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# WHAT TO DO ABOUT AIDS

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**FOR LIFE, LIBERTY AND PROPERTY**

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They call it 'the Plague of the Eighties' - the newest of those pandemics we can read of in the history books. If on nothing else, people do seem agreed on this. The bigots see it - often quite literally - as a gift from heaven. Here is a fatal disease to cry up as one started by homosexuals and now spread to others. It is the ultimate excuse for stamping out 'permissiveness'. The homosexuals also play on the universal risk of catching it. Their hope is to keep the research money flowing, and divert attention from the matter of origins. To the doctors it means yet another chance to strut around in white coats, under the public's admiring gaze, looking clever but concerned. The politicians will talk about and sometimes do whatever they think makes them look good. The media always has gone - and always will go - for anything involving sex or death. This one, of course, has both. As for the rest of us, few are anxious to catch it; and we must all, at some point during the past five or six years, have given some thought to the possible risks in shaking hands and sitting on public lavatory seats. All things considered AIDS has provided a first rate excuse for panic.

Between 1983 and the end of September 1988, 1,794 cases of this 'plague' had been reported in the United Kingdom, of which 965 had been fatal.<sup>1</sup> These are out of a population of around 56 million. In England and Wales, in 1985 alone, 1,006 people hanged themselves, and 508 choked to death on food or vomit.<sup>2</sup> I recall no public alarm when these figures came out.

Certainly, the world as a whole has had more cases. As of August 1988, 108,176 had been reported to the World Health Organisation.<sup>3</sup> On the other hand, at around 5 billion, the world population is somewhat larger than the British.

## WHAT REAL PLAGUES ARE LIKE

In the early summer of the year 542 AD, the bubonic plague made its first known appearance at Constantinople. As the infection took hold, the death rate rose first to 5,000, then to 10,000 per day, and stayed at these levels throughout the three following months. All sensible efforts to dispose of the bodies were overwhelmed. The normal cemeteries filled up. Though dug to contain 70,000 bodies each, the emergency burial pits filled up. Some of the dead were loaded on barges and sent drifting in the Sea of Marmara. Others were bricked into the City walls; and the smell of the collective putrefaction turned stomachs whenever the wind blew from a certain quarter.<sup>4</sup>

The disease very shortly spread right through the Mediterranean world and even beyond, into northern France and perhaps into Britain. Reporting for parts of Italy, Paul the Deacon writes of whole cities falling silent, the inhabitants having fled, and of bodies lying everywhere unburied. "Were everyone so moved by customary duty as to want his loved one buried, he himself would go unburied. While he did his duty, he would be stricken; and, while he performed the funeral rites, his own funeral without rites would await him." In the country, the crops rotted on the ground, and the grapes, unpicked, withered on the vine.<sup>5</sup>

This is my favorite plague. But, if anyone finds the accounts of it incredible, the same pattern can be seen repeated throughout the early modern era. Around a third of the Venetian population died in the two epidemics of 1575 and 1630. In the great London plague of 1665, 70,000 died in a population of less than half a million. At Marseilles in 1720, 50,000 died in a population of scarcely 90,000.

But, perhaps as bad as the mortality, was the complete ignorance of how the plague was spread. It showed no typical pattern. Sometimes, it seemed to go from person to person, those who fled or put themselves into quarantine avoiding it. Sometimes it would do the opposite - leaving the nurses and even sexual partners of the victims untouched, but jumping as if by magic to the most isolated districts and individuals. It was only in 1894 that Yersin and Kitasao found the bacillus *Pasteurella Pestis*, and traced its peculiar spread by fleabite and droplet infection. Until then, the doctors were helpless. The disease was a mystery to them. For lack of any better advice, people tried everything imaginable as a preventive remedy. They prayed. They wore amulets inscribed with mystical signs. They inhaled lavatory fumes. They bathed in urine. They drank the pus spooned out of other people's sores. They burned witches. They burned Jews. They held regular trials of those charged with plague spreading. Looking at the kind of evidence adduced, the vast majority of those convicted were wholly innocent. But there was no lack of severity of punishment. In Milan, they were pinched with glowing tongs, had their right hands cut off and all their main joints smashed with a sledgehammer, and, if still alive, were strangled after six hours.<sup>6</sup> This doubtless took minds off the plague, but did little to abate it.

## AIDS IS TRIVIAL BY COMPARISON

Compared with these tremendous scourges, AIDS is nothing. Set against the panic it has occasioned, its actual effects have been almost laughable. Perhaps aware of this, those who think it their duty to frighten us treat the reported total of cases as no more than one from which to infer or project others more alarming. This is, to be fair, not completely idle scaremongering. In the first place, though no one really knows how much, the number of reported cases is rather lower than the number of actual cases. For the Western countries, the discrepancy is usually thought rather small. But the rest of the world is different. Since every other statistic put out by them is a lie, the low figures reported by the governments of the Communist Bloc can be doubted on principle.<sup>7</sup> In parts of Africa, where the disease is notoriously epidemic, governments are either too embarrassed to admit exactly what is happening, or are incapable of finding out. In the second place, there is the nature of AIDS. The virus of which it is the final stage can linger unknown in the body for months, or sometimes years, before diagnosis. How many there are carrying it is quite unknown.

Granting this, however - taking the said 108,176 as even a tenth part of the true current figure - the disease remains, in historical terms, a very minor pandemic. Allowing, indeed, for the greater populations of today, were the reported figure even a hundredth part of the true one, so the disease would remain. So it will or ought to remain. I know that all those who are, or who think themselves, presently infected, will find this of little comfort. No one is known to have recovered. Nor is there any prospect of a cure or long-term palliative being found before the next century. They can, at the moment, look forward only to a distressing and often prolonged degenerative illness. But their distress, great though it be, should be very nearly the limit of what is threatened by AIDS. The more lurid projections to the contrary, there is no reason why cases should multiply unchecked - why ever a time should come when a few painted savages lay snares for game in the garage blocks of our housing estates.

For, unlike in past visits of the plague, we know exactly how this disease is spread. By all previous standards, the scientific response has been spectacular. Starting from five cases in the Los Angeles area, and no understanding whatever of what was wrong,

finding the truth look less than three years. And if any infection, once its means of transmission are known, can be brought under control, for individuals of whole groups, this one seems almost uniquely biddable. The human immunodeficiency virus is a very delicate thing. It dies so quickly, outside of its ideal environment, that coughing and touching are nowhere near enough to spread it. It requires direct injection into the bloodstream. It is, therefore, in the West, something virtually confined to lower class heroin users and promiscuous homosexuals. Since the Police began taking their needles away, the first have begun sharing equipment. For lack of normal hygiene, the disease has spread among them by obvious means. Among the second, it has been spread by overly frequent sodomy. The vagina is a fairly tough piece of anatomy. Throughout its whole evolution, it has grown increasingly well adapted to the stresses and other dangers of a sexual function. The rectum has not. More than the occasional act of sodomy - not to mention other practices - usually results in damage, through which the virus can be passed. A multiplicity of partners forms a chain along which, once introduced, there is a risk that it will be passed. Anyone outside these two groups stands about as much chance of catching AIDS from someone who does have it as of catching malnutrition from a pauper.

There was until recently some risk involved in accepting transfusions of blood or the factor VIII prepared from it. There was then no reliable test for the infection. But there is one now, and the risk has been eliminated. In Africa and some other places the disease is commonly passed by heterosexual means. But, while not enough is known to speak with any confidence, this is probably a result of specific local circumstances. In most primitive societies, for instance, sodomy is the common method of birth control. Together with the recent collapse of most traditional moralities, this might account for the spread. Again, untreated syphilis or other venereal infections leave sores on the sexual organs, and the virus will pass through these as easily as through anal lesions. Yet, whatever may be happening elsewhere in the world, in the West, it remains that AIDS is no threat to the majority of people. The published figures show this quite clearly. Between 1981 and the July of 1988, of those cases reported in the adult American population, 63 percent occurred among homosexual men without a history of intravenous drug use, 7 percent among homosexual or bisexual men with such a history, 19 percent among heterosexual users of intravenous drugs, and 4 percent among people who received blood transfusions or factor VIII before proper testing began. 3 percent of cases were unexplained. Just 4 percent of cases were ascribed to transmission between heterosexual partners.<sup>8</sup> The pattern is broadly repeated in this country. Of those cases reported by the August of 1988, just over 4 percent were thought an effect of heterosexual intercourse.<sup>9</sup> It appears to be repeated in Holland. One recent survey there shows the risk of the virus passing between an infected man and his wife to be negligible.<sup>10</sup> From woman to husband, there is hardly a case known. Ever since the epidemic began, the cry has been of how prostitutes would open the floodgates of infection into the heterosexual population. This has not happened.

### **NO DRASTIC CHANGE OF HABIT REQUIRED**

Avoiding AIDS ought to be the easiest thing imaginable. A few simple precautions, and its further spread could be stopped immediately. Heroin users need only rinse out shared equipment before use with any cheap disinfectant. Homosexuals need only turn to monogamy or the various kinds of 'safe sex'. Even in Africa, only condoms and penicillin may be required. I am unable to say how many, or even whether, members of these first and last groups have begun taking care. But members of the second certainly have, and in large numbers. Many, of course, have not; and they continue cruising through the bath houses and public lavatories as though nothing had changed since 1980. This is a fact cried up by the alarmists every time the predicted millions fail to drop dead.<sup>11</sup> But the incidence of other venereal diseases among the group as a whole has fallen so sharply, that only very considerable changes of sexual behaviour can be inferred.<sup>12</sup> Since these

diseases show almost immediately, the reasonable expectation is that the number of new AIDS cases will trail off in due course. If these precautions involved altering an entire way of life, I might have cause to feel pessimistic. Continence has been recommended by all the moralists as a preventive of syphilis. It was known to work as one. There are people still catching it, 450 years after its first appearance. But nothing so drastic is required this time. Neither intravenous heroin use nor being sodomised need be given up. All that needs changing is some of the attendant circumstances. Perhaps, for some, these might constitute the whole or the greater part of the pleasurable act. But the terms for staying alive are so very low, that I can imagine only minorities within minorities refusing them.

And, if these should insist on not changing their habits, there is no further reason for concern on the part of everyone else. I keep hearing it said that, where people are dying, moral judgements are grossly out of place. Yet when a fatal disease is so well understood and easily prevented as this one, those people who go out of their way to catch it really have no business complaining if others do judge them. To be sure, anyone diagnosed as suffering from AIDS before the discovery of its viral nature and mode of transmission, if still alive, deserves the fullest sympathy of those around him. By whatever means the infection gained entry, he could have had no awareness of how to keep it out. His case is strictly analogous to that of someone found with a fatal brain tumour. No one knows how these are caused and how to stop them. The same applies to anyone unable to know about or obtain the means of prevention. The same applies to anyone infected by receiving tainted blood or factor VIII, or by other accidental or unusual means. The same applies to any medical staff infected in the course of their duties - though, since these are expected to take precautions for their own sake as well as ours, perhaps it applies with slightly less force. But these are now a minority of cases in this country. Most sufferers diagnosed today have no similar claim to public sympathy, even if human nature is such that they often do continue receiving it. For what they have is a self-inflicted illness. I well remember the uproar caused a few years ago, when James Anderton, the Chief Constable of Manchester, accused members of the high risk groups of "swirling round in a human cesspit of their own making".<sup>13</sup> A man in his position had no business opening his mouth at all. For what he said, he deserved a reprimand. For his manner of saying it, he deserved as immediate and humiliating a removal from office as the rules governing his employment allowed. But, leaving aside its ruder, fundamentalist rhetoric, this much of his speech is a statement of undeniable fact. It is a fact which, in conjunction with what else has been said above, is to be borne in mind throughout any discussion of the disease.

Therefore, while the full extent of AIDS has yet to become apparent, it may be nowhere near so important a matter as is often proclaimed. The evidence is that its current spread has begun to slow, and will continue slowing until it halts altogether, or ceases to be of any consequence. For it to have vanished within a decade, nothing more need be done on the part of government than wait. This is not to say that nothing should be done - simply that what we are usually told we must move heaven and earth to avoid will probably not happen. If there are public measures required, they are not so much heroic efforts to avert a general catastrophe, as means of hastening, or ceasing to check, an existing decline in the rate of new infections. Perhaps there is a need of new laws, or changes in the ones we currently have. But it is in the light of what is likely, rather than what is feared, that any recommendations are to be considered, their costs and benefits weighed.

### **INFECTION IS NOT HOMICIDE**

Now, one measure often considered is the granting or use of some legal safeguard against the deliberate, wanton spread of infection. Considering how hard a thing it is to catch, except virtually by request, there is no reason for public alarm at this point. What research has been done suggests that the typical sufferer has no wish to pose any threat to others.<sup>14</sup> In any case, there are limits

on what can be done by law. There are many things that it can protect against. It can put burglars in prison. It can restrain the dumping of rubbish by one person on another's front lawn. It can even keep rabid dogs and the Colorado beetle out of England. But where checking the spread of AIDS is concerned, the sort of laws most usually considered are either ineffective, or must do more harm than good. Anyone putting faith in the old common law notions of individual justice will certainly be disappointed.

In the case of infection within the high risk groups, these notions may scarcely be applicable at all: nor ought they be. After so much publicity, there can be no intelligent person unaware of the risks now inherent in certain kinds of behaviour. As already said, anyone who carries on regardless of these must be seen as having consented to receiving the disease: and where there is validly given consent, there can be no injury. This is true both in civil and, to a certain extent, in criminal law. Saying otherwise is to deny the notion of human responsibility. If people, offering no very immediate harm to others, wish to destroy themselves, that is their business. There is currently a presumption against their right to destroy each other, so that suicide pacts are illegal. But, while reasonable in those cases where murder could too easily be done under colour of euthanasia, this presumption has surely been carried too far already, without being stretched further. If I went of my own volition into a bath house or heroin 'shooting gallery', and later found I had AIDS it would be grossly unjust to let me involve the Police in a criminal investigation, or regard a civil action of mine for damages as anything but 'frivolous, vexatious and an abuse of the procedure of the Court'. It would scarcely be worse letting me hire an actor to read out a libel on myself and then sue for defamation. And even where consent is not an allowable defence, there must usually be so exceptional a degree of contributory negligence as to frustrate any prosecution.

In the case of rape or seduction of a minor, or the spreading of AIDS in unexpected ways, there is a good claim to legal protection. Yet, though infecting someone may invariably cause death, it cannot be classified as homicide, let alone the murder that it evidently seems to be. Giving someone a fatal dose of salmonella poisoning 'with malice aforethought' is murder. But death in this instance follows both as a direct result of infection and very swiftly. AIDS is different. The virus itself is not fatal. It merely opens the way to other diseases; and these might often not proceed so unambiguously from the initial infection as a court of law would require. Again, if death occurs more than a year and a day after the commission of whatever act is alleged to have caused it, there can be no homicide under English Law. The two events are, once more, though now in time, considered too far apart for a strong enough connection to be made between them.

In spite of its consequences, the act of deliberately infecting another with AIDS seems to constitute no more than rape, or assault occasioning actual bodily harm. The maximum penalty for the first of these is life imprisonment, which is the same as for homicide. Though for the second it is currently only five years imprisonment, Parliament would doubtless, if pressed hard enough, amend the law. For the moment, then, the precise heading under which the act should fall might not seem of great practical importance. If, however, as I devoutly hope, the death penalty were ever reintroduced for murder, a very definite problem of classification would emerge.

But, after making every adjustment, the fact remains that laws protecting against individual hurt can have very little restraining force. Unless he were to have gone about injecting people from a syringe, the chances are that anyone convicted of spreading AIDS will be fairly advanced in it himself. No length of imprisonment, nor any civil award of damages against him, nor even perhaps hanging, is likely to have the same deterrent effect as on most other transgressors. What the Milanese did to plague spreaders might deter - but this would probably never be so much as considered in modern England. Bearing this in mind, any call for legal controls on the spreading of infection must also involve call-

ing for prior restraint. Rather than punishing people after the event, they are to be stopped in advance from acting.

### COMPULSORY TESTING IS A RIGHTS VIOLATION

There is to be the compulsory testing of as many within the high risk groups as can be found. When this is put forward, its advocates usually begin with a rhapsody on how much absolutely vital epidemiological information it would give us. This done, they proceed to describing the benefits to be had of persuading those found to be infected to change their ways and tell about all their friends. But the real purpose behind this is confinement. What point, otherwise, in going to the trouble and expense of tracking down the infected if they are then to be left alone? Writing in America, Masters, Johnson and Kolodny are quite open about to what mass testing is the prelude. "New legislation" they claim, "is needed to modernize [the] law and give the courts power to imprison persons whose persistent irresponsible behaviour exposes others to infection with the AIDS virus."<sup>15</sup> In West Germany, where the Police are already empowered to take people out of their own homes for compulsory testing, the only question left appears to be of what is to be done with all who test positive. In 1987, some journalists redrew the plans of Sachsenhausen Concentration Camp and relabelled them "AIDS Medical (isolation) Centre". The civil servants and politicians shown these thought the whole idea splendid. The on site crematorium was particularly admired.<sup>16</sup> Set against this, the Herr Doctor K. A. Kutter becomes actually quite liberal. He only suggests tattooing the genitals of the infected as a warning to all who might otherwise care to sleep with them.<sup>17</sup>

Even without these extremes, compulsory testing violates just about every individual right imaginable. People are to be detained and, against their will, have needles stuck in them - and, I shall again repeat, nearly wholly for the sake of stopping them from infecting others by consent. If found HIV positive, their details are to be recorded and collected in forms easily open to disclosure or further use. People are to be put in fear not only of more extensive harassment by the State, but also of private blackmail.

Except rhetorically - and then only if quite carried away - I would never call freedom something to be enjoyed absolutely. The right to go about one's business without hindrance is one of the same *genus* as that of owning property. But there are clearly times when a fire can be checked only by tearing down the houses in its path, and never mind who owns them. Equally, there have been plagues requiring the most stringent quarantines, and never mind whose contracts were frustrated or who was kept prisoner for the duration. Freedom, no matter how precious, is a circumstantial thing. It may be entrenched in a bill of rights and hedged round with every safeguard. But it must still give way in time of sufficiently great emergency. There is, of course, no formula for calculating when an emergency becomes 'sufficiently great'. This is a matter of judgement for those in a country whose opinions most count at the time: and what is thought more important than freedom in Teheran is usually thought otherwise in London. Undeniably, though finding and locking away every infected person would have its problems, in that many would slip through the net, it would slow the spread of the disease. But, given the facts of how it is spread, there is no reason for trying this. AIDS is simply not enough of an emergency to justify any departure from what ought to be the general rule of freedom.

### TWO NECESSARY MEASURES

It is, indeed, not important enough in itself to justify any radical step whatever. As I have said already, for the disease to vanish utterly, those who do not have it need at most only adopt a few basic precautions, and wait for those who have done or prefer doing otherwise to have died out. Looking for the means of ensuring that the fewest will have died out, rather than the most, must always remain a worthwhile thing to do. But those means so far reviewed will either not work or will work, bearing in mind what little there really is to be gained, at no price short of the

exorbitant. There are two measures which would help slow the spread of AIDS more surely than anything yet considered. They do require a drastic alteration of current policy. If, therefore, they are worth recommending at all, it is not on account of how they might alleviate a problem of no fundamental urgency that will disappear in any event, but on account of their abstract justice, and of the wider advantages to be expected of them. I believe that this condition is fully met. First, there is the legalisation of heroin. Second, there is the granting of full civil equality to homosexuals. Since it is of these two about the least currently acceptable, I begin with the first. And, while I speak mainly of heroin, it should be plain that any case for legalisation here must apply, in more or less degree, to every other illicit drug.

### THE EFFECT OF TRYING TO BAN HEROIN

Derived from opium, but about 25 times stronger, there is nothing new about heroin. First discovered in 1874, at St Mary's Hospital in London, it came on the market in 1898, sold as a patent cough remedy by the very respectable German firm of Bayer. It remains to this day the best of all painkillers. Nothing matches it for taking away the pain of terminal cancer. Its recreational properties are unique. I know that discussing what I have never experienced has its problems. But, so far as I can tell, heroin, injected into a vein, is a cause of pleasures similar only to those of an orgasm, but of greater duration, and incomparably more intense. Granted, those grown accustomed to its use can experience certain problems. First, given so direct and generally reliable a path to ecstasy, they may come to see the world outside themselves as something more to withdraw from than reach terms with. Second, they may become physically dependent on their drug, so involving the giving up of its use with varying degrees of hardship. But of problems caused by heroin in itself, these are the only ones. The crime, the squalid style of life, the overdosing, the hepatitis and AIDS and other infections - these are all the fault of the State. Beyond the two - by no means inevitable - problems already mentioned, everything considered bad about heroin is an effect of trying to ban it.

If someone robs me, I - or, assuming the worst, my next of kin - make a fuss. The Police are alerted to the fact of a crime, and usually can expect help in solving it. If I buy heroin or some other drug, a crime has still been committed. But there is no victim to go complaining. If talk of stamping out drug use is to be more than so much hot air, the Police must shed their traditional role, of protecting life and property, and start acting like the Gestapo. Entrapment - or tempting, then arresting - is still frowned on by the British Courts. But it is quite lawful to be stopped in the street and searched on suspicion of carrying drugs.<sup>18</sup> Sudden swoops and house to house searches, though not lawful, used to be common until they were found to cause riots. In the future, we can expect coordinated international surveillance of the drug trade, even with the techniques of biological warfare being used to detect or frustrate it.<sup>19</sup> As for punishment, since 1986, the drug dealer has risked life in prison if caught. Under the same law, his assets on conviction may be presumed the profits of crime, and can be confiscated unless proven otherwise.<sup>20</sup> For him, the normal burden of proof in our criminal law has been reversed. The Crown no longer has to prove its case. That job now falls to the Defence. A penalty has been created for imposing which there need be no proof of any specific offence. This departs from the whole spirit of the English common law tradition. It was claimed at the time as necessary to check so exceptionally evil a trade as that in illicit drugs, that it could never set a precedent.<sup>21</sup> Anyone who ever claimed this was either a fool or a liar. What has been done before may lawfully be done again. In 1988, the power of the Courts to grant Criminal Confiscation Orders was extended to cover the assets of those convicted of all other indictable offences.<sup>22</sup> We live, it grows increasingly plain, under our most despotically inclined peacetime government since James the Second ran away to France. It was not fear of drugs behind the law that compels an accused to testify against himself,<sup>23</sup> nor the one that took away the ancient right of preemptory challenge in jury

trials,<sup>24</sup> nor the ones projected which will take away the right to remain silent under Police questioning and which will make the mere possession of banned literature a criminal offence. But the 'War on Drugs' has been and remains one of the prime excuses for snatching away rights and legal protections that have been enjoyed for centuries.

And the 'War' is being lost. Nor, even if we had all of our ancient liberties taken away, could it be won. Synthetic drugs can be made in a garden shed. The smuggling of opiates is impossible to stop. In 1984, 36 million people entered this country. Any woman could bring in £20,000 worth of heroin packed in her vagina.<sup>25</sup> Some Customs Officials doubt whether they stop as much as three percent of total imports of heroin.<sup>26</sup> If drugs are wanted, they will always be supplied. The law can simply determine how.

Attacks on life and property, though distressing to the victims, hardly ever generate the kind of large profits that bring Mafias into being. With their intricate and expensive hierarchies, these require an altogether different class of crimes - something like legitimate business, but from which legitimate businessmen are excluded. Drugs are exactly this. Between 1979 and 1984, convictions for possession or supply of all illicit drugs rose by 163 percent, and of heroin in particular by 465 percent;<sup>27</sup> and both have doubtless since gone considerably higher. How much money is made from the business no one knows. But gross annual receipts in the United States are estimated at \$110 billion.<sup>28</sup> In this country, we can be sure only that a lot is made - easily enough to make crime pay on a very big scale. Drugs are supplied; and because supplied by criminals, they are both expensive and dirty.

Consider an example from the trade in cocaine.<sup>29</sup> A Bolivian farmer sells 500kg of coca leaves for US\$2,000. Refined into 1kg of cocaine, it sells to a local wholesaler for \$7,000. It goes to a Canadian wholesaler for \$18,000. The street dealers buy it for \$100,000. Its final selling price is \$800,000 - representing a mark up of 40,000 percent! There are two elements in this. First, without high prices, there would be no incentive to bring drugs to market. Transport inefficiencies, bribes, rewards of special entrepreneurial risk, all cost money. Second, there is the usual effect of coercive monopoly. If another dealer comes on their territory, the gangsters never sigh and cut their prices. They blow his legs off, and keep market share that way.

This is the cause of the associated petty crime. Perhaps some users become criminals from the example of the company they have to keep to obtain their supply. More often, with heroin at around £50 per day, and not everyone being equally suited to prostitution, thieving is a natural response. In America, as many as 55 percent of all robberies may be to finance drug purchases.<sup>30</sup>

This is the cause of the associated diseases. If I buy a can of lager and read on it the words "8 percent alcohol by volume", I know that this means 8 percent - not anything between 0.5 percent and 30 percent. I know that what makes it taste like lager is not caustic soda. If I want to drink it from a glass, I shall not be given one in which someone else has just vomited. Call this the outcome of clean food laws, or of markets regulated at most by the law of torts. Neither governs the trade in illicit drugs. Because purity is so variable, there is no certainty of dose, and overdosing is frequent. As for the impurities, where injected heroin is concerned, these have been known to produce blockages in veins, so requiring the amputation of gangrenous limbs.

AIDS is merely the latest and best publicised result of State attempts at control. If the lowest class of heroin users had not been made criminals and outcasts, they would never have been thrown so closely together in conditions of such squalor. If the Police had never been encouraged to grow so zealous about the confiscation of every needle and syringe within reach, sharing would never have begun on the scale required for the virus to take significant hold. If anyone is really interested in stopping heroin users from dying, as opposed to stopping them merely from enjoying themselves as they see fit, the obvious course is not further control

laws, but legalisation. The ideal state of affairs is one in which anyone can go into Boots or another chemist and - always showing evidence of age - buy whatever substance in whatever quantity can be afforded. In the meantime, the best compromise might be to give doctors back the right they enjoyed prior to the Dangerous Drugs Act 1967, when they were as free to prescribe heroin as they now are to prescribe antibiotics. Any scheme that lets doctors think themselves more important than they do already is no ideal one. But it would give users an access to clean heroin at somewhat less than monopoly price. It would bankrupt the dealers and clear out the shooting galleries.

### THE RIGHT TO USE OPIUM HAD EXISTED

There is nothing utopian or absurd about any of this. The use of every drug available - and these had come to include, with heroin and the other opiates, cocaine, cannabis and mescaline - was entirely uncontrolled until the Great War: and no serious problems were reported with leaving their use free. Restriction began only as a wartime measure. A groundless panic went round, of how soldiers were being addicted by prostitutes to cocaine. By Regulation 40B, however, of the Defence of the Realm Act 1916, possession of cocaine by members of the armed forces was made an offence. By the Dangerous Drugs Act 1920, control was extended to the general population, possession not only of cocaine but also of other opiates being prohibited without prescription by a doctor. Perhaps it was no coincidence that drug controls began in the same year as gun controls. The Great War had cleared the way for the full expression of what had been growing increasingly evident during the previous forty years, but had always before been checked by a dislike of rapid change in any direction. The British people had come to prefer being looked after by the State to being free. The right to take drugs was quietly given up, and has never since been demanded back. But this right had existed, and had been enjoyed on a massive scale.

Opium had been used in this country for centuries. It was the only painkiller available, and its less obviously therapeutic benefits were widely known. Use was so common, indeed, that it was remarked on only when thought excessive. Robert Clive took it for twenty years in an effort to control his depressions. It was on the whole a successful effort. In nature and extent, his Indian conquests are surpassed only by those of Alexander. He did eventually commit suicide with a double dose, but only after his return to a life of idleness in England. William Wilberforce, the anti-slaver, took it three times a day for thirty years. Scott and Dickens found it a useful stimulus to work. Then there is Thomas De Quincey. His reputation was made by his descriptions of the wild and splendid dreams that opium permitted him. His dosage at times during his sixty years of nearly regular use reached to more than an ounce per day. But, if he would send in manuscripts, apologising to his publishers for the laudanum stains on them, his collected works are still enough to fill sixteen stout volumes. If he was often a recluse, he was never an outcast. His friends, when they could persuade him to visit, gladly upset their domestic arrangements to accommodate his peculiar tastes. He would stretch out on a rug all afternoon and evening before a fire, ecstatic on opium. At around two or three in the morning, he would wake and with his vivacity and eloquence dazzle the supper parties detained in his honour.<sup>31</sup>

Opium use was never the vice of a small minority. It was a national habit. De Quincey wrote in 1821:

"[S]ome years ago, on passing through Manchester, I was informed by several cotton manufacturers, that their workpeople were rapidly getting into the habit of opium-eating; so much so, that on a Saturday afternoon the counters of the druggists were strewn with pills of one, two, or three grains, in preparation for the known demand of the evening. The immediate occasion of this practice was the lowness of wages, which at the time would not allow them to indulge in ale or spirits; and, wages rising, it may be thought that the practice would cease: but, as I do not readily

believe that any man, having once tasted the divine luxuries of opium, will afterwards descend to the gross and mortal enjoyments of alcohol, I take it for granted:

That those eat now who never ate before;  
And those who always ate, now eat the more."<sup>32</sup>

The statistical evidence, such as it is, bears him out. In 1827, when records of the trade were first kept, British consumption was 17,000lb, or 600mg per head of population. In 1860, following one of Gladstone's free trade budgets, the opium duty was abolished, and records were no longer compiled. But, by the previous year, consumption had risen to 61,000lb, or 1,500mg per head of population.<sup>33</sup>

Use was entirely free. Freedom was taken advantage of for purposes that would have the normal modern Englishman bellowing for controls. But use, if self-indulgent, was seldom careless. With freedom went responsibility. No one ran amok. The great majority of deaths were individual accidents, and these were so few that, as today with AIDS, they were scarcely worth counting. But for the improved collection of statistics, they might never have been noticed. In 1863, the first year in which numbers were counted, 126 people died of accidental overdoses: in 1901, 138. There was a high of 207 in 1897, and a low of 90 in 1870. The annual average for the whole period was 136.<sup>34</sup>

Quite naturally, people failed to understand why the Chinese Government could be so touchy about the importation of opium by British traders. As acts of pure aggression, the two wars we fought with China are indefensible. The Chinese took a very modern view of opium, and had been rewarded with a very modern set of problems. Yet, whatever the merits of their policy, they never tried enforcing it outside their own jurisdiction, or without prior warning. The financial interests in London and Calcutta had no business calling for armed intervention. But the fighting of the 'Opium Wars' - and their popularity with the electorate - does show how absolutely different from our own was the view taken by our ancestors of the recreational use of drugs. Any government that tried prohibiting these was seen, almost by definition, as a tyranny. Any nation that put up with such a government was seen as a degraded rabble.<sup>35</sup>

There is no automatic reason why the free availability of opiates should result in national chaos. It might be claimed that State prohibition has taken the place of the old customary restraints on excessive consumption, and that legalisation now would lead only to an explosion of deaths. This might well be claimed. By the same reasoning, any nation having lived so long under a censorship as to have forgotten the habits of politeness and tolerance, ought never again be allowed freedom of speech. Any child, having grown used to stabilisers on his bicycle, ought never be persuaded to give them up. If this is an argument at all, it is rather against State efforts at regulation than for them. Its consideration can influence only the speed of any progress towards freedom, never its desirability.

### AN INSTRUMENT OF REGULAR OPPRESSION

This said, I turn to the cause of homosexual equality. Now, as it is with drugs, so it clearly must be with sex. There being no violation of third party rights, what consenting adults do with themselves or each other ought to be strictly their own business. Here, as elsewhere, the only legitimate function of the law is to offer an impartial protection. Unlike with drugs, however, this has not been the case in England. Until the Reformation, sodomy, or 'buggery' was an offence under canon law, punishable by burning at the stake, and sometimes, it appears, burial alive. In 1533, it was made a felony, punishable, on maximum sentence, by hanging. It should be said that the law was never so harsh as might be imagined. To secure a conviction, the Crown had to prove nothing less than intercourse *mentula culo*. Nothing else would do - not even the coercive irrumation of a little boy.<sup>36</sup> After 1660, the most common punishment, except for persistent offenders, was the pillory - although the last executions took place as late as 1835;

and, in 1806, more convicted sodomites were hanged than murderers.<sup>37</sup> In 1861, hanging was replaced by a maximum sentence of life imprisonment.

Only in 1885 was the law made an instrument of regular oppression. In that year, the offence of 'gross indecency with another male person' was created.<sup>38</sup> A vague term, this was found eventually to cover even those acts where no physical contact had taken place.<sup>39</sup> Such vagueness, together with a maximum sentence of just ten years, rather than life imprisonment, made obtaining a conviction far easier. If, after the first rush of cases, of which Oscar Wilde's was the most famous, it went largely into abeyance, it remained all through the first half of this century, a ready weapon of the blackmailer. After the last war, a strict enforcement was ordered. The resulting great persecution of homosexuals, which reached its fullest vigour in the 1950s, remains one of the most grotesque and sinister events in our modern history.

Granted, matters have improved since then. David Maxwell-Fyfe is retired and dead. No subsequent Home Secretary has yet been anywhere near so eager to have the State play Peeping Tom through bedroom keyholes. Since 1967, the old criminal sanctions have been partially lifted;<sup>40</sup> and male homosexuals have been placed very nearly on an equal footing with lesbians - who, for some reason, have been entirely overlooked by the criminal law.<sup>41</sup> But this is scarcely full equality. Homosexuals are not allowed to marry. Their unions are completely unrecognised by law. They have no automatic rights of inheritance if their partners should die intestate. They are not allowed to adopt children. Their age of consent is fixed at 21 years, rather than the general 16. The most recent legislation affecting them seems to make it an offence to teach in any maintained school that they should be tolerated.<sup>42</sup> In every one of these instances, the law ought to be changed.

The coming of AIDS has given the bigots what many regard as fresh and effective opposing ammunition. If there were fewer homosexuals, the argument goes, or those which exist could be made less active, the spread of AIDS would be slowed. This is James Anderton's view of the matter; and only very firm pressure from above has silenced his calls for renewed prohibition.<sup>43</sup> There are Young Conservatives who feel the same. They blame the spread of infection squarely on the 1967 Act, and insist that a 'moral crusade' is all that can save us.<sup>44</sup> This view might always be right. But, if so, it would justify nothing very severe. As ever, the risk of infection is too slight, and too narrowly confined to those willing to assume it. And it is likely that the argument is wrong.

For about three quarters of a century, one of the principal claims of those in favour of leaving homosexuals alone was that they formed a 'third sex'. What determined their preference no one could tell. But, like the Jews and people born blind, they were a distinct group. Short of murder, no action by the State could reduce their number, but could only make those already existing needlessly unhappy. Toleration would bring no increase in their number, but only allow a readier expression of set preferences. Since 1967, it has become obvious that either there were always many more homosexuals than was ever believed, or - as is likelier - what was claimed was untrue. The Kinsey Report advances a rather more convincing hypothesis, according to which human beings are seldom one thing or the other, but bisexual in varying proportions. A scale is posited to show this, going from zero, or entirely heterosexual, through five intermediary positions, to six, or entirely homosexual.<sup>45</sup> Now, if this be so, it follows that attitudes to homosexuality - especially when expressed in legislation - can have a profound influence on the number of homosexuals at any given moment. One likely outcome, then, of the 1967 Act has been to encourage members of the intermediately groups on the Kinsey scale to do what in other circumstances they would not have done.

#### **HARSHER LAWS AGAINST HOMOSEXUALITY WOULD ENCOURAGE THE SPREAD OF AIDS**

From this, it does follow that a firmly applied prohibition would reduce the number of practising, and, in time, of aware, homo-

sexuals. So far as this goes, the James Andertons among us have an undoubtedly valid point. But, like a spring, human nature is only so elastic. It can be extended and compressed, but only within limits. Even in classical antiquity, when homosexuality, where not compulsory, was honoured and accepted, there were exclusive heterosexuals, like Cicero and Marcus Aurelius. Even in all those other times and places, where homosexuality was abominated, and where the most horrible punishments were decreed against those found guilty of practising it, the very infliction of punishment shows the imperfect force of any law. The extremes on the Kinsey scale are the fixed limits of every variation in human sexuality. Insofar as they claimed that no expansion of numbers could take place, the early advocates of homosexual rights were mistaken. But there really is an irreducible core of homosexuals. No laws can make them into heterosexuals, nor terrify them into continence. Whatever the size of this core - and it may be quite large - the main result of renewed legal sanctions would be to encourage the spread of AIDS. It would produce just that degree of wild and careless promiscuity by which AIDS has been spread.

Men on the whole want - or feel it their duty to want - a frequent change of sexual partner. In heterosexuals, this tendency has been largely restrained by various natural and customary bonds. There is the affection of one person for another. There is habit. There is the regard that must be paid to the preference of most women for only one partner. There is the bringing up of children. There is that joining by marriage of two estates and persons into one, the dissolution of which is always inconvenient. There is the force of public opinion. Economic progress has changed matters somewhat. With an increasingly equal access to decent careers, women are less willing to become wives and mothers. They are bearing fewer children than they did; and those they bear they are often able to look after without the financial support of a husband. But the bonds do remain. If, as we are continually told, one in three marriages ends in divorce, two still do not.

To homosexuals only the first two of these bonds is allowed to apply; and these are seldom the strongest. When there is an active persecution in course, relationships durable enough to be noticed become actually dangerous. Two men living together is a standing risk of discovery or denunciation. The cautious homosexual keeps encounters as brief and anonymous as possible. This means the public lavatories and parks. Or, at best, he takes a boy as a lover, who can be passed off as a son or other relative, and who is less likely to inform than an adult might be. Even now, without an active persecution, the formation of stable unions is impeded by the denial of any legal recognition to them. I know that one public image of the homosexual is that of the voracious libertine. This is an image to some extent confirmed by such homosexual writers as John Rechy and Andrew Holleran. Yet, despite this, and despite the frigid view of the law, there have been and are homosexual relationships held together with great durability by nothing more than affection and habit. I have known of one myself.

#### **HOMOSEXUALS MUST BE ALLOWED TO MARRY**

Four years ago, when I was the branch manager of an estate agent's office in Charlton, I worked next door but one to the Parish Church of St Luke. The Rector, Tony Crowe, had among his congregation two homosexual lovers, a Mr Saxon Lucas and a Mr Rodney Madden. They had met as young men, and had now been together for 25 years. Mr Crowe is one of those Anglican clergymen who never let Church doctrine stand in the way of common sense or humanity. Soon after they moved into his Parish, in 1978, he had conducted for them the nearest service allowed to a formal marriage, a blessing of their union. Seven years later, he prepared a further service, for Saturday 11th May 1985, to bless their silver anniversary. Perhaps as should have been expected, this was disrupted. The night before, a group of fundamentalists had come over from Blackheath and nailed a copy of the Thirty Nine Articles to the Church door. On the day of the service, they forced their way in and occupied the Church for several minutes. The congregation was outraged; and Mr Crowe preached a rousing

sermon the following Sunday week - all about David and Jonathan, and Naomi and Ruth. The occasion was spoiled even so; and the gloating lies of the gutter press could only emphasise the fact.<sup>46</sup> Yet what two people have managed to do in rather unfavourable circumstances, others can do when the circumstances are improved.

And so, homosexuals must be allowed to marry. Objections on purely religious grounds are of no consequence. Marriage in this country is a civil affair. So long as their ministers are put under no obligation to perform the services, the churches have no more place opposing weddings between persons of the same sex than between divorced persons or those within the prohibited degrees of kinship. At the same time, the law respecting the public expression of homosexual love should be harmonised with that respecting any other public nuisance. I recall one very disgraceful misuse of Police and Court time from 1984. Two men were found kissing at a bus stop in Oxford Street at 2 am. They were arrested, charged and convicted of an offence against public decency. The conviction was upheld on appeal.<sup>47</sup> Had it been a man and woman found copulating, there might have been less fuss by the police. Had it been one person of any sex violently assaulting another, I know from experience there would have been none whatever.

## SECTION 28

At the same time, Section 28 of the Local Government Act 1988 should be repealed. There have been glaring instances of Labour-controlled Councils using public money to attack the Government. To stop this, it was made illegal in 1986 for a local authority to 'publish any material which, in whole or in part, appears to be designed to affect public support for a political party'.<sup>48</sup> Some took legal advice, and found how badly drafted the law was, and how easily its intention could be frustrated. They could - and did - continue as before. They continued funding groups dedicated to changing the laws affecting homosexuals, and having pro-homosexual propaganda taught in the schools under their control. This was an abuse of power, and deserved to be checked by all means consistent with the preservation of local democratic responsibility. But these Councils had been propagandising for many other causes beside this one. If there were to be fresh curbing legislation, it should have been a general law, compelling silence in all matters of public controversy. Instead, we had a new law both narrow and imprecise. As things stand, a Council can celebrate the bicentenary of the French Revolution, rename every street in the borough after foreign terrorists, and have the school-children getting up flattering petitions to Mr Gorbachev. All this, and the Courts are put at risk of having to decide whether allowing copies of the Wolfenden Report to remain in the public libraries is not now illegal.

As for the adoption of children, or the keeping of any obtained by other means, there are, perhaps, problems. Children are influenced by their parents. This is a fact that needs no demonstrating. Someone born of Jewish parents usually grows into a Jewish adult. Likewise, if in smaller degree, those born of Conservative, socialist, survivalist or 'green' parents. Expecting a time in the foreseeable future, when homosexuals will be regarded as no more remarkable or unpopular than people with red hair, would be wildly optimistic. Until then, it may seem reasonable to claim a public right of protecting young persons from influences which they cannot properly comprehend, and to which it is not their best interest to give way. But, this much said, there is no other reason why male or female homosexuals should not make perfectly adequate parents. It may be bad for a child to grow up predisposed to join an unpopular minority. It is certainly bad for one to be brought up a drunken thieving member of the underclass; to be beaten every night, or burned with a hot iron, to be taken in and out of care, to be taught that honest work is something done by fools, and that the highest mental activity involves finding a new way to deceive a few extra Pounds out of the Department of Social Security. Those who dislike the idea of homosexual parenthood forget too often that children can do very much worse.

## LIBERALISATION FROM EUROPE

I have mentioned lowering the age of consent for male homosexuals. Following the recommendation of the Wolfenden Committee, ten years previously, this was set by the 1967 Act at 21. It had been decided that "a boy [was] incapable, at the age of sixteen, of forming a mature judgement about actions of a kind which might have the effect of setting him apart from the rest of society".<sup>49</sup> To me, the principle of the age of consent is an entirely sound one. While they have been cruelly persecuted for their views, and face punishments for their actions grossly more severe than is ever warranted, I can see no case whatever for granting the demands of the radical paedophiles. To every child, there is an age below which the Wolfenden view wholly applies: and it applies all the more now that not merely ostracism but possibly also death is the consequence of sexual intercourse between men and boys. I know that this age at which maturity can be presumed varies from child to child; and the criteria by which it is judged have varied enormously according to time and place. There should, even so, be an age of consent. The only question is of where this should be set. In present circumstances, setting at 21 is an absurdity. At 16, the average modern boy knows as much about sex as he is ever likely to. He can join the Army and go and be shot at in Northern Ireland. Any man caught in bed with him can face up to five years in prison, and he can face two. All that can be said in favour of the law as it stands is that it seems to be largely ignored, except where public scandal is given. Various lowerings of the age have been proposed in this country; and one may eventually be required from outside. For good or ill, ours is a member country of the European Community. Our partners are generally more liberal in sexual matters than we are. In 1982, the French set their age of consent at 15 regardless of gender. In Holland, the age is 16. In most other member countries, it is 18. In Italy, there is no age of consent as such, though various circumstantial laws do limit the sexual freedom of minors under the age of 15. Only in the Irish Republic is the law more restrictive than our own, the offence of gross indecency between males never having been abolished or limited, and homosexuality remaining illegal at any age. No harmonisation of the consent laws is likely to be in the direction of severity.

## THE RIGHT OF INDIVIDUALS TO DISCRIMINATE

At this point, if I have not done so already, I should make myself entirely plain. What I am arguing for is a lifting of the whole burden of State discrimination. There should be strict equality of rights. I am unaware of any British advocate of homosexual rights before 1967 who went any further than this. Most fell very short. Since then, however, the notion of positive 'gay' rights has been imported and pushed endlessly forward. According to this, Justice is to keep her spectacles, but the lenses are to be changed. Homosexuals are to be raised from their present bare toleration to an entrenched privilege. There are to be laws prohibiting discrimination against them in employment or anywhere else. They are to be given the right to inflict themselves unwanted on the company of others. The Labour Party, of course, is quite keen on this. It has tried, at various times, bribing women and just about every ethnic minority available with 'equal opportunities' legislation. Homosexuals are simply one more group to incorporate into a coalition, which if it really existed, would have swept the Tories from power years ago. I have already mentioned the efforts of the Labour Councils. In 1983, the main Party Conference voted to adopt an anti-discrimination policy.<sup>50</sup> In 1987, the Labour Member for Brent, Mr Kenneth Livingstone, promised to bring in a private bill outlawing discrimination on the grounds of sexual preference.<sup>51</sup>

Were all this directed only at the State and its dependent bodies, there would be nothing with which to disagree. For as long as there are to be public servants, it should be the duty of those recruiting them to seek out the best ability at the money available. Every other consideration beside fitness for the job to be done involves a waste of money that is - whatever be the necessity of taking it - always taken ultimately at gunpoint. But where private



discrimination is concerned, the matter is entirely different. Laws here are a straight injustice. Insofar as they can ever be made to work, they do so at a heavy cost in liberty. Suppose, for example, I were a staunch Vegan and hater of the South African Government. Everyone - no matter what were thought of my views - would surely think it monstrous if it were made an offence for me to boycott shops selling meat and fur coats and Cape oranges. Yet this is exactly the position of whoever may be penalised for refusing to employ people on the grounds of some prejudice against them. I buy goods. The employer buys labour. This is the only difference.

It might be that a fundamentalist bigot compelled by law to associate with a homosexual would be brought by daily experience to realise what nonsense he was spouting. More likely, it might rouse a perhaps somnolent, abstract prejudice into active dislike. Section 28 is an outrageous law. But it could never have been carried through Parliament without widespread public support; and there would never have been public support had the Labour Councils kept themselves to emptying bins and mending the roads. Homosexuals have as yet been granted rights of this kind too locally and briefly and sporadically for the full evils of doing so to become apparent. But, looking to the experience of those other minority groups that have been assisted these twenty years and more, there can be little doubt that State favouritism has been a greater bar to real progress than State indifference or persecution. In those cases where there are not only laws against discrimination, but a positive bias, there can be no doubt whatsoever.

#### ANTI-DISCRIMINATION LAWS PREVENT PROGRESS

I live in Lewisham, a Borough under a pretty dreadful Labour administration. Whenever I read the local press, of course, I come across page after page of advertisements for Council jobs. All posts are open, these very nearly proclaim, without regard to race, sex, religion, sexual preference or physical or mental disability: but, the Council being short of - say - Sikh leather fetishists or black paraplegic lesbians in the kind of position advertised, only these should apply with any hope of consideration. This has been a standing joke on the Right for years. But its more practical effect has been to lower the public confidence in every local government employee drawn from any of the favoured groups.

When Jews began moving out of trade and into the professions, various informal barriers were put up to prevent their entry. To make their way at all, Jewish entrants had to be consistently better than their Gentile competitors. This was unfair at the time to all who were merely capable. But, to this day, Jewish professionals keep a name for excellence that works entirely in their favour as a group - a favour that, if carried to any greater extent than now, might so ease the way for mediocrity as even to produce a diminution of average quality. Had the anti-semites of ninety years ago been possessed of any sense whatever, they would have demanded race relations laws in exactly the same terms as the ones we currently have. The Jews might then have gone on lending money and selling old clothes until their Messiah came.

Black and brown people have all the supposed advantages that the Jews never had: and look how they are regarded. What is most usually thought of a senior local government official born of West Indian parents? He might have worked ferociously hard to get where he is. He might be outstandingly able. To a public that knows only his ancestry, he is just one more illustration of how the best Council jobs go to the darkest faces. When they had to reconcile their notions of Jewish inferiority with the facts of Jewish success, the anti-semites had to fall back on bizarre conspiracy theories. The modern racists need only produce a volume of newspaper cuttings, or lay on a tour of some inner-London town hall.

Homosexuals are evidently not an ethnic minority. If times become very hard, they can usually disappear. Not the most rabid persecution has been enough to keep discrete homosexuals from material success. But, no more than the ethnic minorities, can they be helped by laws against discrimination. It is not compul-

sion that will bring about that state of affairs in which, being openly what they are, they will be fully accepted as free and equal fellow citizens.

#### PITIFUL WHININGS AGAINST CAPITALISM

After employment, perhaps nothing typifies this confusion of equality with privilege so much as the provision of insurance and medical services. In California, it is an offence for an insurance company to demand or take into account the result of any test for HIV antibodies when assessing whether or not to grant a policy. The reasoning behind this law was that it would prevent discrimination against homosexuals in particular and members of the high risk groups in general. In a State which contains by far the largest and best politically organised homosexual communities in the world, it would be surprising if the statute book were silent on the matter of AIDS. But here, as in every case where it is applied outside the one area in which it can be effective, the law has failed to achieve its stated purpose. No competent insurer sets premiums on the basis of personal dislike. Members of the high risk groups are, by definition, more likely to call on their policies than other people. A few are said to have taken out large life-insurance policies on having found themselves to be HIV positive. If insurers are not to discriminate on the basis of comparative risk, they have only two options before them. These they have adopted. Some have raised their premiums for everyone as compensation for their losses on the few. Some have pulled altogether out of California.<sup>52</sup>

In this country, the Wellcome pharmaceutical company has developed a drug, Retrovir, which may be of considerable use in the treatment of AIDS patients. While not a cure, it does seem to slow the appearance of other symptoms in those who are as yet only carrying the virus. Most drugs take ten years to develop. With lavish funding of research by the company, this one took just three years. The costs of producing Retrovir in so short a time are expected to reduce the value of the future profits from marketing it. One would expect the shareholders to be annoyed by this display of corporate altruism. In fact, Wellcome has been much more frightened of being demonstrated against by the homosexual rights activists. In 1988, it was reluctant to publish any financial details about Retrovir for this reason.<sup>53</sup> What should have been prayers of thanks, coupled with encouragements to greater effort, have been pitiful whinings about how capitalist enterprises put profits before people. These would be funny if they were less completely serious. They would be funny if the assumption on which they rest - that people have a right to be healthy at the expense of others - were not so likely as it is to be knocked over.

#### AIDS AND THE NHS

In the August of 1987, Bishop Hugh Montefiore suggested, in a debate on AIDS, that "[w]hen people have to wait three or four years for a hip joint operation and there is only so much money within the National Health Service, there is not a good moral case for spending vast sums on drugs which are not a cure and which can have devastating side effects."<sup>54</sup> This may at first glance seem outrageous. It may seem a proposal for State discrimination as obvious and repulsive as the rants of James Anderton or as any hysterical demand for the compulsory 'treatment' of every heroin user. It does undeniably propose a form of discrimination. But, unlike with these other forms, there is a certain logic about it that is worth investigating.

The estimated cost of AIDS to the National Health Service in 1988 was £60 million.<sup>55</sup> This is a lot of money. It would build and equip several hospitals. It would finance every hip joint operation currently wanted. If this is just to be the beginning, the majority of those paying National Insurance Contributions surely has a right to limit what is spent on the care of small and often unpopular minorities - especially when, unlike with smokers and drinkers, what they contribute overall in taxes is proportionate at best only to their numbers, and not to their greater call on resources. It would be monstrous if the State were to interfere with

private health arrangements. Where public ones are concerned, it might have no other choice. One of the principles of our health service is that all applicants should have an equal and unlimited right to treatment. So long as no group requires more than all are willing to pay for, the principle is easily maintained. Otherwise the whole system becomes, to whatever extent, unjust. For the unlimited right of one necessarily implies the unlimited obligations of another. If AIDS patients are to grow in number, and still be allowed every available treatments, there must be either so much less money available for every other patient, or so many pennies more on the National Insurance Contribution. After a certain point then, the principles must be repudiated, and priorities for treatment established. Otherwise, it can be preserved only by placing an effective ban on any action thought likely to make those doing it a greater than desired burden on everyone else.

Save when, in 1982, the wearing of seatbelts was made compulsory, these reasonings have never yet found a large audience in England. This may owe something to what is still a remarkable degree of national tolerance - and to an often equally remarkable capacity to ignore a logical inference whenever one seems inconvenient. But it remains that the ideals behind the National Health Service either cannot be realised or point to some kind of totalitarianism. And it remains to be seen what decision will be made should the cost of treating AIDS patients ever become a significant public drain.

#### AN OPTIMIST ABOUT AIDS

Unlike most libertarians, I am not an optimist. When I look around me and then think of the future, I find little cause for anything but apprehension. In my own country, I see an accelerating collapse into arbitrary despotism. In the rest of the world, I see the approach of far worse. The human race is currently doubling its numbers four times in every century. To date, the Malthusian crisis, of population growth outpacing the means of subsistence, has been pushed steadily forward by technical progress. Within the next few decades, however, the step must be taken of establishing colonies outside of the Earth. In the first instance, this will be phenomenally expensive. It will require a large withdrawal of resources from other uses. But, if the transition is not made, or is significantly delayed, the crisis will eventually come; and the world will become one huge battlefield, as the nations fight wars of extermination to secure living space and food. Perhaps the transition will be smoothly made, and future historians will see the twentieth century as just a dark interval between two ages of freedom and enlightenment. More likely, I fear, is that governments will continue their present various arms races, and so slow material progress, or preempt so many of its fruits, as to ensure the passing up of all chance of expansion.

In the event of this happening, we certainly shall see the return of pandemic infections that produce noticeable declines of population. But AIDS is not one of these. It is nothing but an obscure, if deadly, virus that will either go away for lack of hosts or be chased away by human ingenuity. On this at least, I am optimistic. We may live on the edge of a volcano, but we have not yet fallen into it.

#### NOTES

(*Going through the Times Index for AIDS is no rapid exercise! I wish to record my special thanks for his help in this matter to M. A. Huet.*)

1. *Times*, 12/10/88.
2. *Mortality Statistics; Cause*, Series DH2, no. 12, HMSO, 1986.
3. J. M. Mann et al., 'The International Epidemiology of AIDS', *Scientific American*, October 1988, p. 63.
4. For an original account of the Justinian Plague, see Procopius, *The Persian War*, Bk. ii, c. 23-24. See also the relevant passages of Gibbon, J. B. Bury et al.
5. Quoted in J. N. Biraben and J. de Goff, 'La Peste dans le Haut Moyen Age', in *Annales; Économies, Sociétés, Civilisations*, 1969, p. 1491, footnote. See, in addition, their entire article for a really excellent general history of this early plague and its cycle of recurrence.
6. For a full account of these variously horrible efforts at evasion, see J. Nohl, *The Black Death: A Chronicle of the Plague Compiled from Contemporary Sources*, tr. C. H. Clarke, Unwin Books, London, 1961.
7. I notice, looking at a table of cases reported per 100,000 of population in 1987, the following international comparisons: West Germany, 1.4; Haiti and Jamaica, 5.0 and 1.4 respectively. East Germany and Cuba each reported fewer than five cases, and so, like every other communist country save Ethiopia (19 cases, too few to register a proportion of more than 0.0) and Yugoslavia (not a standard example of Marxism-Leninism), do not appear on the table (see Mann et al., p. 69). You are welcome to believe that Socialist Man is so much our moral superior that AIDS is almost unknown to him. For myself, I find such a claim no more credible than those of the Chinese Government to have eliminated famine, syphilis and opium smoking.
8. W. L. Hayward and J. W. Curran, 'The Epidemiology of AIDS in the U.S.', *Scientific American*, October 1988, pp. 55-56.
9. *Times*, 10/8/88.
10. *Times*, 31/10/88.
11. See W. H. Masters, V. E. Johnson & R. C. Kolodny, *Crisis: Heterosexual Behaviour in the Age of AIDS*, Grafton Books, London, 1988, pp. 123-130. This book, while useful for its references and bibliography, is a disgraceful, lurid piece, written more to frighten than to inform. Chapter 6, for example, is titled 'Can You Catch AIDS from a Toilet Seat?'; and the writers do their absolute best to answer: yes. Except the cited facts are probably true, the style of argument owes more to Erich Von Daniken than respectable social science.
12. See, for instance, Heyward & Cullen, op.cit., p. 59.
13. *Times*, 12/12/86.
14. *Times*, 18/12/86.
15. Masters et al., op. cit., p. 177.
16. Duncan Campbell, '1,227 - and Still Counting', *New Statesman*, 22/1/88. See also the various newspaper comments of around the same date.
17. *Times*, 19/8/86. I wish I could know the Herr Doktor's age. A Swiss doctor made exactly the same suggestion a year later (*Times*, 13/9/87).
18. Misuse of Drugs Act 1971, s 23 (2).
19. Ben Whitaker, *The Global Fix: The Crisis of Drug Addiction*, Methuen, London, 1988, p. 293.
20. Drug Trafficking Offences Act 1986, s 1.
21. J. Enoch Powell, *The Drug Trafficking Act Versus Natural Justice*, Legal Notes No. 2, The Libertarian Alliance, London, 1987.
22. Criminal Justice Act 1988, s 71.
23. Criminal Justice Act 1987, s 2.
24. Criminal Justice Act 1988, s 118.
25. Whitaker, op. cit., p. 308.
26. *Ibid*, 318.
27. Martin A. Plant, *Drugs in Perspective*, Hodder and Stoughton, London, 1987, p. 106.
28. Whitaker, op. cit., p. xv.
29. *Ibid*, p. 186.
30. Whitaker, op. cit., p. 284.
31. Leslie Stephen, 'De Quincey', in *Hours in a Library*, Smith, Elder & Co., London, 1909, Vol. I, pp. 221-2.
32. Thomas De Quincey, *Confessions of an English Opium-Eater*, Everyman Edition, London, 1960, pp. 5-6. This is, I know, a digression in what is already quite a long essay. But no one else, to my knowledge, having made the point, I might as well make it here. The couplet is, I believe, a prime instance of De Quincey's habit of conveying information by allusion. In 1700, a Dr John Jones had stated, in his *Mysteries of Opium Reveal'd*, that the first effect of eating opium "has been compared (not without good cause) to a permanent gentle degree

of that pleasure which modesty forbids the name of" (quoted, Berridge & Edwards, op. cit., p. xxv). By 1821, modesty forbade not only naming but much else besides. Therefore De Quincey echoed the metre and burlesqued the form of the refrain from the erotic poem, *Pervigilium Veneris* :

*Cras amet qui numquam amavit quique amavit cras amet*

(Let those tomorrow love who never loved before; and also those let love who loved before.)

33. Calculated from Virginia Berridge and Griffith Edward, *Opium and the People, Opiate Use in Nineteenth Century England*, Allen Lane, 1981, Table 2.
34. Calculated from *ibid*, Table 3.
35. Sean Gabb, *The Opium Wars: Some Lessons for Europe*, Historical Notes No. 5, Libertarian Alliance, London, 1988, contains a brief discussion of the first Opium War, and gives a useful bibliography.
36. *Rex versus Jacobs* (Russell & Ryan 331), reprinted in English Reports, Vol. 168, p. 830. This is an interesting case, well worth narrating as fully as it has come down to us. On the 8th March 1817, a Mr Samuel Jacobs persuaded James Thompson, a boy aged about seven, to go with him from the market place at Nuneaton to a rickyard in a field outside the town. There, presumably alone, he forced open the boy's mouth with his fingers, put in his private parts and completed his lust therein. He was denounced, and was tried and convicted of sodomy at the assizes immediately following. A question arose during the trial, however, of whether Jacobs' act fell within the legal definition of sodomy. The modern appellate structure lying as yet sixty years in the future, the question was put to the twelve common law Judges. Their answer was that the act did not constitute the offence of sodomy, and they directed that a pardon be applied for.
37. A. D. Harvey, 'Prosecutions for Sodomy in England at the Beginning of the Nineteenth Century', *The Historical Journal*, vol. 24, no. 4, 1978, pp. 939-48, Appendix 1. Some writers, referring to this comparison without mentioning the numbers on which it is based, imply an equivalence between Old England and Nazi Germany. But, in 1806, there were six executions for sodomy and five for murder. So much for our 'penal code written in letters of blood'!
38. Criminal Law Amendment Act 1885, s 11. This was replaced by s 13 of the Sexual Offences Act 1956: "It is an offence for a man to commit an act of gross indecency with another man, whether in public or in private, or to be a party to the commission of a man of an act of gross indecency with another man, or to procure the commission of an act of gross indecency with another man."
39. *Regina versus Hunt* (1950) Criminal Appeal Reports, p. 135.
40. Sexual Offences Act 1967 s 1(1): "Notwithstanding any statutory or common law provision, but subject to the provision of the following section, a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of 21 years." The provisions following refer to intercourse in groups of more than two, in any place to which the public have access, with the mentally subnormal, and in breach of any provision of the Acts regulating the armed forces, and the private regulations of the Merchant Navy. Buggery of a woman or animal remains an offence carrying a maximum penalty of life imprisonment!
41. The traditional reason given is that, in 1885, Lord Salisbury, though willing to explain to Queen Victoria what men sometimes did together, flatly refused to define lesbianism. This is a good story. It may even be a true one. But, save when in 1921 efforts were made to create the offence of gross indecency between females, lesbians have always been treated under English law less harshly than male homosexuals. Whenever I suggest moves towards legal recognition, I do, of course, suggest them for both male and female homosexuals. But, since it is male homosexuals who are actively persecuted, and are most at risk of catching AIDS, I hope that my confining of most of this discussion to them will not cause offence.
42. Local Government Act 1988, s 28 (1):  
"A local authority shall not  
(a) intentionally promote homosexuality or publish material with the intention of promoting homosexuality;  
(b) promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship."
43. *Times*, 14/12/87.
44. *Sunday Times*, 8/2/87.
45. Kinsey et al., *Sexual Behaviour in the Human Male*, pp. 638-41; quoted in John Boswell, *Christianity, Social Tolerance and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century*, University of Chicago Press, 1980, pp. 41-42.
46. "Protesters stormed the pulpit during a gay 'marriage' ceremony and begged God not to destroy the church after the 'blasphemous' service ... A man dressed in white robes barged past and pushed the vicar out of the pulpit. Then he told the congregation that homosexuality was a sin and the service 'wicked and depraved'," *Daily Mirror*, 17/5/85. The *Daily Star*, reporting the same day, said much the same, under the headline "Not a Gay Day for Rodney". According to the *Sun*, also reporting that day: "Rodney, a 46-year-old actor, burst into tears and theatrical designer Saxon, 52, sat stunned." The other tabloids, local and national, carried the same general story. They carried a pack of lies. Nothing so dramatic took place. Mr Crowe wrote to them, asking for a correction of their accounts to be printed. So far as I am aware, he is still waiting any reply. It was said at the time that he had wasted half a dozen postage stamps on writing to the press.
47. *Masterton & Another versus Holden*, decision of the court of Appeal, reported in the *Times*, 19/4/86.
48. Local Government Act 1986, s 2. This provision, of course, affects only local government. Its general application would be far too cruel and disruptive both to the advertising industry and among others, to Lord Young. I am told that the publicity budget at the Department of Trade and Industry went from £32,000 in 1984 to £13,000,000 in 1988.
49. John Wolfenden, *Report of the Committee on Homosexual Offences and Prostitution*, HMSO, Cmnd 247, London, 1957, p. 52.
50. *Times*, 5/10/83.
51. *Times*, 29/7/87.
52. For this whole paragraph, see Tom Bethell, 'Gays on Parade', *The American Spectator*, September 1988, p. 10.
53. *Times*, 6/5/88.
54. Address to the British Association for the Advancement of Science; quoted in the *Times*, 27/8/87.
55. *Sunday Times*, 27/10/88.