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A CRITICAL ANALYSIS OF “BORN THIS WAY” AND “NOT A CHOICE”  
ARGUMENTS FOR THE ACCEPTANCE OF QUEER SEXUALITIES

Bachelor’s Thesis in Philosophy

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2020

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## Introduction

In the last two decades, LGB<sup>1</sup> (Lesbian, Gay, Bisexual) rights have become the subject of international attention and their advancement has been approached on the basis of the human rights framework. In 1994 LGB rights were discussed for the first time at United Nations through favourable resolution of *Toonen v Australia* case by the UN Human rights committee (Toonen...). The case's ruling stated that laws against same-sex conduct are in violation of human rights based on the International Covenant on Civil and Political Rights (ibid). In 2007, a set of principles that guide the implementation of human rights to sexual orientation and gender identity issues were developed – the Yogyakarta Principles (Correa, Muntarhorn, 2007). In the European Union, same-sex sexual conduct is legal in all member states and is protected by several treaties and laws, such article 13 of the Treaty of Amsterdam (signed in 1997, enacted in 1999) (Ayoub, Paternotte, 2019).

The focal concept in the LGB rights as human rights discourse is sexual orientation, which is treated as unproblematic and universal (Waites, 2009, 143-144). The concept of sexual orientation has been predominantly used from 1980s onwards in biomedical and psychological research, which often informs and structures the socio-political debate on rights of sexual minorities (ibid, 144-145; Waites, 2005). In Yogyakarta principles, sexual orientation is defined in a footnote: “sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender” (Correa, Muntarhorn, 2007, 6, footnote 1). This definition conceptualises sexual orientation as *reflexive* – sexual orientation is a function of the sex/gender of the person who is attracted (A) relative to the sex/gender of the person that A is attracted to (B) – and *dispositional* – it dictates an individual’s capacity for and disposition to certain behaviour.

Stemming from the Yogyakarta definition of sexual orientation, I use the term LGB to refer to issues pertaining to the mainstream discourse on sexual orientation specifically. I use “queer” as a more inclusive term to refer to all possible forms of non-heterosexuality and to the movement and issues surrounding non-heterosexual persons in general.

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<sup>1</sup> I have omitted the letter T for transsexual, because transsexuality is not a sexual orientation – transsexual persons have a sexual orientation. For this reason, they can be grouped in with cis-gendered persons, when referring to issues pertaining to sexual orientation only.

“Born This Way” and “Not A Choice” arguments have had a significant role in shaping the mainstream LGB rights discourse. Born This Way and Not A Choice arguments rely on the immutability claim (a trait being fixed and unchangeable) and involuntariness claim regarding sexual orientation and then go on to conclude that, since it would be wrong or unfair to discriminate against people for their immutable and involuntary traits, people should not be discriminated against on the basis of their sexual orientation. The Born This Way argument supports the immutability and involuntariness claim by appealing to a strongly biological concept of sexual orientation, while the Not A Choice Argument substantiates the claims with a psychological assumption, that emphasises the involuntariness, fixity and unmalleability of sexual orientation. The central thesis of this work is that Born This Way and Not A Choice arguments define non-heterosexuality through homophobic terms and endorse an implicitly and often explicitly binary and androcentric understanding of human sexuality, which does not reflect the existing variety of sexual behaviours. Thus, Born This Way and Not A Choice arguments do not live up to the goal of inclusivity that the LGB rights as human rights programme aims to achieve. I defend this claim in four sections.

In the first section, I explain why Born This Way arguments – and by extension Not A Choice arguments – have been prevalent in the queer rights discourse. In section 2, I provide an analysis of Born This Way arguments and an evaluation on whether Born This Way argument is sufficiently justified in light of current biological research on sexual orientation and its generalizability to all queer persons. In section 3, I analyse the Not A Choice argument and its potential for generalizability. In section 4, I first consider a possible response to criticisms of Born This Way and Not A Choice arguments based on their pragmatic value in furthering queer rights and subsequently reject it. Then I present an alternative argument based on the permissibility of consensual non-heterosexual behaviour rather than the immutable and involuntary concept of sexual orientation and explain why I find it superior. Finally, I summarise the conclusions of this Bachelor’s thesis and consider further research options.

## **1 Why These Arguments? History and Prevalence**

In this section I consider historical and logical reasons why Born This Way arguments – for which I use the acronym BTW throughout the thesis – have been prevalent in the queer rights discourse. The background established in this section will inform the formulation and reasoning for what I consider a better alternative to BTW in section 4.

As stated in the introduction, LGB rights as human rights initiative has had recent successes all over the world – global attention to LBG issues and pressure from international and non-governmental organisations has led to developments in anti-discrimination, legal partnership and marriage equality cases, which has in turn increased the overall social acceptability of LGB sexualities. However, each success also is accompanied by increased mobilisation on the part of the opposition (Browne, Nash, 2014). The opposers of queer rights in particular local contexts tend to mobilise in opposition to the “global homosexual ideology” that is construed as a direct threat to the existing social and religious institutions, which are assumed to be natural and thus inherently valuable.

Consequently, understanding the rhetoric used by opposers of queer rights is key to explaining the appeal of BTW arguments. There are roughly two strategies of resistance to the advancement of LGB rights, which are often intertwined in the rhetoric of the mobilised opposition. Both strategies construe same-sex conduct as a choice, that can and should be prohibited. The first, resistance based on religious reasons, entails opposing non-heterosexuality, because it is “sinful”, “goes against God’s will” and is “unnatural”. The argument made explicit is roughly: if act or desire X is sinful, and so that one ought to avoid act or desire X, then the agent can act or desire otherwise than X (because ought implies can), and so doing or desiring X is something subject to their choice. Since homosexuality is conceptualised as a matter of choice – same-sex attracted persons can act or desire otherwise – it follows, that same-sex sexual attraction is sinful and does not deserve the same protections as heterosexuality.

The other line of opposition is based on the notion of defending the nation and is utilised by right wing political parties and activists, often in cohort with religious reasoning as a response to the global pressure to implement LGB rights as human rights (Bosia, 2014). This

strategy construes opposition to non-heterosexuality as a means to hold on to the traditional values within a nation and thus avoid the degeneration of the country due to deviant foreign influences (Wilkinson, 2014). Russia is the paradigm case for pitting traditional values as a legitimate consideration for limiting the implementation of universal human rights in a local context (ibid, 363). An example of such rhetoric is Putin's campaign against "homosexual propaganda", that is construed as a ploy to erode traditional Russian values by spreading deviancy, especially among the "young and impressionable" (Chan, 2017). Consequently, opposing LGB rights becomes a matter of self-preservation and protecting the vulnerable from moral corruption (Wilkinson, 2014, 367-368). The "homosexual bogeyman" is created and utilised to create moral panic and further nationalist narratives (ibid).

Examples of the employment of both of these strategies can be found in a booklet by the Estonian Foundation for the Protection of the Family and Tradition (Sihtasutus Perekonna ja Traditsiooni Kaitseks) titled "How to recognise the lies of the homo-movement and refute them?" (Vooglaid, 2014). The booklet is written in opposition to the "global homosexual ideology" that is construed as an immediate threat to the wellbeing of the Estonian people and the continuation of the state. It was circulated in 2014, the same year, when the Registered Partnership Act – which allows the legal recognition of same-sex partnerships – was introduced and eventually adopted by the Estonian Parliament (Kooselu..., 2014).

As can be seen, whether the opposition is politically or religiously motivated, the "homosexual deviancy" is framed as a personal shortcoming and the result of choice, that can be and should be reversed. For this reason, Born This Way arguments, which reduce or even deny the role of personal choice in determining sexual orientation are often construed as a viable response strategy to the opposers of queer rights that is generalizable to all non-heterosexual persons. This entails that all non-heterosexuals can in principle be both identified by other persons as being "born this way" regarding their sexual orientation and self-identify as such, thus making it possible to present a unified front against the opposition.

As mentioned in the introduction, BTW arguments in LGB discourse rely on the immutability claim regarding sexual orientation. Immutability claim about a trait construes

the trait as fixed and unmalleable<sup>2</sup>. By doing so, BTW arguments draw on basic intuitions of fairness and the basic argument structure of BTW can be formulated in this way: if trait X is not freely chosen by the individual A and A cannot change it by merely choosing to do so, then trait X is not under the immediate control of A – A cannot help exhibiting trait X. If A cannot help exhibiting trait X, then A should not be blamed and discriminated for trait X (ought implies can). According to attribution theory, which is often cited as an explanation of these intuitions of fairness (Hegarty, 2010, 5), if the stigmatised trait can be attributed to factors not controlled by the individual, then it is likely to elicit “positive” emotions such as pity in non-stigmatised individuals (Weiner et al, 1988). Thus, BTW arguments (but also Not a Choice arguments) have seemed to be effective in promoting the cause of queer rights (at least against the opposition described above), because of their potential to stir up intuitions of fairness and emotions such as pity towards stigmatised queer individuals. In the remainder of this section, I provide a brief history of BTW arguments.

BTW arguments have been around since the beginning of research on sexual orientation and the related struggle for queer liberation. The first homosexual rights advocacy organisation, Magnus Hirschfeld’s Scientific-Humanitarian Committee (founded 1897 in Germany), used a biological explanation of homosexuality as the basis for its advocacy (Weber, 2012, 680). Hirschfeld’s organisation set the precedent for subsequent queer advocacy in favouring simplified biologically deterministic explanations of non-heterosexuality (ibid). As mentioned, BTW arguments support the immutability claim by appealing to a strongly biologically deterministic concept of sexual orientation. Throughout this thesis, I understand biological determinism as the assumption that sexual orientation is largely predetermined by biological factors – e.g. an individual’s genetic makeup, prenatal hormonal levels – as opposed to sexual orientation arising through social or cultural influences.<sup>3</sup> Although biological determinism has been historically used to argue for queer acceptance in many contexts to varying degrees of success, the US can be considered the paradigm case for the implementation of BTW narrative to further the idea of queer rights as human rights (Bosia, 2014, 258). Due to the global nature of contemporary LGB rights discourse and the similarity

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<sup>2</sup> No trait is absolutely immutable, at least in principle, e.g. it could be changed by using technology that we do not have yet – however bioethical concerns are beyond the scope of the present thesis.

<sup>3</sup> I understand biological determinism to be a form of essentialism about sexual orientation, which posits that sexual orientation is an ahistorical and acultural property – as opposed to social constructionism that defines sexual orientation as specific to a certain time period (19<sup>th</sup> century and after) and culture (Western). Essentialism about sexual orientation, however, is not dependent on biological determinism, e.g. it could still be true if sexual orientation was proven to be a universal psychological property. (Halwani, 2006, 209-210)

of the rhetoric used by the opposers of LGB rights, BTW arguments have been increasingly used as a basis for LGB advocacy and political action everywhere in the world (ibid).

The most notable early example of BTW rhetoric in the US comes from Havelock Ellis. Ellis was an American sexologist who endorsed a multiple cause view of homosexuality in private but adopted a biologically deterministic view of sexual orientation in his activism (Weber, 2012, 680-681). This strategic removal of “choice” from the rhetoric of LGB acceptance by relying on deterministic narratives, allowed the construal of the societal position of “the homosexual” as inherently non-threatening to the heteronormative social context (ibid). (I understand heteronormativity as the assumption that heterosexuality is the default or normal sexuality, making all other possible sexualities deviant and thus less desirable in regard to this norm (as defined in Gill, 2014, 98). Accordingly, I define discrimination based on sexual orientation as the preferential treatment of heterosexuality that results in sustained inequality between heterosexuals and non-heterosexuals, that has nothing to do with their overall abilities (on the basis of Bhurga, 2016, 336).)

In early and mid 20<sup>th</sup> century most public discussion of non-heterosexuality was confined to the biomedical sphere and homosexuality was characterised as an illness or inversion (Weber, 2012, 681). While the rhetoric of illness or inversion cannot be said to be especially friendly to the queer cause, we can still distinguish two cases. If homosexuality is characterised as a non-curable illness, then this rhetoric is in principle coherent with affirming BTW arguments. It is unfair to discriminate people on the basis of having a non-curable illness. But if non-heterosexuality is characterised as a curable (and even contagious) disease, then the rhetoric of homosexuality as illness goes to support the choice-based opposition to queer individuals mentioned above: if you can cure yourself out of homosexuality, then it is a matter of your choice to keep living “in sin” or not.

The 1970ies saw a new chapter in queer rights movement, this time led by queer persons themselves and were marked by positive choice rhetoric (e.g. political lesbianism) (Weber, 2012, 681). However, the 1980s came with a conservative change in LGB rights rhetoric in response to a general rise in conservative attitudes (ibid, 682). The celebration of differences within the queer movement was exchanged for rhetoric that emphasised unity of identity within the movement and sexual minority’s similarity to the heterosexual majority (Bernstein, 1997, 532). The movements aim for a cultural sexual revolution was replaced

with narrow interest group politics modelled on the successes of the civil and women's rights movements (ibid). Thus, establishing a biological basis for sexual orientation became increasingly important in order to justify this change in rhetoric – sexual orientation has to be similar to race and biological sex in order to be afforded the same protections. BTW arguments became especially prominent in the US during 1990s due to increase of LGB visibility following the AIDS pandemic and to several widely publicised biological research programmes on sexual orientation (I discuss the research in the next section) that were used to substantiate the arguments (Stein, 2014, 602).

As mentioned, the BTW rhetoric has spread outside of the US due to the similarity of the rhetoric of the opposition regardless of the location – the opposition creates the “gay bogeyman” in response to the “homosexual ideology” which in turn motivates the identification with and adoption of the BTW rhetoric (Bosia, 2014, 258). The widely held belief that explaining the biological origins of same-sex attraction is essential to alleviate the social stigma around it is also partially responsible for the rising prevalence of BTW arguments (Hegarty, 2010, 4). For example, use of BTW arguments has been noted in Singapore (Detenber et al, 2014) and public officials have sparked outrage by calling sexual orientation a “choice” regardless of their stance on queer issues.

A recent example of the latter is the incident involving the then French president Francois Hollande. Hollande sparked outrage by calling sexual orientation a “choice” in his response (and condemnation) to the Orlando gay club shooting (June, 2016): “it is America that has been hit but it is also freedom, the freedom to choose one's sexual orientation and to determine one's style of life” (The Local France, 2016). Hollande's choice of words was reprimanded both on social media (“Francois Hollande tweets that homosexuality is a choice! No, what country are we living in?”) and in the press (“Francois Hollande learns that one can choose one's words but not one's sexual orientation”, LeMonde). Subsequently corrected by the president's office to “freedom to live your sexual orientation and choose your style of life” (ibid).

## 2 Born This Way Argument

The aim of this section is to examine the structure of the Born This Way argument and the premises it relies on. In the first subsection, I give a standard formulation of the BTW argument and explain the terminology associated with it, after which I give the most charitable formulation of its first premise. In the following subsection, I discuss the main conclusions of the biological research programme on sexual orientation to which BTW arguments appeal and I will emphasise its limitations.

### 2.1 Formulation and Terminology

The BTW arguments start out with a scientific claim – sexual orientations are biologically based – and reach a normative conclusion from that premise with the addition of a normative premise. What is usually meant by “biological” in this context is “genetic” or “prenatally determined” (Stein, 2014). “Biological” can mean a range of slightly different things here, depending on the specific BTW argument proposed, but it is always understood in opposition to “social”, “environmental” and “malleable” (ibid). Thus, the standard formulation of BTW arguments looks like this (ibid, 602, modified):

P1 Sexual orientations are biologically determined traits (genetic, prenatally determined).

P2 It is wrong to discriminate against people for traits that are biologically determined (genetic, prenatally determined) and therefore not controlled by the individual, as long as acting on those traits is not harmful to or infringes on the rights of others (Behrens, 2013, 3).

P3 Acting on sexual orientation does not do harm to or infringe on the rights of others (Behrens, 2013, 3).

C Therefore, it is wrong to discriminate against people for their sexual orientation.

I will take the truth of premise 2 and premise 3 for granted and focus rather on P1.<sup>4</sup> As various scholars and scientists (Stein, 2014; Bailey et al, 2016 among others) have repeatedly emphasised, the “interesting” question is not whether biology is involved in sexual orientation – it is, one way or another – but how exactly is biology involved. Sexual orientation and sexual behaviour that sexual orientation disposes one to engage in is a cognitively mediated phenomenon that involves mental states such as feelings (pleasure,

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<sup>4</sup> Although some – e.g. Natural Law philosopher John Finnis – would argue against this claim.

pain), desires, beliefs and emotions (Stein, 2014, 603). Unlike inanimate objects and organisms with simple biological makeup, e.g. amoeba and bacteria, humans are capable of having mental states and something we call “sexual orientation” in virtue of their biology that is complex enough to exhibit mental states and stable psychological traits (ibid). Hence, all human traits are “biological” in this sense.

While all traits are biologically based, some are mostly biologically determined while others are almost entirely environmental. Stein (2014, 603-604) illustrates this by comparing eye colour – a trait determined almost entirely by one’s genetic makeup – and musical preferences – a trait shaped almost entirely by one’s environment. While a person might be slightly predisposed to liking classical music or jazz due to being born with an exceptionally good hearing, their musical preferences will be predominantly shaped by the styles and genres that they are exposed to by their parents, peers etc (ibid). For this reason, musical preferences are considered environmental (ibid). Traits such as eye colour are considered genetic, because they are largely constrained by the genetic makeup of a person (ibid). Nevertheless, even these traits are influenced by the environment: the way the genetic sequences are eventually manifested is still constrained by “environmental” affordances such as the level of certain vitamins at a certain state of development of the fetus/child (ibid). Thus, the discrepancy between the meaning of “environmental” in different contexts becomes apparent (Marino, 2018, 120). While “environmental” is often used as a synonym for “social” and “malleable” in public context, in scientific context “environmental” means everything that is outside of the individual – prenatal hormonal levels are technically a non-social environmental influence (ibid).

Thus, the traits can be categorised into a continuum, on one end of which are traits that are strongly biologically constrained (traits like eye colour) and on the other weakly biologically based traits (such as musical preferences) (Stein, 2014, 603-604). The salient question is: where does sexual orientation fall on this spectrum? The most charitable interpretation of the first premise of BTW arguments understands sexual orientation as strongly constrained by biological factors – it is either genetically pre-determined (such as traits like eye colour) or it is the result of the influences in prenatal environment (such as in utero hormone levels). Understanding sexual orientation in this way makes it an appropriate basis for protections afforded to other strongly biologically determined traits (e.g. race and biological sex).

## 2.2 Criticism: The Scientific and Social Limitations of the Research Programme

The purpose of this subsection is to evaluate whether existing research on sexual orientation can substantiate the validity of P1 in BTW arguments and assess the generalizability of biologically deterministic sexual orientation framework.

The first question that needs to be answered is: can current research on sexual orientation validate the claim that sexual orientation is a strongly biologically constrained trait? I will briefly cover the findings of some (arguably) most well-known biological studies on sexual orientation in the following.

Simon LeVay's neuroanatomical hypothalamus study (1991) showed a significant difference in the size of INAH-3 region between homosexual men and heterosexual men – the region had fewer neurons in homosexual men, making it more similar in size to heterosexual women (ibid).<sup>5</sup> The aim of the study was to suggest that organisational hypothesis<sup>6</sup> is applicable to humans: the size of INAH-3 region is not sex-specific, but sexual orientation-specific – it is bigger in gynophilic<sup>7</sup> males and females and smaller in androphilic males and females (ibid, 1035). However, LeVay's study did not (nor claimed to) conclusively show that homosexuals are “born this way” – since the studied brains belonged to adults, there is no way to tell when the differences manifested. Additionally, same-sex attracted women were not included in the study (ibid, 1036).<sup>8</sup>

Another line of research that has suggested that prenatal environment might have some effect on the sexual orientation of biological males are the fraternal-birth-order effect studies (e.g. Blanchard, 2004) – homosexual men tend to have more biological older brothers than heterosexual men, heterosexual women and homosexual women. The research suggests that the changes in in utero environment that occur after each consecutive birth increase the likelihood of the youngest male sibling growing up to be homosexual by approximately a

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<sup>5</sup> The results of the study were not clearly replicated by Byne (2000).

<sup>6</sup> According to the organisational hypothesis, atypical exposure to androgens (sex-specific hormones) in early stages of the development of the brain (likely prenatal) results in sex-gender atypical brain structures, which in turn might predispose the subject to same-sex sexual behaviour (Bailey et al, 2016, 790).

<sup>7</sup> Attracted to women

<sup>8</sup> All subjects of LeVay's study had died of AIDS – the AIDS pandemic provided access to the brain tissue of relatively young gay men (the INAH-3 region is so small that it can only be studied post-mortem). Same-sex attracted women were not studied, because the lesbian community was not severely affected by the AIDS epidemic, which precluded access to brain tissue of same-sex attracted women (LeVay, 1991, 1036).

third (Vanderlaan, Vasey, 2011).<sup>9</sup> No correlation between sexual orientation and the number of younger siblings or older sisters has been shown (Bailey et al 2016, 79). Of course, fraternal-birth-order effect cannot be responsible for the sexual orientation of homosexual men who do not have older brothers. Additionally, fraternal-birth-order effect does not apply to same-sex attracted women (ibid).

The genetic influences on sexual orientation have been studied by looking at the heritability rates of same-sex sexual orientation in twin samples and in molecular genetics. Heritability studies by Bailey and Pillard and their collaborators (e.g. Bailey, Pillard, 1991; Bailey et al, 2000) research the heritability factor of homosexuality by comparing sexual orientations of pairs of identical and fraternal twins – if there is a large percentage of monozygotic twins with concordant sexual orientations (both are same-sex attracted), it suggests that there might be some genetic basis to sexual orientation, since the twins share same genes. The studies (e.g. Bailey, Pillard, 1991; Bailey et al 2000) have suggested a low genetic influence on sexual orientation (the heritability rate exceeds 0) with combined male and female samples – if male and female twin pairs are evaluated separately, the heritability rates have consistently been shown to be much lower in female samples. However, the alternative hypothesis (postnatal experiences, socialisation) cannot be rejected in virtue of heritability studies, since the surveyed twins are usually raised together (Bailey et al, 2016, 76).

The genetic linkability research by Hamer, Pattatucci and their collaborators (Hamer et al, 1993; Hamer, 1999) compared specific chromosomal sequences at the tip of the X-chromosome (X-q28) in families with a large percentage of homosexuals. The research has not been well replicated overall (e.g. Rice et al, 1999) – which is characteristic of molecular genetics due to the fact that multiple genes can be responsible for the same trait (heterogeneity) – although the study with the largest sample size with 409 pairs of homosexual brothers (Sanders et al, 2014) did replicate some of the results of the initial study. No significant genetic linkage has been found in same-sex attracted females (Bailey et al 2016, 77).

As can be seen, the current research suggests that there might be some biological basis for the development of male same-sex attraction – male sexual orientation might be somewhat

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<sup>9</sup> e.g. 2% for one older brother, 2,6% for two older brothers, 3,5% for three older brothers and so on (Bailey et al 2016, 79)

genetic and influenced by the non-social environment. However, the precise mechanisms that determine sexual orientation and the extent to which strong biological influences constrain sexual orientation in men are not known (Bailey et al, 2016, 87). The current evidence has established a correlation, but not a definitive causal relationship. The evidence for biological basis of female same-sex attraction on the other hand is lacking.<sup>10</sup> The current research on sexuality suggests that the expression of female sexuality might be more receptive to social influences and social affordances as compared to male sexuality (Bailey et al 2016, 54; Baumeister, Stillman, 2006). Female sexual arousal patterns are considerably less category-specific towards sex-gender regardless of the subject's self-identification, whereas male attraction patterns tend to coincide with their self-identification (Bailey et al, 2016, 54). This has prompted Bailey's (2009) claim that women might not have a sexual orientation – at least not in the same sense as men.

Consequently, if sexual orientation is defined as necessarily having a biological basis, then lesbianism might have to be delegated to the status of a mere preference or a fetish. This would mean that as far as the BTW argument is concerned same-sex attracted women could not be afforded same protections as their male counterparts on the basis of sexual orientation.

In conclusion, P1 in the BTW argument is not sufficiently justified from a scientific point of view (at least not presently), especially in the case of female same-sex attraction. Therefore, one should be careful before assuming a strongly biological account of sexual orientation for the purposes of protecting sexual orientations from discrimination. I am not thereby ruling out all biological accounts – I am not in a position to do that in this thesis. Most importantly, it seems to be the case that differences in male and female sexuality preclude the generalizability of BTW arguments to all queer persons.

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<sup>10</sup> The best evidence for the biological origins of female sexuality comes from research on women with CAH syndrome, who are exposed to atypical androgen levels in utero. However, because women with this syndrome look “masculine” – what might be called a “butch” lesbian look – social influence on their sexual orientation cannot be ruled out. Additionally, while CAH women report elevated rates of same-sex attraction in comparison to general population, most of CAH women consider themselves heterosexual. (Bailey et al, 2016, 69-70)

### **3 The Not A Choice Argument**

The aim of this section is to examine the Not A Choice argument – for which I use the acronym NAC – and its socio-political implications. In the first subsection, I give a standard formulation of NAC arguments and explain how they relate to BTW arguments. I also explain their appeal, after which I clarify key terms, that are used in the formulation of NAC arguments. The second subsection illustrates the negative socio-political socio-political implications of NAC arguments.

#### **3.1 Formulation and Terminology**

NAC arguments adhere to the same basic structure as BTW arguments, but while BTW arguments appeal to a strong biological premise in order to justify the immutability claim regarding sexual orientation, NAC arguments refrain from making a strong biological claim and replace it with a psychological assumption – sexual orientation cannot be chosen. The validity of this claim is assumed to be obvious to an average person regardless of their own sexual orientation, such as through introspection or through testimony of queer persons.

Thus, the central claim of NAC argumentation is that while the exact mechanisms that motivate the manifestation of sexual orientation might not be known, it is a trait that humans experience as involuntary and unmalleable once formed – sexual orientation is not something we can freely choose. “Not a choice” is construed as “involuntary”, “entrenched at an early age” and “not subject to change afterwards”. (Stein, 2014, 607). NAC arguments derive the same normative conclusion as BTW arguments, but building on a different factual premise and an adjusted normative middle premise. The standard formulation of NAC arguments is (modified, *ibid*, 602):

P1 Sexual orientations are not chosen and cannot change (are not malleable).

P2 It is wrong to punish people or otherwise discriminate against them for acting on traits they did not choose and cannot change, as long as acting on those traits is not harmful to others (Behrens, 2013, 3).

P3 Acting on sexual orientation does not do harm to or infringe on the rights of others (Behrens, 2013, 3).

C Therefore, it is wrong to punish or otherwise discriminate against people for acting on their sexual orientation.

As in the case of BTW arguments, NAC arguments make several implicit assumptions about how concepts in their terminology interact with one another. The questions of malleability and choice of a sexual orientation are not always explicitly distinguished, but they can be (Stein, 2014, 606). There is no necessary connection between the property of being malleable and the property of being chosen (ibid). A trait can be chosen but not malleable afterwards, for example, a person can choose to have a hysterectomy (removal of uterus), but the procedure cannot be reversed afterwards. Similarly, a trait can be unchosen, but malleable – if a person is born with a crooked nose, they can alter this trait by undergo corrective surgery later in life. While all strongly biological traits (as defined in the previous section) are not chosen, the relation between “un-malleable” and “biological” is not as straightforward (ibid, 606): having a crooked nose can be a strongly biological trait (unless it is the result of an accident), but it is still malleable. This is not an outright problem for NAC arguments, because they can be construed independently from the strongly biological context of BTW arguments. Nevertheless, the relation is still worthy of attention, because BTW and NAC arguments are often used simultaneously.

Consequently, the most charitable formulation of premise 1 of the NAC argument understands sexual orientation as both not consciously chosen – and hence involuntary – and not malleable after a certain age. This formulation counters the “deviant choice” narrative of the opposition to queer rights that depicts same-sex attraction as a matter of trivial choice and in principle alterable, for example by psychotherapy.

### **3.2 Criticism: The Exclusion of Non-Conforming Queer Experiences**

The aim of this subsection is to raise some criticisms directed at the NAC argument’s reliance on a model of same-sex attraction which emphasises the fixity and involuntariness (immutability) of sexual orientation and the socio-political implications stemming from this, by using the examples of sexual fluidity and bisexuality.

In her survey of a hundred women over the course of a decade, Lisa Diamond (2008) found that a lot of women changed their self-identification in terms of labels pertaining to sexual orientation in between the studies. The women attributed changes in their self-labelling to genuine changes in their attraction patterns. The changes occurred between adjacent categories, rather than substantial changes (heterosexual-bisexual, bisexual-lesbian not

heterosexual-lesbian) (Bailey et al 2016, 56). Diamond refers to this phenomenon as sexual fluidity in her book of the same name (2008). Sexual fluidity poses a problem to NAC arguments, because it contradicts the fixity claims about sexual orientation – it goes against the “cannot change” assumption. Since sexual orientation is usually conceptualised as stable throughout one’s life after becoming fixed at an early age, experiences of sexual fluidity that counter this assumption are often dismissed or explained away (e.g. by arguing that these experiences are inauthentic, the person’s sexual orientation was x all along). More importantly, explaining away or not discussing these differences can be construed as an immediate interest of all queer persons due to the presumed need for a unified front against the mobilised opposition. The women who participated in Diamond’s research were often conflicted about the authenticity of their experiences (e.g. they believed that something is “wrong” with them) and felt reluctant about discussing them publicly due to fears of adverse reactions from the queer community and anti-LGB individuals alike (Diamond, 2008, 256-257).

Diamond had also dealt with the same dilemma – she anticipated that her work on sexual fluidity would be used by anti-LGBT organisations to promote the idea of conversion of homosexuals to heterosexuality (Diamond, 2008, 246-248). Which is exactly what happened – among other misuses, her work was positively cited on the website for National Association for Research and Therapy of Homosexuality (a conversion therapy advocate group) (ibid). Diamond decided to minimise the risk of her research being misconstrued in order to support anti-LGB narratives by emphasising that sexual fluidity is not something that the surveyed women actively chose: the changes in women’s sexual attraction patterns were involuntary (ibid, 250-251).<sup>11</sup>

I do not intend to argue against the claim that most individuals experience their sexual orientation as stable throughout their lifetime and fixed from early adulthood, but I believe that devoting attention to the differing experiences is justified, because NAC arguments assume lack of malleability and inability to change one’s sexual orientation and presuppose

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<sup>11</sup> Additionally, Diamond views sexual fluidity as separate from sexual orientation: „Sexual fluidity, quite simply, means situation-dependent flexibility in women’s sexual responsiveness. This flexibility makes it possible for some women to experience desires for either men or women under certain circumstances, regardless of their overall sexual orientation“ (2008, 3)

the generalizability of this claim to all queer persons. The phenomenon of sexual fluidity does not fit in with the immutability assumption. In other words, the immutability claim in the NAC argument makes sexually fluid people invisible, and thus leaves them outside of the scope of the argument, as if they did not deserve the same protections as other, ‘fixed’ queer individuals.

Having discussed the fixity claim of NAC arguments, I now turn to problems associated with reliance on the involuntariness claim. I use bisexuality as an example of the exclusion of non-conforming experiences from queer discourse as a result of the involuntariness claim.

Bisexuality is largely invisible in LGB discourse (despite the “B” in the LGB acronym), which creates the illusion that it is relatively uncommon. One reason for this is that bisexuality is rarely specifically addressed in the LGB rights as human rights discourse, because the general assumption regarding bisexuals seems to be that addressing issues specific to the bisexual experience is superfluous – attraction towards opposite sex individuals is not penalised, and when the discrimination against same-sex attraction is confronted, it is assumed that all problems that a bisexual person could face, can be dealt with within the same-sex discourse (perhaps, it is assumed that the same could be said for sexually fluid individuals). In other words, the assumption is that bisexuals’ experience can be fully understood, and be socially protected, by simply using the narratives and the social protections that apply to heterosexuality and to homosexuality (Waite, 2009, 150-151). The fact that bisexuality is often excluded from research on sexual orientation or bisexuals are grouped in with same-sex attracted subjects (Kauth, 2006, 87) further contributes to this invisibility. Bisexual invisibility creates a predominantly binary framework for sexual orientation in which all persons are presumed to be either heterosexual or homosexual – bisexuality is thus perceived as a situational preference and not a separate orientation (ibid, 86). For example, Kathleen Stock (2019) defines bisexuality as a compound orientation consisting of heterosexuality and homosexuality as opposed to a third separate orientation in what she calls the “Orthodox Account” of sexual orientation.

However, bisexuality is much more common than one might think given its relative invisibility, which means that issues specific to bisexuality concern a large portion of the queer community. Bisexuality might in fact be more prevalent than exclusive same-sex

attraction among women<sup>12</sup>, but negative stereotypes about bisexuality (e.g. bisexuals are confused about their sexual orientation) both within queer community and society at large make it difficult to access the prevalence of bisexuality among the population (Bailey et al, 2016, 60).

Bisexuality poses a substantial problem for NAC arguments, because while it can be argued, that bisexuals do not choose their sexual orientation, they still have a choice regarding their sexual partners, since bisexuals are by definition attracted to both sexes – the bisexual experience goes against the “cannot be chosen” assumption. For example, we can imagine a bisexual choosing almost exclusively other-sex or same-sex partners (for any reason), hence undermining the “cannot be chosen” part of premise 1. Bisexuals have choices to make, at least in principle. For this reason, as in the case of sexual fluidity, keeping bisexuality out of the discourse – thus ensuring its invisibility – can be construed as the best interest for monosexual non-heterosexuals. This constitutes the political motivation for the exclusion of bisexuals from queer discourse, because as just said the bisexual experience includes (or may include) a strong element of choice when it comes to sexual partners (Yoshino, 2000, 405-406).

Another motivation for the political invisibility of bisexuality, according to Kenji Yoshino (2000), can be attributed to the fact that intermediate categories are sometimes harder to distinguish, because “they are caught between a political struggle” the nature of which dictates an alignment with one side of the the conflict or the other – which seems to be the case with bisexuality (ibid, 391). This is especially relevant due to the mostly binary nature of the mainstream LGB rights discourse, which fuels the expectation that bisexuals have to assume a monosexual identity at some point. Since political mobilisation is based on identity rather than sexual orientation (ibid) – which usually informs the adoption of a certain identity – retaining a bisexual self-label can be construed as a refusal to pick sides or picking the side of the opponent (ibid, 408).

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<sup>12</sup> While same-sex attracted men are usually exclusively homosexual, transitional bisexuality for men is quite common, which means that a bisexual identity is adopted for some period of time before self-identification as exclusively homosexual. (Bailey et al 2016, 59). Although it might be argued that transitional bisexuality increases bisexual invisibility, it does so by reinforcing the assumption, that bisexual identity is not a stable identity, but a phase from which a monosexual identity is set to emerge. (Yoshino, 2000, 396)

Same-sex attracted women may have a special interest in maintaining the claim that sexual orientations are involuntary and stable, that is, in affirming the NAC argument, because as discussed in the previous section, female same-sex attraction does not fit into the biologically deterministic framework of BTW arguments. For this reason, same-sex attracted women feel additional pressure to police their identities and understanding of their experiences to conform with the involuntary model of same-sex attraction in order to be taken seriously in the socio-political realm (Yoshino, 2000, 408). This in turn adds additional pressure for female bisexuals to either adopt a monosexual identity in order to feel welcome in the queer community or adopt an exclusively heterosexual identity. Their male counterparts are however not in a better position – since transitional bisexuality is common among men and there are relatively few male bisexuals, their experiences are at risk of being dismissed as unwillingness to accept their homosexuality. The same is most likely true regarding sexually fluid men.

In conclusion of this section, on the one hand NAC arguments seem as an improvement on BTW arguments – they do not rely on scientific claims that cannot yet be substantiated, and they should in principle be applicable to same-sex attracted females. However, NAC arguments end up excluding a different, but nevertheless predominantly female subgroup of same-sex attracted individuals from the “unified front” and rendering their experiences invisible and therefore outside of the scope of the mostly binary LGB discourse.

## **4 An Alternative Anti-Discrimination Argument**

In this section, I first consider and reject a pragmatic response to any criticism of BTW/NAC argumentation strategy. After that, I will present an anti-discrimination argument in favour of queer sexualities that is better than the BTW/NAC argumentation strategy.

### **5.1 The pragmatic response to criticism against BTW/NAC arguments**

The purpose of this subsection is to consider and reject the most viable response to criticisms of BTW and NAC arguments: while BTW and NAC arguments are not perfect, they have a good track record regarding LGB rights, namely in convincing people to take LGB rights seriously and be more accepting towards queer persons in general – which is the most important, considering that BTW and NAC arguments are mainly used outside of academic context.

The main source of the good track record argument comes from the testimony of queer persons – BTW and NAC rhetoric has helped others to come to terms with their queerness and accept them. For example, Simon LeVay received a flood of thankful letters from homosexual men and their parents after his study on structural differences in the brains of heterosexuals and homosexuals was published (Nimmons, 1994). The men had sent the study to their parents and reconnected with them because of it – LeVay’s study had convinced their parents that nobody is to blame for their sexual orientation, which helped the parents come to terms with their sons’ sexual orientation (ibid).

Moreover, medical knowledge concerning the fixity/involuntariness claims was strategically mobilised in the UK to achieve the expansion of sexual citizenship of gay citizens during debates over the equalisation of the age of consent. Age of consent for homosexual encounters was higher than for heterosexuals at that time in the UK (Waites, 2005). The idea made explicit is: if sexual orientation is still malleable at the time a young person becomes sexually active, then there is a “danger” that young people can be made to become homosexuals by having homosexual experiences “too early”.<sup>13</sup> If it turns out instead that same-sex attraction is not malleable by the time young people usually become sexually active, then this justification for discrimination regarding age of consent does not hold.

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<sup>13</sup> Comparison can be made to Anita Bryant’s Save Our Children campaign (formed in 1977) in Florida that was formed in response to an anti-discrimination act based on sexual orientation.

Biomedical and psychological knowledge was strategically used to reinforce the idea that sexual orientations are usually formed and stable by early adulthood, making the higher age of consent an unnecessary and discriminatory practice (ibid).

Thus, the main claim of the pragmatic response to criticism of BTW and NAC arguments is (1) they appeal to basic intuitions of fairness and therefore can elicit sympathy towards the cause of queer rights and (2) they offer a simple explanation of the etiology of sexual orientation – people are more likely to be sympathetic towards something they think they understand, regardless of whether the explanation is scientifically sound. After all, the context of the arguments is socio-political and merely informed by science, not scientific itself, and some progress is better than no progress. Thus, the good track record argument can be formulated in this way:

P1 The best way (by means of rational argument) to alleviate moral and social discrimination towards queer people is to use BTW/NAC arguments.

P2 We should alleviate moral and social discrimination towards queer people.

C Therefore BTW/NAC arguments should be used.

However, there are several major problems with this response. The first problem for BTW and NAC arguments is that it is not entirely clear whether biologically deterministic (essentialist<sup>14</sup>) beliefs cause people to adopt a more tolerant view concerning queer individuals. The connection between essentialist beliefs and tolerance toward non-heterosexuals is not straightforward and largely depends on the context. There are however some trends that have been noted and researched. While the belief that the categories of sexual orientation are discreet and formed along the lines of basic and fundamental differences is associated with more prejudice toward sexual minorities, on the other hand the belief that sexual orientation is a deeply innate trait, that is immutable and unchosen, is indeed associated with greater tolerance toward sexual minorities (Hegarty, 2010, 6). This is an association that has been replicated through the years in numerous studies (Hegarty, Pratto, 2001; Halsam, Levy 2006; Smith et al, 2014 among others).

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<sup>14</sup> I understand biological determinism to be a form of essentialism about sexual orientation, which posits that sexual orientation is an ahistorical and acultural property – as opposed to social constructionism that defines sexual orientation as specific to a certain time period (19<sup>th</sup> century and after) and culture (Western). Essentialism about sexual orientation, however, is not dependent on biological determinism, e.g. it could still be true if sexual orientation was proven to be a universal psychological property. (Halwani, 2006, 209-210)

Though this research is often cited as a pragmatic reason for using BTW and NAC arguments, it does not actually prove that trait essentialism reduces prejudice against queer persons. While the research has established a correlation, it does not establish a causal relationship between essentialist beliefs and acceptance of non-heterosexual lifestyles. The possibility that the relationship might be the other way around – the acceptance of queer sexualities is the cause of essentialist beliefs about the etiology of sexual orientation – cannot be effectively ruled out (Stein, 2014, 623-624). The situation is the same regarding the possibility that there might be a third factor that is the root of the correlation (ibid, 624). Additionally, Hegarty (2010) found that when biologically deterministic accounts of sexual orientation were not discussed during a university course on sexual orientation, and were instead replaced by discussions of social constructionist theories on sexual orientation, which questioned the discreteness of sexual orientation categories and incorporated a discussion of sexual fluidity and bisexuality, the attitudes of (predominantly female) students still saw a positive – i.e. queer-friendly – change by the end of the course (ibid).

A related issue is that relying on immutability is problematic in and of itself. The legal systems in most countries prohibit behaviour that might be shown to have a strongly biological basis – e.g. if an individual's tendency towards murdering other people were shown to be strongly constrained by their genetic makeup and thus involuntary, it is unreasonable to expect that the law would permit such behaviour (Gill, 2014, 94). On the other hand, there are laws that protect dispositions that are not necessarily immutable, although they might be experienced as deeply important parts of an individual's personality (similarly to sexual orientation) (ibid, 94-95). The rights to political and religious freedom among others are afforded such protections. Therefore, immutability claims are neither sufficient nor necessary to support laws that protect individual rights, such as those of queer individuals.

The second, more worrying problem, is that emphasising the etiology of sexual orientation and appealing to its involuntariness instead of focusing on positive choice, creates a situation in which one can claim to accept queer *persons* while simultaneously disapproving of queer *lifestyles*, without contradicting oneself (Stein, 2014, 615). According to Emily R. Gill (2014) this is possible because BTW and NAC rhetoric emphasises the involuntariness of the status of non-heterosexuality, instead of focusing on non-heterosexuality as conduct – i.e. instead of

emphasising the positive choice associated with adopting a queer lifestyle that matches one's sexual orientation. Recently, the Catholic Church has adopted such strategy. This has allowed pope Francis to appear progressive in comparison to his predecessors, by urging parents of non-heterosexuals to not disown their children on religious grounds and by even claiming that homosexual tendencies as such are not a sin (San Martin, 2019), while remaining ambiguous on the Church's official stance on queer lifestyles. A similar sentiment is endorsed in previously mentioned Foundation for the Protection of the Family and Tradition booklet, but Vooglaide's (2014) stance on homosexual conduct is clear – it is highly undesirable. However, he takes a “sympathetic” stance towards the status of homosexuality (ibid). Again, while homosexual orientation itself is not something a person should be blamed for, what is blameworthy and should be punished is homosexual conduct.

The third and most concerning issue with BTW and NAC arguments is that they define queerness in homophobic terms (as is also discussed in Stein, 1999 and 2014; Weber, 2012; Bosia, 2014; Gill, 2014): basing the acceptance argument for queer rights on the involuntariness of sexual orientation and non-malleability reaffirms the implicitly assumed undesirability of queerness. While emphasising the involuntariness of sexual orientation allows to counter the anti-queer narrative of spread of deviancy among the impressionable youth (Waites, 2005, 549), it does so by implicitly reaffirming the inherent undesirability of queerness in comparison to the healthy, normal heterosexuality. BTW and NAC arguments' emphasis on the (biologically or psychologically explained) involuntariness of sexual orientation creates an association between being non-heterosexual and being a sick, unfortunate human being, especially against a heteronormative background. If non-heterosexuality is like a sickness, then like all diseases – even if one “accepts” them as inevitable and in this case also as incurable – the fewer people have the disease, the better. Queerness that is defined through a strongly biological/involuntary model of sexual orientation, is not a threat to heteronormativity and does not require its redefinition. It just requires narrow exceptions to accommodate the “unfortunate” few. While these exceptions might grant formal rights to the sexual minority (e.g. the right to marry, adopt), they do little to challenge societal prejudices against queer persons in general. Similarly, while characteristics like race and biological sex are immutable and there are anti-discrimination laws regarding them, racism and sexism are still prevalent (Gill, 2014, 94).

Additionally, BTW and NAC arguments can have adverse effects, especially in countries with low societal acceptance rating for queer persons. For example, the previously mentioned Magnus Hirschfeld's strongly biological understanding of sexual orientation was used as a basis to eradicate the "undesirables" during the Third Reich (Stein, 2014, 619). The point is that the biological premise of BTW arguments has been, and may well be used, by those who show no sympathy at all with the "sick" but rather simply aim at their eradication, as was the case in the Third Reich. As Shannon Weber (2012) points out: "Whether the origins of same-sex desire stem from a biological 'mutation' or a behavioural maladjustment, those who are against same-sex desire and love will attempt to exterminate it" (ibid, 681).

## **5.2 The Alternative Argument**

In this subsection, I present what I hold to be a better alternative to the BTW and NAC arguments and emphasise an alternative strategy for the advancement of queer rights and substantial acceptance as opposed to merely formal acceptance.

A better alternative to BTW and NAC arguments does not reference origins of homosexuality, since we do not have any definitive answers regarding this issue and most likely will not have them any time soon (quite possibly ever). Instead, it focuses on the validity and acceptability of queer lifestyles and identities. An argument for the acceptance of and non-discrimination against queer persons does not need to rely on the immutability of sexual orientation, because discrimination against queer persons is wrong regardless of the etiology of sexual orientation. The rights to expression of sexuality and pursuit of consensual sexual relationships are covered by the right to personal freedom/autonomy. For example, an argument can be made against forcing a person to go through the psychological torture of conversion therapy independently of immutability claims regarding sexual orientation by arguing, that conversion therapy is not wrong because homosexuals cannot change, but because there is nothing inherently wrong with being homosexual in the first place – conversion therapy is cruel and unnecessary regardless of the outcome (Stein, 1999, 337-338). Abstaining from the biological/involuntariness premise does not make an anti-discrimination argument weaker, while maintaining the respect towards queer lifestyles. I will formulate a possible version of the argument in the following way:

P1 People have a right to personal freedom, as long as it does not do harm to or infringe on the rights of others.

P2 Consensual non-heterosexual behaviour is an expression of personal freedom and does not do harm or infringe on the rights of others.

C1 Therefore, people have a right to consensual non-heterosexual behaviour.

C2 (from C1) Therefore it is wrong to punish or otherwise discriminate against people for consensual non-heterosexual sexual behaviour.

The alternative argument focuses on the acceptability of non-heterosexual behaviour rather than on the acceptability of clearly defined identity based on biological or anyway unmalleable sexual orientation. This allows to protect a wide variety of conducts, that might not fit into the involuntary and unmalleable criteria of BTW and NAC arguments – such as bisexuality and sexual fluidity which were discussed in the previous section, but it can also account for intersex persons and transsexual individuals (cases which I cannot discuss due to limited space). This argument does not even rely on the philosophically, not just scientifically, contested concept of sexual orientation<sup>15</sup>, because it is purely focused on behaviour. This a strength, because the notion of sexual orientation – at least the mostly binary version of it that even struggles to accommodate bisexuality – might be too rigid to account for the sexuality of at least some intersex and transsexual individuals and persons who are attracted to intersex and transsexual individuals.<sup>16</sup>

An additional factor that favours the adoption of a behaviour-based argument for acceptability is that sexual orientation might not be as easily translatable to other cultures that do not have the same understanding of “sexual orientation” or relevant concepts associated with sexual orientation such as sex and gender – e.g. many non-western cultures have more than two genders (Stein, 1999, 209-211). Likewise, problems arise when a culture does not have the concept of sexual orientation or does not define what is homosexual/heterosexual in the same way (ibid). When discussing the universality of sexual orientation researchers tend to revert to the behavioural view – e.g. while some cultures do not have the same understanding of sexual orientation as the Western world, people in those cultures still engage in behaviour that Westerners would consider “homosexual” (ibid).

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<sup>15</sup> Problems with defining sexual orientation are discussed in Stein (1999, part I), among others.

<sup>16</sup> This is discussed in Dembroff (2016), for example.

Emphasising the consensualness of the behaviour that is to be permitted allows to clearly distinguish the conduct in question from practices, the permissibility of which is often cited as a possible consequence of allowing non-heterosexual behaviour by the opponents of queer rights, such as pedophilia and zoophilia (I assume these practices to be non-consensual by definition).

One possible objection to the behaviour-based argument is that it relies on a liberal moral view – premise 1 is essentially J. S. Mill’s “harm principle” (Brink, 2018) – and that will hardly convince traditionalists, whereas BTW/NAC arguments at least rely on a shared moral principle that traditionalists also usually accept – it is unfair to punish people for inborn/immutable traits, as long as they are harmless. While this is a strong objection, the shared moral principle cannot avoid the problem of distinguishing status from conduct. If one is to remain faithful to this shared moral principle, then it is basically the end of discussion: yes, I accept that you are a blameless invert, but I will not accept your right to act according to your invertedness. There is not much room for progress if reliance on the denial of positive choice is to be continued.

In any case, there is a possible way to elicit sympathy from undecided persons and opposers of queer rights: the persuasive force of arguments that do not rely on immutability claims can come from the re-humanisation of the homosexual bogeyman at the centre of the moral panic concerning queer persons. The moral panic relies on the construction of the “otherness” of queer persons – they are not part of the local community, but agents of foreign influence set on eradicating the local traditional values. The higher visibility of queer persons can alleviate the prejudices substantiated by the assumed abnormality of queer individuals. Learning about queer people’s experiences and hardships that they face in a negatively disposed society re-humanises non-heterosexuals and makes heterosexuals less likely to hold a negative attitude towards a member of their own community (Wilkinson, 2014, 371-372). For example, many queer persons in Russia have opted to “come out” to show that queer individuals are not a deviant caricature they are painted to be by traditional value moralists, but just as much a part of the local community and just as invested in it as the heterosexual majority (ibid).

## Conclusion

In this final section, I summarise the main argument of this thesis and propose possibilities for further research. The central thesis of this work was that BTW and NAC arguments define non-heterosexuality through heteronormative terms and generalise a binary and male-centric model of sexual orientation to all non-heterosexuals, which does not reflect the existing variety of experiences of sexuality – for this reason, BTW and NAC arguments do not achieve the goal of providing an universal argument against the rhetoric of the opposition that all queer persons could identify with.

After explaining the background of BTW arguments in section 1, I assessed the scientific soundness of BTW arguments and their potential for generalisability in section 2. I concluded that the current research does not sufficiently justify BTW argument's claim to immutability and involuntariness through a strongly biologically determined concept of sexual orientation, especially in the case of same-sex attracted females – hence I also rejected the BTW argument's claim to generalizability. However, I did not consider bioethical concerns regarding the biological research on sexual orientation. While some academics, such as Edward Stein, have stopped short of calling the research programme in its entirety unethical (e.g. in "The Mismeasure of Desire", 1999), others, such as Michael Hames-Garcia have called all research on same-sex sexual orientation in a heteronormative society inherently unethical (Hames-Garcia, 2006, 79).

In section 3, I evaluated the generalizability of the NAC argument to all queer persons. I presented it as a weaker formulation of the BTW argument, because while it adheres to the same structure and makes the same claims about sexual orientation (immutable and involuntary), it does not rely on biological determinism and instead validates the claim by appealing to introspective evidence and the testimony of queer persons. I argued, that despite its advantage in regard to the BTW arguments, the NAC argument fails the generalizability criterion, because there are queer experiences that go against the immutability claim (sexual fluidity) and the involuntariness claim (bisexuality). While I argued that NAC arguments – and by extension BTW arguments – are partly responsible for the continued binarity of the mainstream LGB rights discourse and the silencing of non-conforming experiences in queer discourse, I did not discuss other factors that contribute to this. For example, a discussion of

the “homonormativity” of mainstream LGB discourse was left outside of the scope of this thesis.

In the fourth section of the thesis, I considered a BTW/NAC response to criticisms based on the assumed good track record of the arguments. I rejected the response based on pragmatic value of BTW/NAC arguments, because the causal relationship between immutability/involuntariness beliefs regarding sexual orientation and tolerance towards non-heterosexuals is not sufficiently proven and can be attributed to alternative explanations. Additionally, I argued that BTW/NAC arguments implicitly confirm the undesirability of non-heterosexuality and cannot overcome the status versus conduct distinction – while the opposers of queer lifestyles might concede that the status of sexual orientation is involuntary and immutable and thus non-heterosexuals are not to blame for their sexual orientation, they can still consistently oppose queer lifestyles, which are based on adoption of queer identities and positive choice.

Building on the criticism of the good track record argument, I presented an alternative argument for the acceptance of queer sexualities based on the personal freedom to engage in consensual non-heterosexual behaviour, that is not susceptible to the status versus conduct distinction. While the behaviour-based argument I presented does not rely on both philosophically and scientifically contested concept of sexual orientation and thus has several advantages in regard to it (such as greater potential for generalizability), I did not question the usefulness of the distinction between sexual orientation and sexual identity in this thesis. I also did not consider the role of choice in determining sexual orientation. An interesting analysis of these issues could be provided, for example on the basis of William S. Wilkerson’s fusion theory (*Ambiguity and Sexuality*, 2007) and his argument regarding the role of interpretation in determining sexual orientation (Wilkinson, 2009).

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# QUEER-SEKSUAALSUSTE AKTSEPTEERIMISE TOETUSEKS ESITATUD ARGUMENTSIDE “SELLISENA SÜNDINUD” JA “EI OLE VALIK” KRIITILINE ANALÜÜS

## Resümee

Viimaste aastakümnete jooksul on LGB probleemid pälvinud aina rohkem rahvusvahelist tähelepanu, mis on samas aga osutunud ka LGB vastase mobiliseerumise katalüsaatoriks (Browne, Nash, 2014). LGB vastaste retoorika tuumaks on mitte-heteroseksuaalsuse (ehk *queer*-seksuaalsuste) kujutamine hülbelise ja ühiskonnale kahjuliku valikuna (nt Vooglaid, 2014). „Sellisena sündinud“ ja „Ei ole valik“ argumendid mitte-heteroseksuaalsuste aktsepteerimise toetuseks põhinevad muutumatuse ja tahtmatuse väitel seksuaalse orientatsiooni kohta. Seeläbi apelleerivad need argumendid üldisele arusaamale õiglusest: kui teatud omadus ei ole inimese kontrolli all ning seda isikuomadust ei ole võimalik inimese enda vabast tahtest lähtuvalt (või ka välise sekkumise abil) muuta, siis ei ole kõne all oleva isiku selle omaduse eest süüdistamine ja karistamine õigustatud. Seetõttu on „Nii sündinud“ ja „Ei ole valik“ argumendid muutunud osaks peavoolu LGB retoorikast – eeldatavasti suudavad need argumendid pakkuda vastuväidet LGB vastaste retoorikale kõigi mitte-heteroseksuaalsete isikute seisukohast.

Selle Bakalaureusetöö keskne väide on, et “Sellisena sündinud” ja “Ei ole valik” argumendid määratlevad mitte-heteroseksuaalsust homfoobse raamistiku abil ning edendavad seeläbi implitsiitselt – ja tihti ka eksplitsiitselt – binaarset ja androtsentrislikku arusaama inimseksuaalsusest, mis ei peegelda olemasolevate seksuaalsete praktikate mitmekesisust. Kaitsen seda väidet neljas peatükis. Esimeses neist annan põgusa ülevaate „Nii sündinud“ (ja „Ei ole valik“) argumentide kontekstist ja ajaloost. Teises peatükis analüüsin „Nii sündinud“ argumendi laiendavust kõigile mitte-heteroseksuaalsetele isikutele. Kolmandas peatükis peatükis hindan „Ei ole valik“ argumendi laiendatavust ning selle sotsio-poliitilisi implikatsioone. Neljandas peatükis kaalun vastuväidet „Nii sündinud“ ja „Ei ole valik“ argumentide kriitikale („head tulemused“). Peale seda esitan alternatiivse, käitumise lubatavusel põhineva argumendi *queer*-seksuaalsuste aktsepteerimise toetuseks ning toon välja selle eelised „Nii sündinud“ ja „Ei ole valik“ argumentide suhtes.

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