

the third century was, according to our documentation, their age of idealized **pederasty**. Far from causing a decline in population, this flowering of same-sex love accompanied an almost explosive increase in population, requiring the foundation of colonies throughout much of the Mediterranean world and later the conquests of **Alexander the Great** in western Asia. Conversely, the period of Greek decline—the second and first centuries B.C.—corresponded to an incipient sexual puritanism and a glorification of heterosexual married life.

As for Rome, most of the homosexual scandals reported by such writers as **Suetonius** and **Tacitus** belong to the great age of the first and second century; according to Gibbon the latter century ranks as one of the greatest ages of human happiness. Only in the fourth century, under the Christian emperors, did the Roman state take legal action against consensual male same-sex conduct. Thus, if the legitimacy of this general line of macrohistorical moralism be allowed—and probably it should not be—the unwise suppression of homosexuality failed to revive the might of the Roman empire, and may even have hastened its decline. To be sure, as we have seen, Roman writers were given to rhetoric about decadence, including denunciations of homosexual behavior as early as Cato the Elder (234–139 B.C.), but historical evidence provides no warrant for the truth of their assertions. The issue is injected into contemporary discourse solely as a tactic of homophobes, not as a causal factor debated seriously by historians.

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DECRIMINALIZATION

The repeal of the sodomy laws which had been inherited from the late **Middle Ages** and the **sixteenth century** came in two distinct phases. First, there was the wave of decriminalization generated by **Enlightenment** criticism of the penal legislation and practice of the Old Regime, characterized by harsh and barbarous penalties for trivial or purely sacral offenses, the use of torture to elicit confession, and the like. The second major phase developed as a product of the social reform movement that began late in the Victorian era.

The Enlightenment Tradition.

The thinkers of the eighteenth century—**Montesquieu**, **Beccaria**, **Voltaire**—paved the way for the law reforms that came in the period of the French Revolution. In September–October 1791 the French Constituent Assembly adopted a new criminal code which embodied the principle that offenses against religion and morality, insofar as they did not harm the interests of third persons or of society as a whole, should not be the object of prosecution by the secular authorities. This law became the basis of the Penal Code which forms part of the so-called **Code Napoléon**, a comprehensive set of laws for the First Empire adopted in 1810.

The influence of this code was enormous, particularly in the Catholic countries of the Old and New Worlds. Thanks to the spread of the Napoleonic model, virtually all the Catholic states of Western Europe abandoned the medieval statutes against sodomy. But in the Protestant sphere it was only the **Netherlands** that benefited from decriminalization, for the simple reason that Napoleon annexed the entire country to his Empire in 1811, and when independence was regained in 1815, the new code remained.

A few other jurisdictions saw major changes in the law. The colony of Pennsylvania founded by William Penn in 1681 reduced the penalty for sodomy to the minimum that public opinion would

allow, and the criminal code of Catherine the Great of Russia in 1769 did likewise. But reaction was to restore far more severe penalties in due course.

In other countries the only change during this first major phase was the abolition of the death penalty in favor of life imprisonment at hard labor or some other enormous sentence comparable to the punishment for the worst crimes of violence. Such was the reform introduced by the Josephine Code in Austria in 1787, and the statute of 1861 in England and 1887 in Scotland.

Modern Sexual Reform. Toward the end of the nineteenth century social reformers began to take up such questions as contraception, prostitution, and women's equality. Within this framework arose a sexual reform movement that led to further decriminalization as a result of effective propaganda and lobbying for repeal. In particular, the anthropological concept of the homosexual as an individual attracted solely by members of his own sex created a justification for demanding the end of the archaic laws. The **Scientific-Humanitarian Committee** founded in Berlin in 1897 made repeal of Paragraph 175 of the Penal Code of the German empire its major objective, and similar goals were enunciated by the World League for Sexual Reform on a Scientific Basis in the 1920s and later, down to its dissolution in 1935.

The first country to respond to the new approach was Denmark, which reformed the laws against homosexual behavior in 1930. The uniform code adopted in Poland in 1932 followed the example of the Code Napoléon, although all four of the codes (German, Austrian, Russian, Hungarian) that had been in force at the end of the country's partition still had penalties for homosexual sodomy. Switzerland chose the example of the French cantons under Napoleonic influence when it adopted a penal code for the entire country in 1941, and Sweden followed Denmark in 1944.

After World War II. In the post-war period it was Great Britain that took the lead, beginning with the Report of the **Wolfenden Commission** in 1957, which recommended decriminalization of homosexual acts between consenting adults on grounds essentially deriving from classical liberalism. The report provoked a debate between two legal authorities, Hart and Devlin, in which the latter argued that if "the man in the Clapham omnibus" considered a sexual act abominable he should not have to give a logical reason for his feelings. But some ten years later, in 1967, a Labor Parliament voted passage of a private member's bill to repeal the law against homosexual buggery and gross indecency in England and Wales.

The United States, in which each state of the Union still has its own penal code, posed a far greater challenge to the advocates of reform. In 1962 the American Law Institute, after some ten years of deliberation over earlier versions, published an official draft of a Model Penal Code that omitted homosexual acts from the list of crimes. The state of Illinois had in 1961 already enacted a new code with these provisions, and a few other states followed its lead. Effective lobbying for reform was conducted by such groups as the National Committee for Sexual Civil Liberties, which also attempted a second route: that of appeal to the courts to strike down the survivals of pre-Enlightenment penal law as unconstitutional. Such a course was made possible by the specifically American tradition that the appellate courts could declare acts of the legislature unconstitutional on the ground that they violated provisions of the fundamental law of the commonwealth. In most European countries the judiciary has no such power to review acts of the legislature which simply took over the prerogatives of the sovereign. The precedent for this was, in particular, the decision of the United States Supreme Court (1954) outlawing racial segregation. Successful actions were subsequently brought in states such as Penn-

sylvania and New York where the legislature, under the influence of the Catholic Church and of fundamentalist Protestant sects, had refused to act.

A similar appeal to the European Commission of Human Rights against a decision of the Constitutional Court in Karlsruhe in 1957 had failed because the court accepted the view that the Federal Republic of Germany had the right to prohibit homosexual activity in the interest of health and morals. A Social Democratic majority in the Bundestag did, some 12 years later, modify Paragraph 175 of the Penal Code to exclude homosexual acts in private between consenting adults. But in 1981 the European Court of Human Rights, in response to a case brought by a citizen of Northern Ireland, Jeff Dudgeon, found that the statute in that country violated the right to privacy contained in Article 8 of the European Convention on Human Rights. However, when an appeal was brought to the United States Supreme Court in 1986 to test the constitutionality of the sodomy law of the State of Georgia, a 5-4 majority upheld the law, principally on the ground that there was nothing in the Anglo-American legal tradition that extended the right of privacy to homosexual activity (*Bowers v. Hardwick*). So the option of deciding to retain or abandon the existing laws was left with the individual states. The enormous problem of confronting the prejudice and ignorance of legislatures intimidated by conservative religious denominations thus endures. A similar situation prevails in Australia, where each state also has its own criminal code in the common law tradition.

Even when the basic law making homosexual activity illegal has been stricken from the books, there is still the further task of reeducating the law enforcement authorities and the public to the notion that homosexuals have certain rights in the exercise of which they should be protected, and of invalidating statutes such as those against solicitation which were based on the primary ones. More-

over, it is necessary to remove the sundry forms of discrimination that had made their way into civil and administrative law beginning with the second decade of this century, once the psychiatric concept of homosexuality as a "disease" had filtered down to the courts and legislatures. Individuals who, through prosecution under the old laws, had lost the right to pursue the profession of their choice or still languished in prison needed to be rehabilitated. Complete equalization of the laws pertaining to homosexuality and heterosexuality, including the age of consent, therefore still lies in the future. The elimination of police harassment and of a multitude of forms of private discrimination and intolerance will be a challenge for the decades ahead.

Conclusion. A world-wide survey of the situation presents a varied picture. In the first world, that of the advanced industrial countries of the West and the Asian rim, decriminalization has largely succeeded, with some exceptions. In a few countries, it has been followed by enactments of positive statutory protections for homosexuals and lesbians. In Marxist countries of the second world de facto change has been largely secured which has halted most prosecutions, but no actual rights are accorded to homosexuals, who are not permitted to form their own independent organizations and are obliged to meet clandestinely and unobtrusively. (In Poland and Hungary, where fledgling organizations have appeared, the change must be regarded as a sign of the incipient withdrawal of those countries from the Communist world.) The Third World has shown itself actually to be retrograde: not only have countries formerly under British rule, such as India and Kenya, retained the old colonial laws, but nations that were formerly French possessions, where the Napoleonic Code tradition had been implanted, have introduced new bans. On almost the whole of the African continent homosexual activity is now illegal, though it continues to be widely practiced. This

reversal has varied motives. To some extent it results from the influence of fundamentalist religion, whether Christian or Islamic. In other instances, prohibition of same-sex behavior reflects a misguided notion that modernization requires a ban on "decadence" and "perversion." Another problem is that the World Health Organization continues to list homosexuality as an illness. Beginning in 1984, the International Lesbian and Gay Association undertook to monitor the situation on a worldwide basis, and to encourage renewed momentum toward decriminalization.

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DELLA CASA, GIOVANNI (1503–1556)

Italian prelate and author. Della Casa served as archbishop of Benevento in 1544, papal nuncio to the Venetian republic (1544–49), and papal secretary of state under Paul IV (1555–56). He wrote a manual of polite conduct, *Il Galateo, ovvero dei costumi* (1558), which enjoyed great success after its posthumous publication.

Before undertaking a clerical career in 1537, Della Casa wrote various compositions in the Bernesque vein, which are typically full of double entendres. Among his juvenilia it is conventional to mention a text in Latin prose entitled *In laudem pederastiae seu sodomiae* or *De laudibus sodomiae* (in praise of buggery). In reality this work never existed, as was demonstrated by Gilles Ménage (1613–1692) in his *Anti-Baillet* (The Hague, 1682). In this study Ménage traced the attestations for the supposed work, showing that they all go back, directly or indirectly, to propagandistic pieces spread by Protestants in order to discredit Della Casa and Roman Catholicism with which he was prominently connected.

Much of the responsibility lies at the door of Pier Paolo Vergerio, a heterodox prelate whom Della Casa harassed by bringing him to trial, after loudly adhering to Protestantism, Vergerio composed a harsh indictment of his persecutor. In reality the young Della Casa had written only a small satire, the *Capitolo del forno*, in which he pretended to praise, in a Bernesque vein, bread and the oven, while extolling the sexual act through double entendres. Although this composition was mainly heterosexual, a few lines do speak of homosexuality. From this slender foundation arose the legend of the pretended *In laudem . . . sodomiae*. In his own lifetime Della Casa defended himself of the charge in the short Latin work *Ad Germanos* in which he declared of himself: "We did not praise men, but clearly women." Nonetheless, some have held that the charge cost the learned prelate a cardinal's hat.

Other references to homosexual behavior that appear here and there in the *Galateo* serve, however, to confirm that, like many intellectuals formed before the Counter-Reformation, Della Casa held a detached and tolerant attitude toward same-sex love. This attitude drew Protestant attacks aimed at an educated class that was considered excessively lax and tolerant toward homosexual conduct.

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DEMOGRAPHIC FACTORS

Demography is the study of populations. Sex ratios, marriage ages, life expectancies, and prevalence of polygamy may tell us much about the relative frequency of homosexuality, or perhaps more strictly speaking, of **bisexuality**.

Theoretical Basis. Such deductions follow from a theoretical framework which sees the prevalence of homosexual behavior as somewhat plastic, responsive to **situational** factors, rather than fixed at birth or in infancy, and particularly sensitive to the relative lack or abundance of opportunity for heterosexual behavior,