

Review of Stephen Jeffrey-Poulter, *Peers, Queers and Commons: The Struggle for Gay Law Reform from 1950 to the Present*, London: Routledge, 1991. pp ix-xiii; 1-296.

\$29.95

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In the post-war years many societies and parliaments in the Western World have grappled with the question whether the law should or should not be used as a means of regulating homosexual behaviour. The process of reform with regard to the legal prohibition of homosexual practices, in particular sodomy, has been lengthy and at times bitter, and in many jurisdictions including Britain and Australia that process is on-going.

Peers, Queers and Commons (unfortunately the title belies slightly the serious intent of the book), traces the history of homosexual law reform in Britain as it unfolded in the wake of the 1957 *Report of the Committee on Homosexual Offences and Prostitution* ("the Wolfenden Report").¹ It was the Wolfenden Report, with its attempts to lay aside many of the common myths regarding homosexuality and its recommendation to decriminalize homosexual practices, that changed homosexuality in Britain from a "fit subject for music hall humour"² into a genuine candidate for serious debate and possible law reform.

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1. Great Britain *Report of the Committee on Homosexual Offences and Prostitution* (London: HMSO, 1957).
2. S Jeffrey-Poulter *Peers, Queers and Commons* (London: Routledge, 1991) 8.

As Jeffrey-Poulter recalls in detail, the developments following the publication of the Wolfenden Report were gradual. As long as homosexuals were subject to social stricture and possible criminal action, they remained reluctant to identify themselves by participating in the activities of those reform groups which slowly came together in the wake of the Wolfenden Report. The book also describes some wider difficulties faced by many campaigners for law reform, particularly where moral issues are concerned. The reluctance of political parties to embrace reform policies, the sensitivity of individual politicians to being aligned with “radical” elements, the reactionary pressure exerted by the popular press, and the alienating effect on popular opinion of extreme groups (both pro and anti-reform) are all cause for delay; and they are all examined by Jeffrey-Poulter. As a result it was a full decade before the Wolfenden recommendations regarding decriminalization were adopted, albeit in a modified way, by the English Sexual Offences Act 1967. If this seems a lengthy process, consider that in Western Australia it was 15 years between the issuing of similar recommendations from a Royal Commission³ and the final passage of the reforming legislation.

Jeffrey-Poulter’s method of revealing the gradual shifts in public opinion that eventually made the initial reforms palatable is to quote extensively from the two main forums for debate, the press and the parliament. He refers frequently to both, as the press worked overtime to shape public opinion and the parliament made uncertain attempts to reflect the increasingly liberal attitudes. The coverage of press reaction in particular is effective, including not only the predictable reporting and editorial analysis given by the establishment and tabloid papers (we are indebted to the *Star* for the memorable headline “Loony Lezzies Attack TV Sue”), but also of the burgeoning gay press and numerous regional papers. The text is also punctuated by press cartoons of the time, most of which serve to illustrate the general air of homophobia which prevailed even amongst the nation’s serious opinion shapers.

The frequent use of quotes from press and parliament is an effective means of conveying the tone of the debate, but unfortunately it also highlights the weakness of the book as a narrative. For although the reference to primary sources serves to create an air of objectivity, it also detracts from the author’s

3. *WA Report of the Honorary Royal Commission Appointed to Inquire into and upon Matters Relating to Homosexuality* (Perth: Government Printer, 1974).

ability to inject some real flair into his account of these events. By adopting a myriad of voices, many of them those of anonymous editorial writers, the unfolding drama seems devoid of personalities who can dominate or champion their respective causes. Various groups with almost interchangeable acronyms come and go with bewildering frequency, but very few individuals emerge as playing a pivotal or even continuing role in the debate. It is almost a relief when Ian Paisley puts in a brief appearance with his "Save Ulster from Sodomy" campaign.

The objectivity for which Jeffrey-Poulter is striving, however, is of course crucial to a book such as this which clearly purports to be more than a popular account. The reader is apprised very early on of the author's pro-reform sympathies, but these sympathies only infrequently impinge by way of direct comment upon the debate. For the most part he is content to let the various voices of the pro and anti-reform groups carry their own arguments. Jeffrey-Poulter also shows respect for both sides of the debate by providing representative comment from both the moderate and the radical factions of the opposing groups.

Following the initial breakthrough of the 1967 legislation the narrative continues to plot the slow path of reform as a number of "initiatives" are dragged before an unwilling parliament. Jeffrey-Poulter continually emphasises that the decriminalization of sodomy between consenting adults has been but one step on the way to achieving legal equality for homosexuals. Subsequent to the decriminalization of sodomy in England, the thrust of the reform movement has been aimed at Scotland and Northern Ireland with the reduction of the age of consent from 21 to either 18 or 16 (for females), and at the need for legislation to protect the civil rights of homosexuals. Despite several set-backs, particularly with regard to the age of consent, the reformers appeared to be making steady progress until the advent of AIDS in the early 1980's.

It is at this point that Jeffrey-Poulter's narrative gains new interest. The book fluently captures the shift in the debate, as reactionary elements within the press and parliament claimed that their moral outrage had been justified all along and others found it convenient to shelter their renewed sensitivities under a cloak of concern about public health. The reform groups, on the other hand, suddenly found themselves on the back foot, divided between those who were willing to continue the campaign using the existing dialectic and others who saw the need to take account of this new threat to their self-respect and perhaps their very existence. Jeffrey-Poulter does a service in recreating the crudities of the early debate regarding AIDS, when it was widely

considered a “gay-plague” of little consequence to other members of the community.

Most of this debate as it is recalled in the latter sections of the book, centres on clause 28 of the English Local Government Bill which came before Parliament in 1987. Clause 28, which sought to forbid local authorities from funding the activities of homosexual groups and to prevent them from “promoting homosexuality”, was the first major victory for the anti-reform groups. It was also instrumental in altering the tone of the debate. For the first time an element of militancy emerged in the reform movement, and large groups of homosexuals and their supporters took to the streets in support of their cause.

Despite the set-back to the reform movement received when clause 28 was finally passed in 1988, the book ends on a generally optimistic note. This optimism derives from the increasing pressure being exerted by the European Parliament to regulate not only the economic activity of the European Community, but also social factors to ensure that individuals’ rights are consistent throughout the member states. As early as 1981 a decision⁴ of the European Court of Human Rights in an action taken under the European Convention on Human Rights⁵ had forced the British Parliament to extend the 1967 reforms to Northern Ireland. The beginning of the 1990’s found reform groups turning increasingly to the European Parliament as a means of aligning the legal status and civil rights position of British homosexuals more closely with those which exist on the continent. Having been largely seen to have failed as an instrument of reform the British Parliament is now in danger of being by-passed.

The lesson for Western Australia to be learnt from the British experience as it is recounted in *Peers, Queers and Commons* is clear enough. The decriminalization of sodomy between consenting male adults will not of itself quell the demand for homosexual law reform. Despite following some 22 years after the British initiative, the Western Australian reform retains the same prospect for future conflict. In its adoption of 21 as the age of consent;⁶ in its proscription of the vaguely defined “promotion and encouragement of homosexuality”,⁷ in its lack of clarity with regard to the position of homo-

4. *Dudgeon v United Kingdom* 3 EHHR 40.

5. Convention for the Protection of Human Rights and Fundamental Freedoms 213 UNTS 221.

6. (WA) Criminal Code 1913, s 186.

7. Preamble to the (WA) Law Reform (Decriminalization of Sodomy) Act 1989.

sexuals in public, and not least, in the preamble to the legislation wherein Parliament recorded its continuing disapproval of homosexual activity and homosexual relationships,⁸ it has set a virtual agenda for the reform movement.⁹ As one reform campaigner stated recently with regard to proposed Tasmanian reform legislation, “Any legislation similar to that in WA is completely unacceptable ... We would rather that there was no change in the law as it stands”.¹⁰

Jeffrey-Poulter’s book can be usefully read by not only those with an interest in gay issues, but anybody concerned with understanding more about the law reform process in a parliamentary democracy.

8. Ibid.

9. For a discussion of the drafting problems with the legislation see N Morgan “Legislation Comment: Law Reform (Decriminalization of Sodomy) Act 1989 (WA)” 14 Crim LR 180.

10. “Tasmania Waits for March: Law Reform Passes Lower House” (1991) 40 Westside Observer 8.

