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CAPITAL CRIME, HOMOSEXUALITY AS A

With decriminalization of same-sex relations between consenting adults in many countries, and nonenforcement of existing laws in others, it may come as a shock that homosexual conduct was once judged worthy of death. Although only a few fanatics call for capital punishment nowadays, such barbarism has been a historical reality.

Judeo-Christian Sources. According to the Holiness Code of Leviticus (in its present form, probably of the fifth century B.C.), "If a man lie with mankind as he lieth with a woman, both of them have committed an abomination (*tō 'ēbāh*): they shall surely be put to death; their blood shall be upon them." (Leviticus 20:13, reinforcing the earlier prohibition in 18:22). From this dire injunction, which applies to male homosexuals only, stem all later Western laws prescribing the death penalty for sodomy. Although our sources are silent as to how frequently the Levitical sanction was enforced (the method was probably stoning), it was endorsed with new arguments by some later Jewish rigorist thinkers, notably Philo of Alexandria (first century of our era).

After the Roman Empire's recognition of Christianity as effectively the state religion (A.D. 313), capital enactments against male homosexuality made their way into the Civil Law. One statute of 342 prescribed death by the sword, another of 390 indicated burning. As in the case of the Levitical injunction, it is not known how often these capital punishments were carried out; certainly burning would have been unlikely at this point, though decapitation with the sword would not. The emperor Justinian's sixth-century legisla-

tion, however severe its attitude toward sexual variation, does not seem to have insisted on death, and a Visigothic code in Spain of ca. 650 specified castration. The penitentials which appeared in the early Middle Ages prescribe only regimes of penitence ranging from a few months to some years in duration.

The Later Middle Ages. A new wave of hostile legislation emerged in the twelfth century, starting with the Nablus Council of 1120, which specified burning. The prevalence of this penalty is based in part on the Sodom story, but it also reflects the parallel with heretics who were usually burned. A somewhat later French law required execution only on the third offense. Unusual (and surely without effect) was the English *Fleta*, which called for death by drowning—probably a reminiscence of Tacitus' *Germania* 12, where the Roman historian says that the ancient Teutons would drown *corpore infames* ("the infamous for their sexual vices") in bogs. (The Nazi Heinrich Himmler was later to urge revival of this practice.)

During the central Middle Ages a vicious rationalization became popular, claiming that sodomy was equivalent to murder (or worse) as it threatened the survival of the human race (found in the ecclesiastical writers Peter Damian, Peter Cantor, and Luca da Penne. This strange notion, anticipated by Philo of Alexandria, was still alive as late as 1895, when the magistrate in Oscar Wilde's trial repeated it in his sentence.

Available evidence suggests that capital penalties were enforced rather selectively: fewer than 1000 executions have been documented from the late Middle Ages and the Renaissance. Apparently it was thought sufficient to stage a public execution from time to time in order to discourage the practice—or at least its public display. Following the Levitical tradition, lesbians were for a long time exempt from any punishment, but the Scholastic predilection for analogy eventually brought them into the purview of

some legislation. Yet fewer than ten lesbian executions are known, and some of these are doubtful, since other crimes were involved.

The Reformation and After. It might be thought that the age of Reformation would have brought some relief in this grim onslaught of lawmaking—if only because a deeply divided society was preoccupied with other problems. But not so, for the death penalty stipulated by article 116 of the Caroline Code of 1532, extending the provision of the Bambergensis of 1507 throughout the Holy Roman Empire, provided a baneful model, followed almost immediately by Henry VIII's law of 1533, of paramount importance for English-speaking, common law countries. This Tudor legislation anchored the prohibition of sodomy firmly in the fabric of the secular law as a felony, taking it out of the jurisdiction of the ecclesiastical courts which were believed to have become lax.

While some Enlightenment thinkers, notably the great penal reformer Cesare Beccaria (1738–1794), had been critical, credit for the first real break in the dismal pattern belongs to one of the emerging United States. After several earlier reform attempts, in 1786 Pennsylvania substituted hard labor for death, to be followed by Austria in 1787 and Prussia in 1794. Just as antihomosexual legislation had crossed ideological lines in the 1530s, the mitigations were the product of two very different climates: the Quaker tradition (transatlantically) and enlightened despotism (in Europe).

Decriminalization. In the wake of the French Revolution, the French National Assembly swept away the whole repressive apparatus of the ancien régime when it adopted a new criminal code in 1791. Then in 1810, the French Code Penal (as part of the Code Napoléon) eliminated homosexual conduct entirely from the penal law, a salutary step that has been followed in many countries since.

In Hitler's holocaust male homosexuals died in the concentration camps,

though they were rarely officially condemned to death. In the 1970s, the Ayatollah Khomeini's Iran instituted execution for homosexuals (on spurious precedents derived from Islam). Such fanatical acts have been universally condemned by enlightened opinion.

See also Canon Law; Law, Feudal and Royal; Law, Germanic; Law, Municipal; Sixteenth-Century Legislation.

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CAPOTE, TRUMAN (1924–1984)

American novelist and journalist. Capote became famous at the age of 24 with his elegant, evocative book *Other Voices, Other Rooms*, which concerns the growing consciousness of a boy seeking to comprehend the ambivalent inhabitants of a remote Mississippi house. Dubbed "swamp baroque," this short novel was easily assimilated into then-current notions of Southern decadence. Born in New Orleans, Capote lived most of his life in New York and at the homes of his jetset friends in Europe. He cherished a lifelong friendship with fellow writer Jack Dunphy. In 1966 he published *In Cold Blood*, a "nonfiction novel" about the seemingly senseless murder of a Kansas farm family by two drifters. In preparing for the book, Capote gained the confidence of the murderers, and was thus able to make vivid their sleazy mental universe.

The controversy surrounding this book elevated him to celebrity status, and he began a series of appearances on television talk shows, where his waspish wit amused, but where he often served the function (rivaled only by Liberace) of reinforcing for a mass audience their stereotype of a homosexual. During this period Capote became the confidant of rich and famous people, especially women, and he gathered their stories for incorporation in a major work which was intended to rival Marcel Proust. Yet when excerpts from this work-in-progress were published in