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### IMMATURITY THEORY

When confronted with a teenager's homosexuality or lesbianism, parents will often exclaim, "It's just a phase. S/he will grow out of it." While this view reflects popular ideas of personality growth, it also finds a learned prop in the psychoanalytic idea that human bisexuality is a halfway house along a path that is always directed toward a final goal of heterosexual maturity. In keeping with this premise the persistence of a homosexual pattern in adult life is ascribed to "arrested development."

The immaturity notion also accords with the folkloric view that a "little experimentation" is permissible, as long as it does not "become a habit." This motif borders on the concept of deviant sex as self-indulgence, a flight from the serious responsibilities imposed by raising a family. In clinical sessions psychiatrists have had recourse to the reproach of immaturity as a lever to induce young clients to give up their homosexuality.

Of course there are individuals who try a few homosexual acts in youth and, having then found that this is not where their major interest lies, come to live essentially heterosexual lives. Other young people, aware of the stigma that still attaches to homosexuality, cling to the immaturity notion as a device of denial, refusing to accept as long as they can their homosexual orientation. In the recent past, some of these persons would contract a heterosexual marriage in hopes of putting the "immaturity" behind them. Such expedients have rarely been successful. This denial can result in unhappiness both for those who embrace it and for

others who are emotionally and socially involved with them.

Conceptually, the immaturity theory makes an incongruous contrast with its opposite, *satiation*.

### IMMIGRATION

Today's world has become concerned with immigration, not only because millions have migrated but also because the rise of the modern state and its definition of nationality has made the matter fraught with complications. Homosexuals live in a certain degree of tension with the environing society and have fewer ties to keep them rooted in the communities where they grew up. For this reason, they tend to migrate, not just to large cities with their convenient anonymity, but even across national borders. In the past, conflict with the law often sent homosexual men in precipitous flight to escape long prison terms or even a lynch mob, while voluntary exile amounted to a commutation of a severe penalty: in either case the individual whose homosexual activity was exposed ceased to be a member of society. If he was fortunate, he might settle in another part of world where his past was unknown and could not easily be discovered; and here, too, he could resume the series of casual liaisons that had become part of his lifestyle.

A visit of few days as part of a vacation trip is technically an act of immigration, even if the foreigner has no intention of residing permanently or becoming a citizen of the host country; and many are the homosexuals who either prefer exotic sexual partners or, possessing discretionary income but without families to accompany them, enjoy travel abroad, even to distant lands, in search of erotic adventures or pleasures denied them in the communities where they reside.

*The Evolution of American Law.* Homosexuality as an issue for the authorities that control immigration, in the United States the Immigration and Naturaliza-

tion Service (INS), did not arise until the second decade of the twentieth century, for the simple reason that in the nineteenth century homosexuality as a psychiatric entity was unknown to the general public. There were, however, laws that sought to bar the movement of prostitutes and particularly the white slave traffic which had assumed international dimensions on the eve of World War I. Inside the United States the Mann Act of 1910 made it a crime to transport a female across state lines "for immoral purposes," while the movement to restrict immigration from Europe gathered support in the hinterland which resented the growing clusters of new arrivals from eastern and southern Europe in the large cities.

The first comprehensive revision of the immigration laws came with the Immigration and Naturalization Act of 1917, which denied entry to persons certified by an examining physician as "mentally defective" or afflicted with a "constitutional psychopathic inferiority." However, because the concept of homosexuality as a psychological condition was still new, the Board of Immigration Appeals excluded only those aliens who confessed to committing, or had been convicted of, homosexual acts involving moral turpitude. In 1947 the Senate began an investigation into the entire immigration system, and in 1950, when Senator Joseph R. McCarthy had made "sex perverts in government" a political issue, Senator McCarran of Nevada and Representative Walter of Pennsylvania introduced a bill that added "homosexuals and other sex perverts" to the class of medically excludable aliens. The Senate Judiciary Committee dropped the phrase from the bill primarily because of the objection raised by the Public Health Service that some difficulty would be encountered in substantiating the diagnosis of homosexuality and sexual perversion. Its report did, however, state that the Public Health Service had asserted that "the provision for the exclusion of aliens afflicted with a psychopathic

or a mental defect" was "sufficiently broad to provide for the exclusion of homosexuals and sex perverts," and also specified that the "change in nomenclature" was "not to be construed in any way as modifying the intent to exclude all aliens who are sexual deviates." The revised bill was passed by Congress to become the Immigration and Nationality Act of 1952.

The new law was enacted, it should be stressed, not just because the American Psychiatric Association and a majority of the medical profession considered homosexuality a mental illness, but also because they had no objection to any measure that deprived homosexuals of rights in civil and administrative law. This is a classic instance of how religious sanctions were in the nineteenth and twentieth centuries rationalized as pseudo-medical or pseudo-biological norms so that a policy of discrimination and exclusion could be justified in the eyes of the public. It was only the advocacy of measures for greater toleration that provoked the ire and indignation of the psychiatric "experts" of that day.

The issue of whether the expression "psychopathic personality" included homosexuality was soon raised, and the courts in looking at the legislative history of the Immigration and Nationality Act reached a consensus that Congress intended to include homosexuals within the term "psychopathic personality" regardless of the medical profession's understanding of the term. However, in a 1962 case a Federal appellate court did hold that the expression "psychopathic personality" was void on account of vagueness as it did not provide a "sufficiently definite warning that homosexuality and sexual perversion are embraced therein." It subsequently set aside a deportation order on the ground that homosexual aliens could not be excluded as "persons afflicted with psychopathic personality."

The liberal Congress elected at the time of Lyndon Johnson's landslide victory in 1964 responded to this decision

by amending the law to add the term "sexual deviation" to the roster of excludable medical afflictions, and the Supreme Court, in *Boutilier v. Immigration & Naturalization Service* (1967) ruled that Congress intended the expression "psychopathic personality" to exclude homosexual aliens, stating that Congress had used the expression not in any clinical sense, but as a term of art designed to achieve its goal of exclusion. Case law further established that an integral part of the statutory scheme is the issuance of a "class A" certificate—a medical determination of "sexual deviation," and the Supreme Court held that an order of exclusion could not be issued unless the alien had been labeled with the requisite Public Health Service certificate. It did not raise the procedural issue of whether the INS could simply bar homosexuals who had not been so certified.

*The Legal Impasse.* In the wake of the decision of the American Psychiatric Association to drop homosexuality from its nomenclature of mental illnesses, the United States Surgeon General in 1979 notified the INS that the Public Health Service would no longer furnish the medical certification required for the exclusionary procedure, and instructed Public Health Service medical officers that they should not certify homosexual aliens as psychopathic personalities or sexual deviates solely on the basis of their homosexual orientation. The INS, in response to legal advice from the Justice Department that it was still required by law to enforce the exclusion of homosexual aliens, adopted the practice of excluding only those aliens who are identified as homosexual by a third party arriving at the same time, or who offer an unsolicited, unambiguous admission of homosexuality and repeat that admission in a second interview. An affirmative answer at the second hearing will result in a formal exclusionary hearing that may result in a denial of entry. This procedure allows for exclusion

in the absence of the medical examination and certificate.

Faced with a new situation in administrative practice, the appellate courts have split over the issue of whether Congress has the power to exclude homosexual aliens under the new, non-medical procedure. The ultimate solution of the dilemma rests with Congress itself, but when the issue of homosexual rights became clouded by the problem of AIDS, support for repeal of the measure denying admission to the United States of aliens suspected of being homosexual became politically far more difficult. In practice most immigration officials and consuls attempt to avoid any direct confrontation with a law that bars any and all homosexuals by ignoring it rather than excluding homosexual celebrities on the basis of an absurd statute.

In 1985 the Committee on Immigration and Naturalization Law of the Association of the Bar of the City of New York formally reported that "The United States, alone among all the nations of the world, statutorily excludes homosexual persons from admission into the country for any purpose whatsoever, from casual visitor to would-be permanent resident. It is now time to correct that anomaly by removing homosexuality as a ground for exclusion from the United States."

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## IMPERSONAL SEX AND CASUAL SEX

"Impersonal sex" refers to intercourse between two or more human beings who, for the sexual act considered, treat