

EASTERN

MATTACHINE

MAGAZINE

"the voice
of the
homosexual
community
on the
east coast"

MAY
Volume X

1965
Number 4

50¢

EDITORIALS

PRESIDENT JOHNSON SPEAKS ON TOLERANCE AND BROTHERHOOD

This is the first nation in the history of the world to be founded with a purpose. The great phrases of that purpose still sound in every American heart, North and South: "All men are created equal"--"Government by consent of the governed"--"Give me liberty or give me death." Those are not just clever words or empty phrases. In their name Americans have fought and died for two centuries and today are risking their lives.

Those words are a promise to every citizen that he shall share in the dignity of man. This dignity cannot be found in a man's possessions or his power or his position. It rests on his right to be treated as a man equal in opportunity to all others. It says that he shall share in freedom, choose his leaders, educate his children, provide for his family according to his ability and merits as a human being.

To apply any other test--to deny a man his hopes because of his color or race, his religion or the place of his birth- is not only to do injustice, it is to deny America and to dishonor the dead who gave their lives for freedom.

What happened in Selma is part of a far larger movement which reaches into every section and State of America. It is the effort of American Negroes to secure for themselves the full blessings of American life.

Their cause must be our cause too. It is not just Negroes, but all of us, who must overcome the crippling legacy of bigotry and injustice. And we shall overcome.

The time of justice has now come. No force can hold it back. It is right--in the eyes of man and God--that it should come. And when it does, that day will brighten the lives of every American

For Negroes are not the only victims. How many white children have gone uneducated- how many white families have lived in poverty --how many white lives have been scarred by fears because we have wasted our energy and substance to maintain the barriers of hatred and terror.

Those who ask you to hold on to the past do so at the cost of denying you your future.

This great, rich, restless country can offer opportunities and education and hope to all--black and white, North and South, sharecroppers and city dweller. Those are the enemies--poverty and ignorance--and not our fellow men. And these two shall be overcome.

(continued on page 20)

NEW YORK
MATTACHINE
NEWSLETTER

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Published monthly by
Mattachine Society Inc.
of New York, 1133 Broad-
way, New York, N.Y.
10010. Telephone: (212)
WATkins 4-7743.

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Annual membership dues
of \$5.00 include free sub-
scription to New York
MATTACHINE News-
letter. Subscription only
\$3.00 a year. All copies
mailed in plain, sealed
envelope.

New York MATTACHINE Newsletter is available on many news-stands and in many book-shops at \$0.25 a copy.

VOLUME X NUMBER 4

MAY 1965

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Penal Code Reform

In 1931 New York State assigned to a Commission the task of revising both the substantive criminal law and the code of criminal procedure of the State. The Commission has completed and published a draft criminal code, which was presented to the New York State Legislature earlier this year as a study bill only. Public hearings are now being held in various parts of the State to gather public opinion and reaction to the proposals.

In regard to the provisions relating to sex offences, the New York proposals go considerably further than simply making homosexual acts between consenting adults legal. There are three classes of offence proposed for persons engaging in "deviate sexual intercourse." Deviate sexual intercourse is defined as "sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or between the mouth and the vagina." It should be noted that this would not cover acts between a married couple, which, in Canada, fall under the prohibition of section 147 of our criminal code (Buggery or Bestiality). The New York proposals would, however, cover deviate sexual intercourse between a heterosexual couple who are unmarried. Also of interest is the fact that by the definition of deviate sexual intercourse in the New York draft code, acts between a lesbian couple not involving oral-vaginal contact would not be covered.

The three classes of offence for deviate sexual intercourse are as follows:

SODOMY IN THE FIRST DEGREE: A person is guilty of sodomy in the first degree when he or she engages in deviate sexual intercourse with another person (1) by forcing or compelling the other party to submit to the act, or (2) when that other person is physically helpless: or (3) when that other person is less than eleven years old. The maximum penalty for sodomy in the first degree is a sentence of twenty-five years.

SODOMY IN THE SECOND DEGREE: A person is guilty of sodomy in the second degree when, being eighteen years old or more, he or she engages in deviate sexual intercourse with another person less than fourteen years old. The maximum penalty for sodomy in the second degree is a sentence of seven years.

SODOMY IN THE THIRD DEGREE: A person is guilty of sodomy in the third degree when (1) he or she engages in deviate sexual intercourse with a person who is mentally defective, mentally incapacitated, physically helpless or unaware (each term is defined in the code) or (2) being twenty-one years old or more, he or she engages in deviate sexual intercourse with a person less than seventeen years old. The maximum penalty for sodomy in the third degree is a sentence of four years.

New York Ponders

In summary, leaving aside cases of compulsion and lack of effective consent, in no case is deviate sexual intercourse legal with a person under the age of eleven. If one partner is under the age of fourteen, but over the age of eleven, deviate sexual intercourse is legal so long as the other partner is under the age of eighteen. If one partner is under the age of seventeen years, but over the age of fourteen, deviate sexual intercourse is legal so long as the other partner is under the age of twenty-one.

Deviate sexual intercourse between an eleven year old and a seventeen year old would be legal, as it would be between a fourteen year old and a twenty year old. But, strangely, if an eleven year old and a seventeen year old continue a homosexual relationship for a year, their sexual acts become illegal, being now between a twelve year old and an eighteen year old (prohibited as sodomy in the second degree). Two years later their sexual acts would again be legal, being now between a fourteen year old and a twenty year old. After one more year, the acts would again be illegal, being between a fifteen year old and a twenty-one year old (prohibited as sodomy in the third degree). In two years the acts would again become legal, this time permanently, the youngest partner having reached the age of seventeen.

These anomalies, by which acts legal one night may be illegal the next, are a serious weakness in these draft provisions. The reasons for the complex provisions are fairly clear. The Commissioners felt that deviate acts between young people of fairly similar ages should not be illegal. The problem then arises of determining what age gap should be permitted. The Commissioners have drafted provisions which allow an age gap ranging from four years to six years. The pattern with which the permitted age gap varies is irrational: a sixteen year old can have relations with someone five years younger, a seventeen year old with someone six years younger, an eighteen year old with someone four years younger, a nineteen year old with someone five years younger, a twenty year old with someone six years younger, and a twenty-one year old with someone four years younger. It would be far better to select a permissible age gap and apply it consistently. The code could provide that it is an offence for two persons to engage in deviate sexual intercourse if more than four years separates their ages. Stronger penalties could be imposed for offences with younger boys.

The sodomy sections have been designed to parallel the sections on statutory rape (where consent is also no defence) thus treating heterosexual relations on the same basis as homosexual relations. The Commissioners expressly point out this parallelism. They

comment generally on their proposals: "A majority of the Commission is of the opinion that, in the light of modern sociological and psychiatric principles, criminal prosecution of homosexual acts privately and discreetly engaged in between competent consenting adults, serves no salutary purpose. This follows the approach adopted both by the Model Penal Code and by the 1961 revision of the Illinois Criminal Code. Of course, such conduct is subject to prosecution when it constitutes disorderly conduct (what we would refer to as indecent exposure) or loitering (which would cover "cruising" or the seeking of a sexual partner in a public place.)"

One section, of great interest, deals expressly with entrapment. It provides that a person may not be convicted of an offense which he was induced or encouraged to commit by an officer (or person co-operating with an officer) who was attempting to obtain evidence against him for the purposes of criminal prosecution. This section only applies when there is a substantial risk that the entrapment methods used will result in a person committing the offense, who would not otherwise be ready to commit it. If any preliminary initiative comes from the person being entrapped, a prosecution can successfully result. Conduct merely affording a person an opportunity to commit an offense would not constitute an improper entrapment. This section hits at the worst abuses of entrapment methods without prohibiting entrapment entirely. If we are in agreement with the substantive provisions of the code, I do not think that we will object to the type of entrapment it still permits.

The New York proposals need revision, but they indicate a fresh and constructive approach to sex offences: a most welcome approach.

the homophile movement

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News and Views

from
Michael Kotis

■ INTRODUCTORY COURSE IN HOMOSEXUALITY

Within the past few years, virtually the entire nation has had a course in "An Introduction to Homosexuality I and II," and the future hopefully contains "Intermediate" and "Advanced Homosexuality." The faculty has included many prominent names with a continually increasing number of new faces. Ignoring the dismissal of the New York Times due to shoddy reasearch and scholarly ineptitude, the most prominent and esteemed member continues to be Life Magazine. Among the newer staff members we find The Ladies Home Journal, The New York World-Telegram and Sun, and the Denver Post.

In February, The Ladies Home Journal added its contribution to the growing volume of introductory material: "Mothers and Sons: An Intimate Discussion" by Vincent T. Lathbury, M.D. Among the aspects of homosexuality noted by Dr. Lathbury were: its primary source as a psychological disorder (he is somewhat dogmatic in declaring this as the major source of homosexuality); the impossibility of "curing" a practicing homosexual; the parental role in determining a child's sexual inclinations (possessive "mom" and weak or cruel "dad"); the misconception that all homosexuals are effeminate or criminal; the "normal" stage of homosexuality between the ages of six and ten.

Although such terms as "perversion" and "illness" are used, the article as a whole exhibits a substantial degree of scientific disinterestness.

The New York World-Telegram and Sun printed a series on "Lesbianism: A Secret Tragedy" in January. It included preliminary information on the subject, the story of a strange, secret "burden"