

## Gay Rights and Civil Liberties

The widely-perceived erosion by the Government of principles of civil liberty has had the paradoxical effect of winning, in several quarters, a higher recognition than hitherto of gay rights as a civil libertarian and human rights issue. The General Secretary of NCCL, Larry Gostin, '...considers gay rights to be one of the NCCL's major growth areas...' and believes that '...the whole question of discrimination against gays, in whatever form, requires a highly strategic campaign involving the broad gay movement'.

To the Government, the police, and HM Customs and Excise, homosexuality + books = pornography. Just like any other minority group, we have our culture, our history, our wealth of experience both personal and collective, and we have a right to share our culture with each other, to exchange it across frontiers, to let it live. The police mount a daily assault on our individual right to be who we are; the Customs assault our right to delight, to knowledge, to free speech; the Government attempts to rob us of our pride, our self-respect, our right to self-determination, and our right to equality under a just law.

These Briefing Notes are available from Linda Semple or Paud Hegarty at Gay's The Word Bookshop, 66 Marchmont Street, London WC1 (01-278 7654).



## Briefing Note 5—The Customs Action: A Wider Political Context

The action against Gay's The Word bookshop by HM Customs and Excise on 10 April 1984 can be seen as part of a wide-ranging escalation of discriminatory action against lesbians and gay men. It can also be seen as a part of what Louise Christian, legal assistant to the Greater London Council Police Committee, has called a shift towards 'policing people' rather than 'policing crime'. This shift in attitude has contributed to an atmosphere characterised by Larry Gostin, new General Secretary of the National Council for Civil Liberties (NCCL), as '...an extension of the powers of the police and the executive in a way which is unprecedented in peacetime...'. Such extension is taking place not only through changes in the law, actual and proposed, but also through use of the broad powers of 'discretion' and interpretation granted to the judiciary and law enforcement agencies, of which HM Customs and Excise's power to judge publications 'indecent' or 'obscene' is only one example.

### The Waddington Letter

The prevailing attitude in the present Government towards the rights of gay and lesbian people may be judged by a little-publicised letter sent this year by David Waddington QC MP, a Minister of State at the Home Office, to one of his constituents. He wrote that it would be 'crankish' to think it 'wrong to discriminate against people on grounds of homosexuality'. Such statements can only encourage police and Customs officers to stretch the use of their powers unfairly against lesbians and gay men.

### A Conflict of Attitudes

Individual incidents of police and HM Customs and Excise activity must therefore be seen in a more general light. As this applies to lesbians and gay men, these separate events occur within a legal and official atmosphere that regards all gay people as essentially criminal and by nature immoral. Law enforcement agencies thus view actions against the gay community as legitimate proscription of an objectionable minority. In the face of such a hostile attitude, it is virtually impossible for gay men and lesbians to obtain equal rights under the law, or equal treatment by law enforcement officers. We are not recognised as a cultural minority, just like other minorities, with their own distinctive cultures, but as individuals who, if allowed the freedom granted to and expected by others, would be liable to act in an inherently indecent or obscene manner. Thus any action against us becomes justified and acceptable. The perfectly legitimate 'straight' activities of meeting people, discussing ideas, reading for information or pleasure become, in the present climate, a lifestyle for which one may be arrested, fined, or imprisoned. Recent changes in social attitudes, opinion among many Members of Parliament and in the European Parliament, accept that gay people are entitled to the same rights and the same expectations of fair treatment as other members of society. The recent actions of the law enforcement agencies and the executive in this country run counter to this fortunate and long-overdue recognition.



## Raids on Bookshops

The action by HM Customs and Excise against Gay's The Word bookshop exposes Customs' powers as a blunt instrument which can readily be used to seriously harass and threaten the gay and lesbian community. In Edinburgh HM Customs and Excise detained stock destined for Lavender Menace, another gay and lesbian bookshop. Police also used their separate powers under the Obscene Publications Act to seize a magazine, although this was subsequently returned. In both cases the powers are to an important extent arbitrary, depending on individual officers' prejudices, and those at the receiving end are put to great difficulty and expense in establishing their rights. Though part of Gay's The Word's stock has been returned, the law has been used to weaken the financial basis of two important lesbian and gay organisations. Lavender Menace could not afford to contest the detention, and thus lost twenty-six imported titles. More recently, HM Customs and Excise have detained nearly 200 books ordered by London's Essentially Gay mail order service which, with limited finances cannot now remain in business.

The outcome is to limit the access of gay men and lesbians to the printed material vital to the sharing of our culture, whether it is informative, romantic, sensual, or just enjoyable. The Customs law arbitrarily limits the exchange of ideas across frontiers. The actions against the bookshops are very central attacks on the self-determination and self-respect of the gay and lesbian community.

## A Calendar of Oppression

The bookshop raids and the scale of the total Customs action against Gay's The Word are a culmination of what many gay and lesbian people have seen as an escalation of official action against us. There was a police raid on a private party (Chiswick, 1982); on a sauna (Newport, South Wales, 1983); convictions of men for consenting sexual relations (Exeter, 1983); raids on gay pubs — one with 50 officers (London, March and May 1984); and police posing as gay men in order to provoke the offence of 'soliciting for an immoral

purpose' (Earl's Court, London, for years through to 1984). There is no reduction in the number of policemen who loiter in public lavatories in the hope of entrapping a gay man. A Queen's Counsel (barrister) was recently quoted as advising members of the public, gay or straight, on the basis of his experience at the bar, never to enter a West End public convenience except in the direst emergency. The role of policemen as *agents provocateurs* has recently received much criticism.

All of these, and similar, incidents combine to create an atmosphere of fear which circumscribes our community. It is an atmosphere which many would argue is used with conscious intent; that is, raids and arrests are used not only to proscribe those who are their immediate objects but also to deliver a message to the gay community, to make us aware that we cannot act with the same sense of freedom and security which other members of society expect as of right.

## Effect of the Laws

United Kingdom laws still treat male homosexual acts as 'unlawful' despite the removal of penal sanctions from certain acts in the 1967 Sexual Offences Act. Even with the decriminalisation of homosexual acts between two consenting males over 21, juries in importuning cases are instructed that they can find an accused guilty of having an 'immoral purpose' in seeking a sexual partner. Whilst lesbians are not mentioned in the law (except as regards the Armed Forces and police operating regulations), the general social disapproval of homosexual behaviour affects them too, particularly in custody and divorce cases, dealing with Social Services, etc.

The legal attitude to homosexuality in the UK has always adopted the view that society must be protected from homosexuals; never has the principle been adopted legally that homosexuals are entitled to equal civil rights with other citizens, nor even that gay men and lesbians are entitled to protection from the excesses of the law and social attitudes in the same way as are non-gay people.

This generally condemnatory, though confused,

situation provides a convenient cover for the activities of police and Customs officers. Not recognising us as a culture, or as a minority protected by normal standards of civil liberties, they do not recognise that we are capable of possessing a culture, a history of experience in common, which we have a right to share and enjoy. Because gay means to them only proscribed or condemned sexual acts, they characterise our literature and activities as being 'indecent', 'obscene', or 'pornographic', as being about sex rather than about a way of life.

## Some Positive Things

An increasing number of local authorities are adopting a positive approach to homosexual men and women, with anti-discrimination clauses in employment policies. In 1984 the National Association of Teachers in Further and Higher Education voted for a positive approach to homosexuality in curricula. In Parliament on 14 May 1984, 131 MPs of all major parties voted in favour of abolishing police entrapment of gay men. Ken Livingstone in his 1984 Report as Leader of the Greater London Council, declared that 'being gay or lesbian is natural and positive for gay men and lesbians. This needs to be understood by the heterosexual majority.'

These encouraging views, however, are under threat, not only by police and Customs actions but by the central Government. In seeking to abolish the Greater London Council and others, the Government also threatens to do away with those areas where gay people have been able to work openly and acceptedly towards the betterment of both the general and gay communities. Much of our funding will be cut off, our organisations forced to cease operation. Support for lesbian and gay organisations is one of the reasons cited by the Government in its opposition to those local authorities.

## European Parliament Resolution

The attitude of the UK Government is in striking conflict with the attitude of the European Parliament towards gay rights. A Resolution of

the European Parliament of 13 March 1984, reinforcing similar positions dating back to 1981, deplored 'all forms of discrimination based on an individual's sexual tendencies' and urged the Member States including the UK to 'abolish any laws which make homosexual acts between consenting adults liable to punishment'. The same resolution called for 'the same age of consent as for heterosexual acts'. Despite this European emphasis on ending discriminatory laws against homosexuals, the UK response can be seen in the Report in April 1984 of the English Criminal Law Revision Committee which firmly rejected the idea of parity in ages of consent, instead recommending that the gay male age of consent be fixed at 18, as against 16 for heterosexual consent.

## Police and Criminal Evidence Bill

There are many aspects of the Police and Criminal Evidence Bill (currently before Parliament and expected to pass into law in Summer 1984) particularly worrying for gay men and lesbians. On 15 May 1984 the Government introduced without warning an amendment to the Bill which seeks to categorise the offence of 'indecent assault which constitutes an act of gross indecency' as a 'serious arrestable offence'. This would mean that gay men suspected of this offence would face the risk of 96 hours' detention without charge (36 hours without access to legal advice), alongside those suspected of rape or murder. Suspects would be subject to search of their homes, and any persons connected with a suspect could also have their homes searched, even without any charges being laid.

Historically, such offences, and suspicion of them, have been used as a means of harassing gay men in particular, a means of policing the moral climate rather than investigating particular crimes. There is nothing to prevent police from detaining gay men for up to 96 hours without pressing charges, simply because they are gay, using that time to pressure isolated and fearful individuals to plead guilty to an offence of which they are innocent. Such tactics have been widely reported in the arrest of gay men on suspicion of 'persistently importuning'.