term that describes the essential nature of an act or the truth of the identity of the actor, but rather a reference to a practice of naming that attributes a particular truth that purports to refer to the essence of the object(s) so named. More specifically, the Wolfenden analysis draws attention to the fact that the citation of "homosexual" is a reference to "a whole machinery for speechyfying, analyzing and investigating."[30] It is a reference to a set of practices and a particular knowledge of the (male) body and its desires that is produced and enforced not so much by the one who is placed in the position of the object of consideration,[31] but,

as the Wolfenden Committee noted, by authorized and duly qualified speakers such as psychiatrists and prison doctors. The Wolfenden analysis suggests that as the machinery works toward the discovery of the essential truth of the thing that is the object of knowledge (homosexuality), it is faced with the prospect of discovering that rather than being a reference to a specific identity, homosexual(ity) refers to no specific thing. This is not to suggest that the "homosexuality" of "homosexual offences" has no meaning but it does draw attention to the way nothing can give rise to something, as "homosexuality" becomes a fantasy space or a kind of screen onto which are projected desires, memories, and anxieties.[32]

Finally, the analysis shows that the "homosexual" of "homosexual offences" is a reference to a machinery of naming that has a great capacity not only to incite, extract, distribute, and institutionalize the discourse of (homo)sexuality, but also to put sex into a discourse that has unruly tendencies, produces unexpected meaning, and is in need of control. The final report of the committee draws attention to two mechanisms through which that control might be produced: the distribution of those who are and are not authorized to speak the name "homosexual," and the designation of a specific lexicon or code that may be spoken and read as the signs and symptoms of that identity. The Wolfenden review suggests that the "homosexual" of "homosexual offences" is nothing more than a reference to the machinery through which the very legibility of homosexuality and "homosexual offences" is produced.

The use of "homosexual" in the phrase "homosexual offence" focuses on the fact that by the time of the Wolfenden review a machinery for speechifying, analyzing and investigating homosexual(ity) in law was already a possibility. The references to treatment, to the prison medical service in general, and to the prison medical officer's use of the category "homosexual offence" in particular demonstrate that these naming practices implanted within the legal system had already produced a possibility of the legibility of "homosexual" and "homosexual offences" within the substantive law.[33] The use of "homosexual offences" as a central category in the Wolfenden reform proposals seeks to formally deploy these practices and knowledges developed elsewhere for a different purpose: the invention of a new category of wrong in law. The remainder of this essay will consider the machinery of naming and the knowledges that it produced and deployed.

"Homosexual" as a Technology of Production

One mechanism of the process of naming homosexuality is of particular importance: the examination. It is a complex apparatus that brings

together technologies for observing, questioning, listening, formulating and recording. The British Medical Association's (BMA) memorandum to the Wolfenden Committee[34] shows the importance of the examination as a naming practice through which medical knowledge of the (male) body and its desires was deployed and produced. It also provides a valuable snapshot of the uses of the technologies of examination within the processes of the law at the time of the Wolfenden review. The report notes that in general the examination might operate in two contexts: first, in the context of the offense itself; and second, in what the BMA described as a medicopsychiatric context. In the former, an examination might be undertaken to facilitate the process of detection and/or to assist the court in deciding whether there was sufficient evidence to justify conviction. In the latter case the examination might occur at various points in the legal process—before trial, after conviction but before sentencing, or after sentencing—and might be commissioned by the prosecution, the defense, the court itself, or the penal authorities. The BMA suggested that this second type of examination might have various uses. Before the trial it could be used to assess the quality of the case. Postconviction it might be used to determine the causes or reasons underlying the conduct or to inform the court's disposal of the offender. This attempted categorization of examinations illustrates three important points. First, the two functions need not necessarily be carried out in separate examinations; there is evidence of overlap between, for example, the fact-finding function and the pretrial medicopsychiatric function. Second, an individual might be subject to many examinations; he might be examined upon arrest, before trial, before sentence, after sentence, in the course of entrance and placement in prison or in other institutions of punishment/treatment, and even during the period of punishment/treatment, especially before release on parole. Finally, examination may take place after release as a condition of that release.[35] Thus by the time of the Wolfenden review, the technologies through which the (male) body and its desires might be put into discourse were well implanted within the processes of the law.

While the BMA document details the many uses of examination, it tells little about the techniques deployed within the examination itself. A document submitted to the Wolfenden Committee by the Admiralty provides an example of some of the practices associated with the fact-finding examination.[36] Having stressed the importance of the examination, the Admiralty orders explained its purpose. The general objective was to produce a written record that contains a clear and definite opinion. The written record should always incorporate certain in-

formation. It must record the detail of the act[37] and establish whether it occurred on one occasion or on several occasions. It must record all signs and symptoms, whether direct or indirect; all findings, both positive and negative; and all participation, both active and passive. It must contain a record of any physical signs and symptoms of venereal disease and include the venereal history of the man. The Admiralty orders also state that the report shall contain the appropriate conclusions and gives explicit instruction as to what that evidence shall be: the only certain medical evidence of the commission of the offense of buggery "is the presence of semen in the anal canal."

The orders require that the practices of interrogation and documentation are in general to be carried out by specific personnel, medical officers, or, in certain situations, particular specialists—psychiatrists and venereologists. Each in turn must have complex training: the completion of a medical course, with supervised clinical experience, contact with the psychological disciplines, the creation of particular attitudes, and the installation of particular personality characteristics. All have their place in the production of the art of observing, questioning, and listening.[38]

The orders then detail three examination procedures: one for the passive "partner," a second for the active "agent," and a third for the self-confessed homosexual. In general each individual is to be subject to two examinations, both the passive and the active. Where two persons are suspected of a "guilty relationship," they are to be kept apart during the examination and given no opportunity to communicate.

The orders declare that the passive examination should be conducted in the following manner:

> (1) Note the general appearances. Look for feminine gestures, nature of the clothing and the use of cosmetics, etc.
> (2) Visual external examination of the anus for:
> Appearance of bruising or inflammation.
> Whether redundancy or thickening of the skin is present.
> Evidence of irritation, inflammation or presence of thread worms.
> Recent tears, lacerations, fissures and piles, old scars due to previous ulceration, or any physical sign that might be present and might cause dilation or relaxation of the anal sphincter.
> (3) Examine the anus for size and elasticity (it is useful to measure the size of the opening by some standard measure such as the number of fingers) and note any discomfort or otherwise during the examination. A speculum may be used.
> (4) A swab must be taken from inside the anus with the aid of a proctoscope or speculum for demonstration of spermatozoa, and another from surrounding parts for identification of lubricant and spermatozoa.

> (5) The anus should be examined most carefully for the presence of V.D. The presence of any discharge from either the anus or urethra should be noted and slides and swabs taken for the identification of gonococci. . . . When possible all cases in whom V.D. is suspected should be sent to the venereologist for examination at the earliest opportunity.
> (6) If it is alleged that the practice has been carried out recently, the underpants and shirt should be examined for the presence of stains which may still be damp. Any suspected stained articles should be wrapped in cellophane or brown paper and sealed for transmission to a laboratory. If it is possible to collect a specimen of liquid semen from an article of clothing, it is desirable to send this in a suitable container. In some cases the blood group of the donor can be detected.
> (7) Other suspicious objects such as tins of lubricants, should be sent to a laboratory for examination for the presence of spermatozoa or pubic hair.[36]

In the case of the active (agent), the examining officer is instructed that the examination is to have a particular focus: the penis. The purpose of the examination is to establish whether the penis has in fact been subjected to friction and is contaminated with feces, lubricant, and spermatozoa, which are strong evidence of an offense having occurred. Here the examiner is instructed to pay particular attention to clothing, in this case the front of the underpants, trousers, and shirt, for fresh stains and again for a mixture of semen and feces.

The third interrogation procedure is specific to the examination of the self-confessed homosexual. Here the orders direct that the examination should be conducted by particular specialists: a venereologist and a psychiatrist. The examination must be carried out on the general lines already indicated as far as appropriate but must be modified to exclude those procedures applicable only to a recent act. The objective here is not the documentation of a single act but the documentation of a life history and an identity. Again the examiner is directed to document negative as well as positive findings with supporting reasons for any conclusions reached at any stage. The examiner is specifically required to state in his report whether he believes that the man is telling the truth or lying, or whether he cannot give an opinion on this point.

Finally, the orders contain certain cautions. For example, the examiner is warned that the "classical" appearance of the anal sphincter described in many books is most uncommon and that the conical anus occurs only in the confirmed homosexual practitioner. The orders go on to advise that the anus, which is the object of so much attention, is problematic in other respects, since the "dilation of the anus by itself is not a specific sign of the homosexual and . . . can be due to other

causes, e.g., old standing piles, or it may follow operations on the rectum, or it may be due to some disease of the nervous system, etc." Further difficulties are noted in the context of the examination of the self-confessed homosexual. The examiner is warned that "medical evidence may be completely negative even in a well established case; and as the rating who voluntarily confesses may not be a confirmed addict, abnormal physical signs are unlikely to be met."

While the examination procedures appear to be of general significance, applicable to the fact-finding process for a wide range of "offences of immorality,"[39] they seem to have a very particular focus. This is demonstrated by the emphasis given to the distinction between active and passive, which in turn repeatedly concentrates the interrogation procedures upon the anus and the penis, respectively. The technology thus appears to be oriented to the production of evidence of one particular offense—buggery (the only one on the list that directly involves the penetration of the anus by the penis)—rather than upon the full range of offenses. In general the orders also purport to be concerned with setting out an examination procedure dedicated to the detection of an unlawful act. However, it is apparent that this is not the only goal. For example, the direction to examine appearances in general and the presence (or absence) of feminine gestures, the nature of clothing, and the use of cosmetics in particular suggests that the examination is designed to discover evidence not merely of the act itself but also of the signs or symptoms of an identity that is produced through the act and installed behind the act to be named as its cause and essence. Nor is identity only to be read from signs remote from the wrongful act. Act and identity are presented in close proximity by an assumption that the "unnatural offence" (buggery) and more specifically particular uses of the anus are manifestations of homosexuality.[40] Here the fact-finding and the medicopsychiatric functions are not necessarily separate aspects of separate examination procedures but one and the same. These orders suggest that, if the fact-finding examination is concerned only with establishing the fact of the offense, then the sexual desire and thereby the sexual identity of the accused have become facts of the offense to be established.[41] Thereby they suggest that the nature and cause of homosexuality are not matters confined to postconviction deliberations.

The technology's concern with identity is also confirmed by the presence of a psychiatrist as an officer in the fact-finding examination of the self-confessed homosexual. Here the interrogation is concerned primarily with the production of a sexual biography rather than the detail of a particular act. The examination procedure applicable to the self-confessed homosexual is of interest in other ways. In particular,

Admiralty orders emphasize that the authenticity of identity is an effect not so much of self-identification but of the machinery of examination, subject to the scrutiny and the endorsement of specialists. Thus while the technology of examination incites the self-confessed homosexual to speak of his homosexuality in the first instance, it then questions the authenticity of that speech. Where the homosexual names himself, that naming appears to become more rather than less problematic. Thus the orders warn the examiner of the dangers of self-definition, with the homosexuality of the self-confessed homosexual threatening to disappear in the process of examination. Contrary to expectations, the presence of the self-confessed homosexual does not so much undermine the need for the technology of examination as reinforce the importance of that technology. Here self-confession is only an ambiguous sign of homosexuality. The examiner is warned that the self-confessed homosexual may become more difficult to detect, as he may carry none of the signs of homosexuality.

Thus the self-confessed homosexual poses a threat, in part because he is not an authorized speaker, and in part because he may present his homosexuality in ways that do not comply with the canonical code by which homosexuality is represented and that therefore may disturb and disrupt that code. The Admiralty orders show that in the final instance homosexuality is to be produced or authorized by a designated speaker and through a particular code of representation dedicated to the discovery of "the truth" of homosexuality. As a particular specialist, a psychiatrist is required to determine the truth or falsity of the self-confession, and, by means of the examination, document the self-confession according to the requirements of the canonical discourse.

Again, the Admiralty papers only provide evidence of a fragment of the technology of examination. Other papers presented to the Wolfenden Committee illustrate other aspects of that technology. In particular they offer evidence of the knowledges of homosexuality according to which the outpourings incited by the examination machinery might be organized, presented, and absorbed. For example, in a memorandum submitted to the Wolfenden Committee by the Institute of Psychiatry the knowledge of homosexuality is tabulated as a scheme of classification.[42] This classificatory grid operates with five main categories and a number of subcategories. It incorporates references to various treatments: analytical therapies, psychiatric teamwork, sexual sedative medicine, social work supportive measures, and penal. The grid evaluates their suitability with a crude scale (+ = useful; ++ = very useful; +++ = essential). Like all of the classificatory schemes presented to the Wolfenden review, this grid has both an individualizing and a

totalizing dynamic.[43] It seeks to name homosexuality in general by way of its causes, origins, and manifestations, and to name the nature and causes of the homosexuality of the particular individual. The grid demonstrates the interface between the classificatory schemes and treatment regimes, which shows that these knowledges of homosexuality are closely linked to projects of control and eradication. When deployed through the process of interrogation, the naming process attempts not only to incite and extract but also to distribute and institutionalize the (male) body and its desires by attributing to it a particular nature and connecting it to a particular project of treatment that might further encode it in certain practices or work toward its eradication.

Conclusion

The term "homosexual" in the phrase "homosexual offences" is in the Wolfenden review a reference to technologies of examination, schemes of classification, and projects of management and eradication. The phrase "homosexual offences" points to the existing implantation of these devices through which homosexuality might be spoken about and induced to speak for itself within various practices of the law. The use of this term indicates the installation of these technologies within regimes of containment, treatment, and punishment. While particular attention has been paid to the technologies of homosexuality in the prison medical service, this was not the only site of the production of homosexuality at the time of the Wolfenden review. Another particularly important location, which I consider elsewhere, was police practice.[44] This draws attention to the dispersion of sites of production, which in turn illustrates how the review worked as a nexus connecting these disparate sites and facilitating their further extension into substantive law. The Wolfenden proposals and the later inclusion of the phrase "homosexual offences" in the Sexual Offences Act of 1967 sought to install these technologies and knowledges in a different context, within the practices through which substantive law is imagined and more specifically through which the (male) body and its desires are both criminalized and decriminalized.

There is much evidence to suggest that the Wolfenden Committee hoped to install a technology of homosexuality within English law that would both limit the meaning of homosexuality and further promote its eradication. Two strategies of eradication are proposed by the Wolfenden reforms. The first is juridical eradication. By arguing that certain homosexual offenses should be decriminalized when they occur in private, the committee hoped that homosexual acts might dis-

appear into a space beyond the law. The second project of eradication is also connected to the proposal to decriminalize certain offenses, which the committee hoped would encourage homosexuals to seek treatment for their condition. In turn that treatment would lead to heterosexuality, abstinence, or the performance of homosexual acts in private. Finally, the Wolfenden review proposed that a major project should be launched to discover more about homosexuality, which again might be dedicated to eradication.

However, there is ample evidence in the Wolfenden papers that a project to install these technologies of production was doomed to failure. Thus it is important to note that the above descriptions of the technologies of examination outline the optimum conditions for success. These descriptions ought to be placed in the context of their actual operation. Day-to-day practice might not mirror these formal requirements. Evidence before the Wolfenden Committee suggests that the use of the examination was a partially realized and idiosyncratic practice rather than a systematic one. For example, a survey of homosexual offenders remanded to Brixton prison in 1946 showed that the magistrates had called for a report in only 39 of 66 cases.[45] The Cambridge survey,[46] conducted immediately prior to the Wolfenden review, found that the courts called for medical reports in only 20 percent of cases. Evidence indicated that the use of medical examinations by the courts depended upon the offense charged. Thus the Cambridge survey suggested that the use of medical examinations was higher (31.7%) where the accused was charged with indecent assault. Dr. Snell, the Director of the Prison Commission Medical Services, also noted that the courts asked for reports much more frequently in cases of indecent assault, but he added that the same pattern emerged with regard to persons charged with importuning.[47] The courts therefore had a discretionary power rather than a duty to order medical examinations. Finally, medical officers did not undertake such examinations uniformly.[48]

Other instances of the failure of these technologies abound. For example, in its references to available treatments the classificatory grid demonstrates that the success of the treatments was problematic. Furthermore, the memoranda submitted to the committee show that while many classificatory schemes might have certain features in common, they also differed in many respects. It should not be forgotten that the difficulties facing the Wolfenden committee in part arose out of the need to make sense of the multiplicity of classificatory schemes that had produced a proliferation of categories of homosexual. This proliferation of categories points to the effects of the tension between the totalizing tendency and the individualizing tendency, which pro-