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# AN ARMY OF LOVERS? QUEERING THE MINISTRY OF DEFENCE REPORT OF THE HOMOSEXUAL POLICY ASSESSMENT TEAM

Bruce Carolan<sup>†</sup>

## I. INTRODUCTION

The legal debate over “gays in the military” is not unique to the United States. The United Kingdom recently confronted the issue, as a result of challenges brought before the U.K. and European courts. The court challenges were unsuccessful. However, these legal challenges produced something unique: a massive document prepared by the U.K. Ministry of Defence entitled, “Report of the Homosexual Policy Assessment Team.” The Report purports to provide a justification for the continuation of the ban on homosexuals serving in the U.K. armed forces.

This article undertakes to “queer” the Ministry of Defence Report. In other words, the article seeks, by reference to the text of the document itself, to challenge its superficial assumptions about “the fixity of the categories of gender and sexual identity and the binary opposition of hetero- and homosexuality.”<sup>1</sup> The article contends that the Report undertakes simultaneously to construct fixed categories of identity and to privilege the artificially-constituted category of heterosexuality. When exposed to an unsympathetic aggressive reading, contradictions in the Report expose a hidden rationale that shares similarities with beliefs of “queer” theorists, to wit, that categories of sexual identity are fluid and cannot be non-problematically assigned to individuals.

## II. BACKGROUND

In *Ministry of Defence v. Ex parte Smith*,<sup>2</sup> Simon Brown LJ of the Queen’s Bench Division, while upholding the British armed forces’ ban on homosexuals, invited the Ministry of Defence (“MoD”) to examine its policy afresh “in the light of

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1. CARL F. STYCHIN, *LAW’S DESIRE: SEXUALITY AND THE LIMITS OF JUSTICE* 141 (1995).  
2. 4 All E.R. 427 (Q.B.D. 1995).

changing attitudes and circumstances.”<sup>3</sup> The MoD accepted this invitation, formed the Homosexual Policy Assessment Team (“HPAT”), and produced a massive document entitled, “Report of the Homosexual Policy Assessment Team” (“Report”).<sup>4</sup> The new Labour government, in announcing its intention to review the ban on homosexuals in the military, stated it would refer to this HPAT Report.

The HPAT undertook to consider whether the ban on homosexuals could be justified as rational. The Report disclaims a moral condemnation of homosexuality. It accepts that homosexuals are fit to serve on the basis of strength, bravery, dependability, and skill.<sup>5</sup> However, as the result of a crude form of cost-benefit analysis, the Report concludes that continuation of the ban is justified because integrating homosexuals into the military would diminish Fighting Power (defined by the Report as “the overall ability to fight”).<sup>6</sup> Fighting Power would be diminished because of the reaction of non-homosexual service personnel to the presence of homosexuals.

The HPAT Report superficially rests on an assumption that homosexuality is a stable category of identity. That is, that a ‘homosexual’ is known and knowable, and readily identifiable to a (privileged) observer; that there are no gray areas of sexual identity distinct from the binary categories of hetero- and homosexuality.

An unsympathetic reading of the text, however, reveals a contradictory underlying assumption about the nature of sexual identity. The Report can be read to reveal a fear that categories of sexual identity are fragile and mutable. That is, that some people cannot easily be categorised as being homo- or heterosexual. The authors of the Report apparently fear that integrating identified homosexuals threatens these fragile identity categories. The Report responds to this potential threat by constructing fixed categories of identity and excluding “homosexuals”.

In the words of Carl Stychin, “lesbians and gay men have been erased from the armed forces not because of an otherness, but rather due to the fear that the opposite might well be true.”<sup>7</sup> This article seeks to demonstrate the truth of this assertion with respect to the Report of the Homosexual Policy Assessment Team.

### III. COST BENEFIT ANALYSIS OF INTEGRATING HOMOSEXUALS INTO THE ARMED FORCES

This section of the article examines the superficial reasons for excluding homosexuals from the armed forces. The Report purports to evaluate the effect of

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3. *Id.* The United Kingdom does not possess a written constitution. The U.S. tradition of challenging laws based on a set of express constitutional rights is largely unknown in the U.K. The only basis on which a U.K. court can strike down action by, for example, the U.K. Ministry of Defence, is if it concludes that the Minister has acted irrationally. This is approximately equal to the minimum level of constitutional scrutiny under the U.S. equal protection clause.

4. MINISTRY OF DEFENCE, REPORT OF THE HOMOSEXUALITY POLICY ASSESSMENT TEAM, Feb. 1996 [hereinafter HPAT REPORT] (on file with author).

5. *See id.* at 7, 26.

6. *Id.* at 18.

7. STYCHIN, *supra* note 1, at 93.

integrating homosexuals into the armed forces. It emulates a form of cost-benefit analysis. The approach is as follows. The Report identifies a number of "Problem Areas" implicated by the integration of homosexuals.<sup>8</sup> These Problem Areas diminish fighting effectiveness and represent the cost of lifting the ban so as to admit homosexuals. The Report evaluates evidence to determine whether the evidence establishes the existence of these Problem Areas.

The Report virtually dismisses out of hand any benefits that might accrue from admitting homosexuals to the armed forces. It identifies only two possible benefits which are the reduction of stress on the part of homosexual service personnel and an increase in the pool of applicants.<sup>9</sup> The Report concludes that any reduction in stress for homosexual personnel is more than outweighed by an increase in stress among heterosexual personnel.<sup>10</sup> It further states that there is no need for an increased pool of applicants in light of excess capacity and compulsory redundancies facing the military.<sup>11</sup>

The Report's conclusion on lifting the ban therefore depends upon assessment of the evidence establishing the existence of a Problem Area, rather than on a balancing of a Problem Area against a Benefit. If the evidence demonstrates that a Problem Area exists, then continuation of the ban is rational and justified. It is not surprising the Report concludes the ban on homosexuals in the military is justified.<sup>12</sup>

The Report relies on four types of evidence. This evidence consists of (1) statements made by service personnel in six-person focus groups that explored attitudes to homosexuality, (2) statements made in letters sent by service personnel in response to a call for such letters, (3) responses to a specially-designed HPAT questionnaire sent to a modest sample group of service personnel, and (4) responses to a previous questionnaire distributed to a much larger group of service personnel in each branch of the armed forces.<sup>13</sup>

The analysis consists of providing a concrete example of a Problem Area, and then culling for evidence of the existence of this type of problem.<sup>14</sup> Where such evidence is found, the Report concludes the Problem Area is established.<sup>15</sup> Where

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8. See HPAT REPORT, *supra* note 4, at 62. These Problem Areas include: (1) control of homosexual behaviour and heterosexual animosity, (2) assaults on homosexuals, (3) bullying and harassment of homosexuals, (4) accusations against homosexuals of sexual harassment, (5) ostracism and avoidance, (6) cliquishness and pairing, (7) leadership and decision problems, (8) sub-cultural frictions, (9) privacy/decency, (10) increased dislikes/suspensions, (11) family anxieties, and (12) resentment of imposed change especially if controls on heterosexual expression are tightened. See *id.*

9. See *id.* at 156-57. Of course, many other benefits might accrue from admission of identified homosexuals to the military. Liberal values of tolerance of difference might be promoted. More radical values, such as the questioning of the stability of categories of sexual identity, might also be promoted.

10. See *id.* at 156.

11. See *id.* at 157.

12. The Report considers, but rejects, alternative approaches. It rules out empirical assessment, that is, introducing homosexuals into the armed forces and observing the results. It also discounts evidence from armed forces of other countries and the experience of civilian quasi-military organisations such as the fire and police departments. It rules out this evidence by distinguishing the British military from these other organisations. See *id.* at 29-35.

13. See generally HPAT REPORT, *supra* note 4.

14. See generally *id.*

15. See generally *id.*

such evidence is lacking, the Report concludes the Problem Area is not established.<sup>16</sup>

The Report focuses on the predicted negative effects of admitting known or strongly suspected homosexuals to the U.K. armed forces. The terms "known" or "strongly suspected" homosexual come from a typology of possible categories of homosexuals set forth in various parts of the Report.<sup>17</sup>

The HPAT found evidence established the existence of ten out of twelve Problem Areas. The existence of one Problem Area would have been sufficient to justify continuation of the ban under the analysis adopted by the HPAT.

One Problem Area illustrates the approach taken by the HPAT. Problem Area Two is defined as "Assaults on Homosexuals."<sup>18</sup> The Report hypothesises that "[a]ssaults on homosexuals . . . could never be entirely prevented."<sup>19</sup> It supplies predicted scenarios, including "Deliberate Accidents" and "Drunken Saturday violence in barrack rooms."<sup>20</sup>

The Report then considers whether evidence establishes the existence of this Problem Area. This evidence consists of "Illustrative Written and Oral Statements in Letters and Questionnaires Interviews and Discussion Groups," survey data, and references in letters.<sup>21</sup> Illustrative (anonymous) statements include those of a Corporal with nine years service, who stated, "I would never serve in a unit where a known homosexual is serving and I like many others would quite happily smash their faces in if I found any in my unit."<sup>22</sup> Nine such quotes are offered as evidence.<sup>23</sup> Other evidence includes survey data demonstrating that 84% of Royal Navy Personnel, 88% of Army Personnel, and 80% of Royal Air Force Personnel who had responded to a postal survey agreed with the statement, "[a]llowing declared homosexuals into the Services would increase bullying and assaults."<sup>24</sup> Finally, the "risk of violence against homosexuals" was cited in 258 letters mailed in by service personnel in response to a request for opinions on lifting the ban against homosexuals in the military.<sup>25</sup> This section of the Report concludes that evidence establishes the

16. See generally *id.*

17. See *id.* at 17-18. The subcategories of homosexuals contained in these typologies are: (1) homosexual activist, (2) flamboyant homosexual, (3) declared homosexual, (4) open homosexual, (5) strongly-suspected homosexual, (6) suspected homosexual, (7) covert homosexual, (8) known homosexual, and (9) a non-practising or celibate homosexual. See *id.* This typology illustrates the difficulty of constructing fixed categories of sexual identity, and the relatively privileged position of the heterosexual or non-homosexual identity category. The omission of a category or definition of heterosexuals in the Report implies that they occupy a position from which they can objectively know the sexuality of homosexuals while remaining free from an intrusive examination of their own sexuality.

18. See *id.* at 70-75.

19. HPAT REPORT, *supra* note 4 at 70-75.

20. See *id.* at 73. The Report supplies a typology of violence associated with each branch of the military. In the Army, the preferred method of assault is termed "bed-ending", which consists of "striking sleepers with hard objects wrapped in towels." *Id.* at 72. In the Navy, assault takes the form of "blows with Samson bars (metal pry bars clipped next to each hatch) when moving around ship." *Id.* In the Royal Air Force, the tradition is "taking someone behind the hangar". *Id.* "Spontaneous 'frictional' aggression" is illustrated by use of quotes which accompany such forms of spontaneous violence, such as "He touched me/ He was eyeing me up/ He rubbed up against me more than he needed to/ . . . He deserved it/ I was only defending myself/ . . . All my mates agree, sir." *Id.* at 72.

21. See *id.*

22. *Id.* at 73.

23. See *id.* at 72-73.

24. *Id.* at 75.

25. See HPAT REPORT, *supra* note 4, at 75.

existence of this Problem Area.<sup>26</sup> The Report performs a similar “analysis” for each of the twelve Problem Areas and concludes that evidence demonstrates ten of these areas exist.<sup>27</sup>

The Report concludes the existence of these Problem Areas will produce certain “Systematic Tendencies”. These systematic tendencies comprise “increased levels of organisational conflict creating significant additional, and otherwise avoidable, management and disciplinary problems,” “increased anxieties, resentments and frustrations for the majority leading to greater stress on individuals,” and “lowered cohesion, team spirit, trust and motivation, reduced confidence in leaders and their decisions.”<sup>28</sup> The “Overall System Outcome” of these systematic tendencies will be “lowered forces morale and therefore fighting power.”<sup>29</sup>

Although the Report claims to eschew a moral judgment of homosexuality, it constructs homosexuals as being highly sexualised, seductive, and predatory, particularly towards the young. For example, the Report notes there is a possibility of real abuse of power for sexual harassment which is “more likely in cases involving younger and junior personnel.”<sup>30</sup> No evidence is offered in support of this observation. The Report infers predatory homosexual behaviour from casual observations about heterosexual conduct. For example, the Report cites the comments of a Petty Officer in the Royal Navy who remarks, “[a]s a bloke you still make advances to a married woman, it’s the same with gays. They would make advances towards heterosexual men.”<sup>31</sup> Similarly, a Wing Commander provides evidence of predatory homosexual behaviour with his remark,

I would have relished the opportunity to share a bed, room, tent, bath or shower with a [female]. What then would be in the mind of a homosexual in similar circumstances? If his thoughts and desires were as devious as mine, it would lead to a total disintegration of the trust and comradeship I have totally relied on till now.<sup>32</sup>

The Team, in hypothesising examples of problems concerning privacy issues, ascribed predatory or highly sexualised traits to homosexuals. It wrote if homosexuals were allowed into the armed services, “[t]his would mean heterosexuals being unable to escape the sexualised gaze of others who might see potential objects of physical desire rather than simply the often naked bodies of comrades.”<sup>33</sup>

The Report acknowledges contrary attitudes towards admitting homosexuals to the military. It takes note of opinions of unnamed service personnel that it is unfair

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26. See *id.* at 82.

27. The two Problem Areas not established by a review of the evidence are [false] Accusations of Sexual Harassment and Family Anxieties.

28. HPAT REPORT, *supra* note 4, at 62.

29. *Id.*

30. *Id.* at 83.

31. *Id.* at 84.

32. *Id.* at 126.

33. *Id.* at 120.

to homosexuals currently serving in the military to maintain the ban. It quotes a Lieutenant Colonel in the Army who stated, “[w]hen I go to war, I would rather have alongside me a gay who shoots straight, than a straight who shoots crooked.”<sup>34</sup> Nevertheless, the Report concludes it is rational to exclude homosexuals from the armed services. It notes, “[r]educed cohesion and increased friction must be expected to undermine Fighting Power unless the Armed Forces continue to exclude homosexuals. . . .”<sup>35</sup>

#### IV. EXPOSING AN ALTERNATIVE RATIONALE FOR EXCLUDING HOMOSEXUALS

The superficial rationale for maintaining the ban rests on unstated assumptions. One assumption is the categories of “heterosexual” and “homosexual” are fixed and knowable, and people can be assigned non-problematically to either category. Problem Areas develop because of the antipathy of heterosexuals to homosexuals. As a result, homosexuals must be excluded.

A critical reading of the Report exposes a contradictory rationale. If the Report is subjected to what Janet Halley refers to as “rather ferocious tactics of unsympathetic reading,” it becomes clear that HPAT fears that categories of sexual identity are fragile and easily undermined.<sup>36</sup> This implicit rationale forms the true basis for the ban. Janet Halley believes antihomosexual discrimination stems from a concern that heterosexual identity can be undermined because of a potential for mutability; therefore, to avoid such problems with identity, “known” homosexuals must be segregated.<sup>37</sup>

HPAT’s reasoning remains hidden in the HPAT Report. This is understandable due to its radical implications. The implicit rationale that categories of sexual identity are mutable intersects with beliefs of so-called “Queer Theorists”. It is consistent with the Queer Theory agenda of undermining categories of identity. As expressed by Carl Stychin, “[c]entral to a queer identity . . . is the problematisation of categories of sexual identity and boundaries of sexual propriety, as they have been historically constituted. Queerness in part suggests an unwillingness to fix difference in any ultimate literality.”<sup>38</sup>

Thus, contrary to the superficial rationale provided in the Report, a closer reading of the Report reveals it is not heterosexual antipathy towards homosexuality that requires exclusion of homosexuals. It is, instead, a fear that individuals previously constituted by themselves and others as heterosexual will examine and reject this categorisation. The armed forces depend upon the existence of fixed categories of identity and perceive as a threat anything which undermines these

34. HPAT REPORT, *supra* note 4, at 36.

35. *Id.* at 226.

36. JANET E. HALLEY, *The Construction of Heterosexuality*, in FEAR OF A QUEER PLANET: QUEER POLITICS AND SOCIAL THEORY 82, 95 (Michael Warner ed., 1993) [hereinafter HALLEY, *The Construction of Heterosexuality*].

37. *See id.* at 93-99; *see also* Janet E. Halley, *Reasoning about Sodomy: Act and Identity in and After Bowers v. Hardwick*, 79 VA. L. REV. 1721-80 (1993).

38. STYCHIN, *supra* note 1, at 141.

categories. The Report responds to this threat by participating in the construction of the categories of "homosexual" and "heterosexual," privileging those who are heterosexual and excluding those identified as homosexual. Heterosexuals "know what a homosexual is . . . are at the same time exempt from the definitional clarity to which homosexuals are subject; and . . . because of both these features are exempt from the discrimination to which 'known homosexuals' are exposed."<sup>39</sup>

The Report is replete with circumstantial evidence of the contradictory rationale of the armed forces for continuing the ban on homosexuals. The statements of the anonymous authors and the choice of evidence on which they relied forms the basis for an inference of the true reason for the ban. This section of the article reviews the evidence demonstrating the existence of this alternative rationale.

### A. Armed Forces Policy and Guidelines on Homosexuality

The HPAT Report contains, at Annex B, a document entitled "Armed Forces Policy and Guidelines on Homosexuality" ("Guidelines").<sup>40</sup> This document was distributed to the respective armed forces directorates by the Ministry of Defence in December 1994.<sup>41</sup> It is an early forerunner of the HPAT Report and foreshadowed the structure and conclusions of the later Report. It adopted the same superficial attitude that homosexuality is a fixed category of identity; it provided a definition of homosexual and homosexuality.<sup>42</sup> However, it also betrayed a belief that homosexuality was largely an artificially or socially constructed category, and assigning a person to this category could pose problems. Many of the policies and procedures outlined in the Guidelines remain the present position of the Ministry of Defence.

The Guidelines' view of the fluidity of sexual identity is evident in the procedures it adopted for dealing with suspected homosexual activity. For example, the Guidelines warn that "[p]articular caution is necessary in dealing with recently enlisted personnel who have not had time to adjust to the standards of behaviour required by the Services and to communal life in general. In such circumstances cautionary words of advice about behaviour and the need to show more considering [sic] to other members of the community, may be sufficient to remedy the situation."<sup>43</sup> This cautionary instruction by the military admits the possibility that armed services personnel, particularly recent recruits, may engage in a range of behaviour that might cause them to be ascribed with a homosexual identity. It is at odds with the assumptions of fixed categories of identity underlying the surface rationale for excluding homosexuals. The HPAT Report states this is the present position of the

39. HALLEY, *The Construction of Heterosexuality*, *supra* note 36, at 96.

40. See HPAT REPORT, *supra* note 4, at Annex B.

41. See *id.* at 9.

42. The Guidelines defined a homosexual as "a person who is sexually attracted to a member of the same sex," and defined homosexuality as "behaviour characterised by being sexually attracted to members of the same sex." HPAT REPORT, *supra* note 4, at Annex B.

43. *Id.*



armed forces.<sup>44</sup>

### *B. Letter Warning of the Armed Forces' Prohibition of Homosexual Activity*

The HPAT Report contains, at Annex C, a form of warning letter that can be used in the case of suspected homosexual activity.<sup>45</sup> The warning letter provides,

Recent investigations give rise to suspicion that you may have been involved in homosexual behaviour. It is not intended to take any further action against you in relation to what has been revealed by these investigations, but you . . . are reminded that homosexuality is considered incompatible with service in the Armed Forces and those who admit to being, or found to be, homosexual, or have engaged in homosexual activity during their service, whether on or off duty, are discharged.<sup>46</sup>

The text of the warning letter is inconsistent with the notion of a fixed category of homosexual identity. It is consistent with a contrary view that homosexual identity is socially constructed or ascribed, and that participation in homosexual acts does not necessarily imply or result from certain essential, objectively knowable traits. It allows for the possibility of a mutable sexual identity. It seems to imply that homosexual activity is akin to cigarette smoking, that is, an act of which anyone potentially is capable without reference to an underlying predisposing identity.

### *C. Service Personnel Responses to Questions Concerning Homosexuality*

An inference of a belief in the fragility of identity categories arises from the fact that HPAT provided a reference to a psychologist for service personnel who had been asked to answer questions about their attitudes to homosexuality. The evidence on which the HPAT relied included responses to a questionnaire distributed to service personnel. The HPAT Report contains the cover sheet that accompanied the questionnaire.<sup>47</sup> This cover sheet states that the recipient has been selected at random, that responses are anonymous, and that views will be held in confidence.<sup>48</sup> It also states, “[i]f you have any concerns about this questionnaire, you may talk *in confidence* to Dr [name given], a civilian MOD psychologist, who is a member of HPAT, on 0171 305-8373 or extension 58373 LHQ.”<sup>49</sup>

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44. *See id.* at 9 (“Caution is applied to dealings with recently enlisted personnel, who may not have had time to adjust to the standards of behaviour required by the Services and to communal life in general. In these circumstances cautionary words of advice may be sufficient to remedy the situation and again, this is left to the Commanding Officer.”).

45. *See id.* at Annex C.

46. *Id.*

47. *See* HPAT REPORT, *supra* note 4, at Annex G-Appendix 1.

48. *See id.*

49. *Id.*

The superficial rationale for continuing the ban rests on an unstated assumption that homosexuality is objectively knowable. There is evidence of HPAT's implicit contradictory view that homosexuality is not objectively knowable but is in part socially ascribed. This evidence is found in its reasons for not asking service personnel in the anonymous questionnaire if they were homosexual or had engaged in homosexual conduct. According to the Report, "HPAT deliberately refrained from asking such details in its questionnaire. This would have seemed too intrusive and answers could only have rested on guesswork."<sup>50</sup> This reasoning is consistent with a view that identity categories can be problematised, and are not rigidly fixed.<sup>51</sup>

In Problem Area Five, the HPAT investigated whether ostracism and avoidance could have a negative effect on Fighting Power.<sup>52</sup> They concluded it could. Comments in this section expose a fear of the mutability of sexual identity categories. The authors state "[t]he problem [of ostracism of homosexuals and those who befriend them] is unlike the integration of women and ethnic minorities where members of the majority group remain indisputably white and male however much time they spend with members of those military minorities."<sup>53</sup> This comment implies time spent in the company of an identified homosexual might mutate a heterosexual into a homosexual. This is inconsistent with the notion of fixed identity categories.

The HPAT reviewed thousands of comments submitted in response to questionnaires. The comments selected by HPAT for inclusion in the Report reflect a fear of the mutability of sexual identity categories and the threat posed by introducing homosexuality. For example, an anonymous Lieutenant Commander in the Royal Marines remarked:

A man will fight for the other man not because of his particular characteristics as an individual but because he is there: he is in my fire team, my section, therefore I owe him. . . . Introduce a sexual element, either homosexual or heterosexual, and sooner or later the nature of this attachment will tend to change and one will start getting one to one relationships. Jealousies will tend to divide what had hitherto been seamless. A man's need for self respect could be satisfied by looking after one individual to whom he is particularly committed. He prioritises. And the cohesion of the fighting group is weakened.<sup>54</sup>

The Report responds to the threat which the mutability of identity categories poses to military cohesion by constructing the categories of "heterosexual" and "homosexual," privileging those who are heterosexual, and excluding homosexuals. Janet Halley remarked upon a similar construction in the judicial opinions of federal judges from the United States Courts of Appeal:

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50. *Id.* at 29.

51. *See id.* The Report avoided questions about (homo)sexual activity because of "the considerable problems of definition" and because "homosexual behaviour is often a transient part of sexual development." *Id.*

52. *See id.* at 89-95.

53. HPAT REPORT, *supra* note 4, at 89.

54. *Id.* at 100.

[A] position from which the class of homosexuals can be known is under construction even as it is removed from view. This position is a class of *nonhomosexuals* who know what a homosexual is; who are at the same time exempt from the definitional clarity to which homosexuals are subject; and who because of both of these features are exempt from the discrimination to which “known homosexuals” are exposed. Both their epistemological privilege and their exemptions are contingent, however, on their continued silence about the heterogeneity and fabricatedness of their class—on their acceptance of what I have called the “bribe”.<sup>55</sup>

The Report contains evidence of this construction and concomitant privileging of non-homosexuals. For instance, while there are nine subcategories of homosexual proffered, the Report contains no definition of non-homosexual or heterosexual. Non-homosexuals thus are free from scrutiny of their sexual identity. The epistemological privileging of non-homosexuals is evident in the analysis of Problem Area Six, “Cliquishness and Pairing”.<sup>56</sup> Non-homosexuals determined whether there was likely to be a problem with homosexual cliquishness. Respondents were asked whether they agreed or disagreed with the statement, “Homosexual Service personnel would tend to gather together in homosexual cliques.”<sup>57</sup> The Report regarded the responses as evidence that established the existence of Problem Area Six.

Non-homosexuals are privileged from scrutiny of their personal relationships. This privileging might be threatened by introduction of homosexuals. This is evident in the analysis of Problem Area Ten, where the HPAT hypothesised a problem with, “[i]ncreased uncertainty about the sexual orientation of fellow Service Personnel which could no longer be taken for granted as heterosexual.”<sup>58</sup> A comment from a Lieutenant Commander in the Royal Navy selected by the HPAT implicitly reveals the freedom of members of the constructed class of non-homosexuals to engage in certain conduct that might be perceived as homosexual, so long as they participate in the “continued silence about the heterogeneity and fabricatedness of their class.”<sup>59</sup> This anonymous respondent remarked:

‘Friendships [among RN ratings] become very deep . . . Their friendships can become reasonably physical with horseplay and banter and, dare I say it, affection. Most will have a special “oppo”. [Though on a messdeck] there was no modesty allowed in their lifestyles, nor needed . . . there was no stigma and no threat attached to [nakedness] so it was not unnatural or of any importance. Introduce homosexuals and the whole playing field changes. [Like RN ratings], Officers develop healthy friendship and can spend many hours in each others [sic] company

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55. HALLEY, *The Construction of Heterosexuality*, *supra* note 36, at 95-96.

56. See HPAT REPORT, *supra* note 4, at 96-103.

57. *Id.* at 101.

58. *Id.* at 130.

59. HALLEY, *The Construction of Heterosexuality*, *supra* note 36, at 96.

or in each others [sic] cabins, putting the world to rights. This would be instantly taboo or at the very least [questionable] because everyone would have to build artificial barriers against the introduced possibilities. Not because either suspected the other was queer, but because previously the issue never arose . . . one never had to defend oneself from the implied accusations. It simply never entered ones [sic] thoughts and when a colleague sat on your bunk you did not immediately have to consider whether you ought to jam your door open or call a 3rd party to attend . . . Removing the ban will lead to insecurity and a crisis of morale. The term oppo will develop a new meaning, the RN will be poorer for the experience and the homosexual will probably suffer most of all.<sup>60</sup>

A similar privileging from scrutiny of personal relationships for the constructed non-homosexual class is evident in the comment of a Lieutenant Fighter Controller in the Royal Navy that, “[e]verybody would question people’s behaviour if homosexuals were allowed. Why did that officer not invite a woman to that event?”<sup>61</sup> A Sergeant’s comments revealed a similar privileging. “We take the clothes off drunk colleagues now and put them to bed but if homosexuals were allowed in we might be accused of sexual assault.”<sup>62</sup>

That the introduction of homosexuals would threaten immunity from self-scrutiny of identity is evident in the comments of a Company Commander in the Royal Marines, who said, “[i]t would upset the extremely happy hard working status quo that we have at present, by introducing doubt and speculation about everybody’s motivation for joining the [Marine] Corps. Men will ask themselves: Was it for the physical challenge, travel and excitement or was it for the possibility of finding a partner?”<sup>63</sup>

Thus, the comments of the authors of the HPAT Report as well as the comments selected for use in analysing Problem Areas reveal the rationale underlying the surface rationale for the continued ban of homosexuals in the armed services.

## V. CONCLUSION

The immediate future of gay-identified service personnel in the U.K. rests with the European Court of Human Rights. After losing *Ministry of Defence v. Ex parte Smith* in the U.K. national courts, and, thus, exhausting national remedies as required under the law of the European Convention on Human Rights, the applicants brought suit in the European Court of Human Rights in Luxembourg. They have alleged that the ban on lesbians and gays breaches Articles 8 (right to privacy), 14 (discrimination), 3 (degrading treatment), and 10 (right to freedom of expression).

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60. HPAT REPORT, *supra* note 4, at 135.

61. *Id.* at 136.

62. *Id.*

63. *Id.*

The Court is expected to rule in 1999.<sup>64</sup>

However, the focus of this article has not been on litigation challenging the right of the U.K. armed services to exclude gay-identified service members. Instead, I have sought to expose the hidden rationale behind the rule excluding "homosexuals," based on the text of the document prepared to justify the exclusion.

The express reasons for the exclusion for homosexuals contained in the HPAT Report mask a deeper, more radical fear, that allowing known homosexuals into the military will undermine the artificially constructed category of heterosexual identity. The Report deals with this fear by shoring up construction of identity categories, privileging the heterosexual category identity through use of a bribe, and excluding the category of homosexual. In seeking to overturn the ban, we should be aware of, and militate for, the broader, radical goal of undermining comfortable notions of stable categories of sexual orientation.

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64. A case also was lodged in the Court of Justice of the European Communities, after a reference from the U.K. national court seeking a ruling on whether the ban violated the law of the European Union. However, that case was withdrawn after the Court of Justice ruled in Case C-249/96, *Grant v. South-West Trains*, that European Community law did not prohibit discrimination against lesbians and gay men.