

One of a number of polemical libertarian works by this prolific author, who argues against the alliance of law and psychiatry to regulate personal conduct.

4087. WACHENFELD, FRIEDRICH. **Homosexualität und Strafgesetz: Ein Beitrag zur Untersuchung der Reformbedürftigkeit des 175 St.G.B.** Leipzig: Weicher, 1901. 148 pp.

German jurist's examination of the background of criminalization of homosexuality in canon, Roman and Germanic law. See the detailed review and critique by Numa Praetorius in: *JfsZ*, 4 (1902), 670-775.

B. ANCIENT, CIVIL, AND CANON LAW

Roman law, as codified at the behest of the Emperor Justinian in the 6th century, is the source of the civil law tradition which came to prevail on the European continent and, ultimately, through much of the world (with the major exception of the English-speaking countries; see XX.D-M). Canon law is the legal tradition of the Roman Catholic church, which came--in the sexual sphere as in others--to have a symbiotic relationship with the medieval civil law tradition.

4088. BIENER, FRIEDRICH AUGUST. **Geschichte der Novellen Justinian's.** Berlin: Ferdinand Dummler, 1824. 621 pp.

On Justinian's Novellae 77 and 141 and his persecution of sodomites in Byzantium, see pp. 23, 27, 44-46, 455-56, 470-71, 518, 526, 583-84.

- 4088A. CARPZOV [CARPZOVIUS], BENEDICT. **Practica nova imperialis Saxonica rerum criminalium.** Wittenberg and Leipzig, 1652.

The influential leader (1595-1666) of the German Practical School of legal scholars held that sodomites incur divine vengeance in the form of famines, plagues, wars, earthquakes, floods and "other general scourges of this kind" (Pars 11, Quaestio LXXVI, 5).

4089. CHRIST, JOHANNES FRIEDRICH. **Historia legis Scatiniae.** Halle: Johannes Christoph Krebsius, 1727. 27 pp.

To date the only comprehensive treatise (in Latin) on the obscure law of the Roman republic, the Lex Sca(n)tinia. See now, however, Saara Lilja, **Homosexuality in Republican and Augustan Rome** (Helsinki: Societas Scientiarum Fennica, 1983), 112-21.

4090. DAMHOUDER, JOOS DE. **Praxis rerum criminalium.** Antwerp: Beller, 1601.

One of several editions of a treatise first issued in 1554 in Louvain. See pp. 390-97 (chapter 98), where the learned author (1507-81) extends the boundaries of sodomy to include bestiality, demonism, necrophilia, and relations with heretics.

4091. D'AVACK, PIETRO AGOSTINO. "L'omosessualità nel diritto canonico," *Ulisse*, 3:18 (1953), 680-97. Well-documented study by a canonist on the history of church law.
4092. FLORENCE. REPUBLIC. **Statuti della Repubblica Fiorentina**. Edited by Romolo Caggese. Florence: Comune, 1910-21. 2 vols. See Chapter LIV (2, pp. 218-19), for a law of 1325 which prescribes castration for active sodomites and a fine for passive ones (if under age). An unusual provision in this otherwise typical Italian law of the period is the prohibition on composing or singing sodomite songs.
4093. GAUTHIER, ALBERT. "La sodomie dans le droit canonique médiéval," in: Bruno Rey (ed.), **L'érotisme au moyen âge**. Montreal: Aurore, 1977, pp. 111-22. Brief account of the canon law tradition; inferior to P. A. D'Avack, above.
4094. GOODICH, MICHAEL. "Sodomy in Medieval Secular Law," *JH*, 1 (1976), 295-302. Shows that in 13th and 14th century Europe kings and lawmakers strove to make secular law conform with Christian moral theology.
4095. LOBINGIER, CHARLES SUMNER. "Lex Christiana: The Connecting Link Between Ancient and Modern Law," **Georgetown Law Journal**, 20 (1931-32), 1-43, 160-95. Places in context the process whereby "the whole province of sex crimes was annexed by the church courts" (pp. 6, 160, 181).
4096. ORBACH, WILLIAM. "Homosexuality and Jewish Law," **Journal of Family Law**, 14 (1975), 353-81. On the whole an uncritical traditionalist compilation of Jewish law in relation to homosexuality from the Bible to contemporary responsa, but useful for the many references to traditional and modern sources.
4097. SABELLUS, MARCUS ANTONIUS (MARCO ANTONIO SAVELLI). **Summa diversorum tractatum**. New ed. Venice: Paulus Balleonium, 1707. 6 vols. The crime of sodomy is discussed with many learned references (4, pp. 128-32).
4098. SCHURIG, MARTIN. **Gynaecologia historico-medica, hoc est congressus muliebris: Consideratio physico-medico-forensis qua utriusque sexus**

salacitas et castitas ... necnon coitus ... item nefandus et sodomiticus raris observationibus et aliquot casibus medico-forensibus exhibentur.

Dresden and Leipzig: 1730.

Chapter VII (pp. 368-413) deals with the crime of sodomy in all its forms: with members of the same sex, with animals, intercourse with the opposite sex **per os et per anum**, with corpses, and with inanimate objects. There are extensive references to ancient and contemporary authors in Latin and in German, including accounts of many little known cases. All in all, a compendium of what was thought on the subject on the eve of the Enlightenment campaign for reform. See also Schurig's earlier treatise: **Spermatologia historico-medica ...** (Frankfurt am Main, 1720).

4099. SINISTRARI D'AMENO, LUIGI MARIO. **De delictis et poenis.** Venice: Hieronymus Albiriccus, 1700.

In this work written for the use of priests in the confessional, see Section X, "Mollities" (pp. 250-68), for the crime against nature. This section of Sinistrari's treatise has been several times republished in Latin, French, and English. The English version first appeared as **Peccatum mutum** (Paris: I. Liseux, 1893; 76 pp.).

4100. **The Theodosian Code.** Edited and Translated by Clyde Pharr. Princeton: Princeton University Press, 1952. 643 pp.

See pp. 231-32 (IX.vii.3) for the antihomosexual law of 342, and pp. 232 (IX.vii.6) for the shorter text of the 390 law.

4101. VOET, JOHANNES. **The Selective Voet: Being the Commentary on the Pandects (Paris Edition of 1829) by Johannes Voet (1647-1713) and the Supplement to That Work by Johannes van der Linden (1756-1835).**

Translated with explanatory notes by Percival Gane. Durban: Butterworth Africa, 1955-58. 9 vols.

See vol. 7, Book XLVIII, Title 5, Section 24, where Voet lists a dozen legal authorities of the 16th and 17th centuries.

4102. WOLFART, JOANNES HENRICUS. **Tractatio juridica de sodomia vera et spuria hermaphroditi; Von achter und unachter Sodomiterey eines Zwittern.** Frankfurt am Main: 1742. 32 pp.

Part I deals with sodomy committed by hermaphrodites of either sex with each other, or with ordinary men and women. Part II gives an account of a lesbian scandal of 1740.

C. EUROPEAN LAW

The French Revolution marks a decisive turning point in

the civil law tradition. With respect to homosexuality, the French National Assembly decriminalized sodomy in 1791, and this omission was replicated in the body of law known as the Code Napoleon, created in the first decade of the 19th century. The decriminalization was imitated in many countries under French influence, chiefly in southern Europe and in Latin America. Change in the sodomy laws of northern Europe was a slower process, but it was essentially achieved in the period after World War II.

4103. ANCEL, MARC (ed.). **La réforme pénale soviétique.** Paris: Centre Français de Droit Comparé, 1962. lxxix, 248 pp.

See p. 51 (Art. 121 of the Penal Code of the RSFSR: buggery = **muzhelozhstvo**); p. 118 (Art. 126 of the Code of Criminal Procedure: obligatory character of preliminary investigation).

4104. ANDENAES, JOHS. "Recent Trends in the Criminal Law and Penal System in Norway: I. Criminal Law," **British Journal of Delinquency**, 5 (1954), 21-26. Describes the prereform situation in Norway. Since this time a remarkable improvement has occurred; see, e.g., Lia Pedersen, "Norway: The Antidiscrimination Law: The Experience So Far," **IGA Pink Book** (Amsterdam: COC, 1985), 117-19.

4105. ANOSSOW, J. J. (I. I. ANOSOV). "Die Homosexualität im sowjetischen Recht," **Monatsschrift für Kriminalpsychologie und Strafrechtsreform**, 23 (1932), 583-86.

The penal codes of the union republics of the USSR with a predominately Moslem population (Uzbekistan, Tadjikistan, Turkmenistan) already had prescriptions against pederasty, which was regarded as an aspect of the "old way of life."

4106. AUGSTEIN-THALACKER, RENATE. "Argumente für eine ersatzlose Streichung von Paragraph 175 StGB," **Liberal**, 23 (1981), 931-40.

Arguments for the complete abolition of Article 175. Concerning this article of the German penal code, enacted in its original form in 1871, there is an enormous literature, most of which is listed in Manfred Herzer, **Bibliographie zur Homosexualität** (Berlin: Verlag Rosa Winkel, 1982).

4107. BASLER, WALTER. **Homosexualität im Strafrecht.** Zurich: The author, 1941. 239 pp.

Legal dissertation with particular application to the new liberalized Swiss code.

4108. BAUER, FRITZ, HANS BÜRGER-PRINZ, HANS GIESE, and HERBERT JÄGER. **Sexualität und Verbrechen: Beiträge zur Strafrechtsreform.** Frankfurt: Fischer, 1963. 438 pp.