

**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.

Twenty-two essays on various aspects of sex and the law assembled during a period of intense discussion of law reform in West Germany. Of particular interest are those by Helmut Thielicke (Protestant theology and homosexuality in relation to the law) and Heinrich Ackermann (on the question of punishing homosexual conduct: supports reform).

4109. BAUMANN, JÜRGEN. **Paragraph 175: über die Möglichkeit, die einfache, nichtjugendgefährdende und nichtöffentliche Homosexualität unter Erwachsenen straffrei zu lassen.** Berlin-Neuwied: Luchterhand, 1968. 204 pp.

An argument for the reform of Article 175 of the (West) German penal code, a step which was taken the following year.

4110. BERGMANS, ALBERT, and J. DEBOIS. **Verslag en advies met betrekking tot art. 372bis Belgisch Strafwetboek.** Antwerp: Federatie Werkgroepen Homofilie, 1973. 39 pp.

On the antihomosexual article 372bis of the Belgian penal code.

4111. BIEDERICH, PAUL HUGO. **Die gleichgeschlechtliche Unzucht in kriminal-politischer Sicht: eine statistische-taxonische Untersuchung.** Hamburg: Arbeitsgemeinschaft zur Pflege der Humanität, 1953. 39 pp.

A statistical and taxonomic inquiry concerning homosexual indecency in criminal-political perspective.

4112. BIEDERICH, PAUL HUGO. **Paragraph 175: die Homosexualität.** Regensburg: Verlag für Sexualliteratur, 1950. 71 pp.

In addition to Biederich's essay on Article 175, contains "Die lesbische Liebe im Spiegel der Gesetze" by Thea Booss-Rosenthal, and "Zwischen Mann und Weib: Zwitterbildung beim Menschen" by K. Koeniger.

4113. BONDY, HUGO. "Ueber die Sexualparagraphen im tschechoslowakischen Entwurf des Strafgesetzbuches," in: International Congress of Sex Research, **Verhandlungen** [Berlin], 1926, 1-29.

On the sexual articles in the draft of the Czechoslovak penal code, which was unfortunately not adopted during the First Republic.

4114. BOUCHAL, M., and D. BARTOVÁ. "The Attitude of Homosexuals after the Change in the Criminal Code," **Activitas Nervosa Superior**, 6 (1964), 100-01.

Evaluates changes in attitudes among homosexuals following the 1962 law reform.

4115. BROCHER, TOBIAS and others. **Plädoyer für die Abschaffung des Paragraph 175.** Frankfurt am

- Main: Suhrkamp Verlag, 1966. 146 pp.  
Four essays by academic authorities (Tobias Brocher, Armand Mengen, Hans Bolewski, and Herbert Ernst Müller) arguing in favor of discarding Article 175.
4116. CHARLES, R. "Propos sur l'article 372bis du code pénal (article 87 de la loi du 8 avril sur la protection de la jeunesse)," **Revue de droit pénal et de criminologie**, 62 (November 1982), 809-35.  
Complications of current Belgian law.
4117. COUROUVE, CLAUDE. **Contre nature? Etude sur l'incrimination pénale de l'homosexualité.** Paris: The author, 1981. 16 pp.  
Historical review of problems in French law concerning homosexuality, esp. those stemming from the Vichy government's 1942 change of article 334 of the penal code, which set the age of consent at 21.
4118. COUROUVE, CLAUDE. "1791 Law Reform in France," **Cabirion**, 12 (1985), 9-10.  
Sets forth some elements in Enlightenment thought that made possible the decriminalization effected by the National Assembly during the Revolution.
4119. DAMASKA, MIRJAM. "Les infractions contre la moralité sexuelle en droit yougoslave," **Revue internationale de droit pénal**, 35 (1964), 1011-33.  
Seriatim discussion of sexual law provisions in the Yugoslav penal code. Pp. 1022-27 contain some historical material on the crime against nature.
4120. DANET, JEAN. **Discours juridique et perversions sexuelles.** Nantes: Faculté de Droit et des Sciences Politiques, 1977. 111 pp.  
Changes in French legal attitudes toward sexual deviation in the 19th and 20th centuries.
4121. DIECKHOFF, ALBRECHT DIEDRICH. **Zur Rechtslage im derzeitigen Sittenstrafrecht.** Hamburg: Kriminalistik, 1958. 112 pp.  
Consideration of the German situation in the period leading to reform, with extensive reference to the Griffin Report and the Wolfenden Report (UK).
4122. DOMINGO LORÉN, VICTORIANO. **Los homosexuales frente a la ley.** Second ed. Barcelona: Editorial Plaza y Janes, 1978. 320 pp.  
Somewhat prolix interviews with Spanish judges and legal authorities.
4123. EUROPEAN COURT OF HUMAN RIGHTS. "Dudgeon Case," **Publications of the European Court of Human Rights** [Strasbourg], Series A, vol. 45, 1982. 48 pp.  
The existing statute in Northern Ireland was held to violate Article 8 of the European Human Rights Conven-

tion ("right to privacy").

4124. FONTÁN BALESTRA, CARLOS. **Delitos sexuales, estudio jurídico, medico-legal y criminológico.** Buenos Aires: Depalma, 1945. 344 pp.

See p. 138ff. for brief discussion of "corruption" (homosexuality in its relation to sexual offenses).

4125. FRIEDRICHS, KARL AUGUST. **Homosexualität und Strafvollzug: Probleme der Straf- und Strafvollzugszwecke.** Munich: Goldmann, 1971. 234 pp.

Problems of the aims and methods of applying criminal penalties to homosexuals; revision of author's doctoral dissertation.

4126. FRITZSCHE, HANS. **Gerichtsverfassung, Strafgesetzbuch und Strafprozessordnung der RSFSR.** Berlin: VEB Deutscher Zentralverlag, 1962.

See p. 84 (Art. 121 of the criminal code of the Russian Soviet Federative Socialist Republic concerning **muzhelozhstvo**, "buggery"), and p. 195 (Art. 126 of the Code of Criminal Procedure: preliminary investigation obligatory).

4127. GALLETO, T. "Identità di sesso e rifiuto delle pubblicazioni per la celebrazione del matrimonio," **Giurisprudenza Italiana** (February 1982), 169-73.

Well-informed article focussing on the attempt of two men to marry in Rome in 1980.

4128. GLASSL, KARL. "Zur Frage der Strafbarkeit der Homosexualität," **Kriminalistik**, 26 (1972), 47-51.

On the criminalization of homosexuality in Austria.

4129. GOLLNER, GUENTHER. **Homosexualität: Ideologiekritik und Entmythologisierung einer Gesetzgebung.**

Berlin: Duncker und Humblot, 1972. 264 pp.

Attempts to exfoliate preconceptions conditioning penalization of homosexuality, and in particular rationalizations utilized by defenders of the existing law in Germany from 1897 to the time of writing.

4130. GOLLNER, GUENTHER. "Homosexualität--Tradition gegen Recht?" **Zeitschrift für Rechtspolitik**, 8 (1975), 231-34.

Discusses practical difficulties, esp. among the military, hindering the full effect of the West German legal reform of 1969.

4131. GONZÁLEZ DE LA VEGA, FRANCISCO. **Derecho penal mexicano: los delitos.** Seventh ed. Mexico City: Porrúa, 1964. 463 pp.

In this standard commentary on Mexican penal law, the author defends the Latin pattern of exclusion of homosexuality from the penal code, for "the law should not invade the territory proper to conscience and individual morality" (pp. 323-25).

4132. GURY, CHRISTIAN. **L'homosexuel et la loi.** Lausanne: Editions de l'Aire, 1981. 380 pp.  
Ambitious, but sometimes capricious effort to treat the law of homosexuality in Europe: civil, criminal, and institutional. Extensive, but not always adequate references.
4133. GUSMÃO, CHRYSOLITO DE. **Dos crimes sexuais: estupro ao pudor, defloramento e corrupção de menores.** Third ed. Rio de Janeiro: Freitas Bastos, 1945. 418 pp.  
Discussion of sexual crimes from a positivist standpoint, treating medical background, Brazilian law, and comparative law (includes offences against decency and corruption of minors).
4134. HAFTER, ERNST. "Homosexualität und Strafgesetzgeber," **Schweizerische Zeitschrift für Strafrecht**, 43 (1929), 37-71.  
Favors reform of Art. 169 of the draft of a penal code for the Swiss confederation.
4135. HAMMELMANN, H. A. "Homosexuality and the Law in Other Countries," in: J. T. Rees and H. V. Usill (eds.), **They Stand Apart: A Critical Survey of the Problems of Homosexuality.** London: William Heinemann, 1955, pp. 143-83.  
Summary of the state of the law in Western European countries at the time of writing.
4136. HENTIG, HANS VON. **Die Kriminalität des homophilen Mannes.** Stuttgart: F. Enke, 1960. 182 pp.  
Criminalistic study of the homosexual man conducted before the 1969 law reform in West Germany.
4137. HENTIG, HANS VON. **Die Kriminalität der lesbischen Frau.** Second ed. Stuttgart: F. Enke, 1965. 107 pp.  
After a discussion of the lesbian social situation, deals with aberrations such as murder, crimes against property, and offenses against public morals.
4138. HIRSCHFELD, MAGNUS. **Paragraph 175 des Reichsstrafgesetzbuchs: Die homosexuelle Frage im Urteile der Zeitgenossen.** Leipzig: Spohr, 1898. 71 pp.  
One of scores of critiques of the antihomosexual Article 175 in the Imperial German Penal Code which appeared in the period 1880-1933. For the most recent developments, see R. Augstein-Thalacker, above.
4139. **Homosexualität oder Politik mit Paragraph 175.** With a forward by Hans Giese. Reinbek: Rowohlt, 1967. 180 pp.  
Political aspects of impending law reform in West Germany.
4140. JOUBERT, DIAN D. **Tot dieselfde geslag: Debat oor**

- homosexualiteit in 1968.** Capetown: Tafelberg, 1975. 95 pp.  
 Analysis of discussions in South Africa in 1968 regarding legal reform, with coverage of the negative position of Roman-Dutch law as influenced by the Calvinist religious tradition.
4141. KIEL, PETER. "Paragraph 175 StGB: Relikt eines autoritären Sexualstrafrechts? Ein Beitrag zur Sexualpolitik der SPD," **Demokratie und Recht** 11 (1983), 428-37.  
 On the attitude of the West German Social Democratic Party to Article 175.
4142. LADAME, P. L. "L'homosexualité dans l'avant-projet du Code pénal suisse," **Schweizerische Zeitschrift für Strafrecht**, 27 (1914), 279-95.  
 Psychiatrist comments on the ongoing discussions concerning changes in the Swiss penal code, arguing for reform.
4143. MARTÍNEZ, JOSÉ AUGUSTÍN. **El homosexualismo y su tratamiento.** Mexico City: Ediciones Botas, 1947. 150 pp.  
 Three lectures delivered before the Tribunal Supremo of Cuba; hostile.
4144. MAURACH, REINHART. "Die Einführung der Strafbarkeit der Päderastie in der Sowetunion," **Zeitschrift für osteuropäisches Recht**, N.S. 1 (1934), 93-97.  
 Account of the Soviet recriminalization of sodomy. There is a reply by Sergeï Iakovlevich Bulatov in **Sovetskoe gosudarstvo**, 1-2 (1935), 159-61.
4145. NABOKOFF, VLADIMIR. "Die Homosexualität im Russischen Strafgesetzbuch," **JfsZ** (1903), 1159-71.  
 Russian jurist's account of Tsarist law before the Revolution of 1905.
4146. NORSKE FORBUNDET AV 1948. **Kommentar til Straffelovradets instilling om saerlig straffererenslig vern for homofilie.** Oslo: Forbundet, 1980. 95 pp.  
 Commentary on the current Norwegian situation by the leading Norwegian homosexual rights association.
4147. RADDATZ, THOMAS F. "Quid leges sine moribus? Gedenken zur aktuellen Menschenrechtspolitik des Europarates," **Liberal**, 24 (1983), 4-13.  
 Human rights, including those of homosexual persons, in the context of the Council of Europe.
4148. SCHMUTZ, MARCEL, and PETER THOMMEN. **Die Unzuchtspargraphen 191 und 194 im Schweiz. Strafgesetzbuch.** Basel: Arcados, 1980. 57 pp.  
 Current Swiss law sets the age of consent for heterosexual acts at 16 and for homosexual acts at 20. It is proposed to make the latter conform to the former.

4149. SCHWULE INITIATIVE GEGEN DEN PARAGRAPHENSUMPF.  
**Rechtswul: Rechtsratgeber für Schwule.** Berlin:  
 Verlag Rosa Winkel. 288 pp.  
 A legal guide put together by gay German law students  
 and lawyers offering comprehensive coverage from simple  
 civil procedures to felonies. The guide also provides  
 advice for homosexuals in the civil service, the church,  
 and the army, as well as information about cohabitation  
 and inheritance rights.
4150. SEELBACH, SIEGFRIED. **Die Beratungen der Grossen  
 Strafrechtskommission über das Problem der Bestraf-  
 ung gleichgeschlechtlicher Unzucht zwischen  
 Männern.** Cologne: The author, 1965. 315 pp. (Doc-  
 toral dissertation)  
 Account of West German parliamentary and other official  
 discussions preceding the reform of 1969 stimulated by  
 the English Wolfenden Report. Reissued as a book with a  
 somewhat different title by Enke in Stuttgart in 1966.
4151. STOKVIS, B. J. "Frage der Homosexualität im  
 Holländischen Strafrecht," **Monatsschrift für  
 Kriminalpsychologie**, 24 (1933), 740-46.  
 The Dutch law as amended in 1911.
4152. STURUP, GEORG K. "Sex Offenses: The Scandinavian  
 Experience," **Law and Contemporary Problems**, 25  
 (1960), 361-75.  
 Reports decriminalization of homosexual behavior between  
 persons 18 years of age and over.
4153. SZABÓ, A., and G. POLLNER. "Appreciation de  
 l'homosexualité à la base du nouveau Code Pénal  
 Hongrois," **Acta Medicinae Legalis et Socialis**, 19  
 (1966), 325-26.  
 Discusses the exclusion of homosexual acts between men  
 from the Hungarian penal code of 1962. The age of con-  
 sent is 20.
4154. TISSOT, OLIVIER DE. **La liberté sexuelle et la  
 loi.** Paris: Ballard, 1984. 380 pp.  
 Theoretical considerations on sexual liberty with partic-  
 ular reference to French experience.
4155. VINCINEAU, MICHEL. **La débauche en droit, le droit  
 à la débauche.** Brussels: Université Libre, 1985.  
 Reflections on the law by a Belgian professor, who is  
 also part owner of a gay sauna that has been harassed by  
 the authorities.
4156. VINCINEAU, MICHEL. "Homosexuels devant la Commis-  
 sion européenne des droits de l'homme," **Revue de  
 Droit Criminel et de Pénologie**, 59 (1979), 83-106.  
 Reviews some cases brought before the European Commission  
 on Human Rights.



4157. VIVAS MARZAL, LUIS. **Contemplación jurídico-penal de la homosexualidad.** Valencia: Academia Valenciana de Jurisprudencia y Legislación, 1963. 49 pp.  
Inaugural lecture reflecting older Spanish attitudes.

## D. BRITAIN

Britain's historic law tradition, known as the common law, stands apart from the civil law tradition of the European continent. This British legal tradition has been bequeathed to the other English-speaking countries, including (with the major modification of the principle of constitutional review) the United States. Accordingly, Henry VIII's law of 1533 against buggery is a landmark not only for England, but for all jurisdictions in this legal tradition. As far as modern research can determine, prosecutions were relatively uncommon. However, the English-speaking countries have inherited a body of commentary, as seen in the writings of Coke and Blackstone, that is harshly antihomosexual. This hostile strand of our tradition accounts in part for the fact that sodomy law reform has been slow to come to the English-speaking world. The publication of the Wolfenden Report in Britain in 1956 nonetheless marked an important turning point on the road to reform.

4157. ANDREWS, JOHN. "Homosexual Relationships in Northern Ireland," **European Law Review**, 7 (April 1982), 141-44.  
On the Dudgeon decision, which brought about decriminalization in Northern Ireland, and virtually establishes the right of adult males, in those states which are parties to the European Convention on Human Rights, to engage in homosexual acts in private.
4158. AYER, ALFRED JULES, SIR. "Homosexuals and the Law," **Mattachine Review**, 5:6 (1959), 5-11.  
A noted English philosopher urges adoption of the Wolfenden Committee proposals.
4159. BERG, CHARLES. **Fear, Punishment, Anxiety and the Wolfenden Report.** London: George Allen & Unwin, 1959.  
In "The Wolfenden Report on Homosexual Offenses" (pp. 11-50), Berg argues that the Committee did not go far enough in separating the realm of law from the realm of private morality.
4160. BLACKSTONE, WILLIAM, SIR. **Commentaries on the Laws of England: A Facsimile of the First Edition of 1765-1769.** Chicago: University of Chicago Press,

1979. 4 vols.

In this most famous of all English law commentaries, see vol., pp. 215-16, on "the infamous crime against nature ... a crime not fit to be named."

4161. BLOM-COOPER, LOUIS. "A Miscarriage of Justice-- English Style," *Medico-Legal Journal*, 49:3 (1981), 98-117.

On the murder of Maxwell Contait, a homosexual transvestite, followed by the conviction of three delinquent boys, whose main activity was setting fire to buildings.

4162. BRETON, JOHN LE, SIR. **Britton**. Edited and translated by F. M. Nichols. Oxford: Clarendon Press, 1865. 2 vols.

This 14th-century treatise prescribes burning for arsonists, sorcerers, renegades, sodomites, and heretics publicly convicted (vol. 1, pp. 41-42).

4163. BRITISH MEDICAL ASSOCIATION. **Homosexuality and Prostitution: A Memorandum of Evidence Prepared by a Special Committee of the British Medical Association** ... London: BMA, 1955. 94 pp.

Although this report straddles the legal issue, it suggests that "essential" homosexuality should be treated differently from "acquired" homosexuality.

4164. CHESSER, EUSTACE. **Love and Let Live: The Moral of the Wolfenden Report**. London: William Heinemann, 1958. 125 pp.

Affirms that the private behavior of consenting adults is not the concern of the state.

4165. COHEN, STEVE, et al. **The Law and Sexuality: How to Cope with the Law If You're Not 100% Conventionally Heterosexual**. Manchester: Law Centre (Grass Roots Books), 1979. 176 pp.

Practical advice for homosexuals and other sexual minorities.

4166. COKE, EDWARD, SIR. **The Third Part of the Institutes of the Laws of England**. London: W. Lee and D. Pakeman, 1644. 243 pp.

This influential treatise is harshly negative, prescribing death by hanging or drowning. "Buggery is a detestable, and abominable sin, amongst Christians not to be named, committed by carnall knowledge against the ordinance of the Creator, and order of nature, by mankind with mankind, or with brute beast, or by womankind with brute beast." (pp. 58-59). See also: **The Twelfth Part of the Reports** ... (London: Twyfford and Bassett, 1656), pp. 36-37. (These texts are renderings from the original texts in Law French.)

4167. COULTER, CAROL. "No Earthquake in Dublin," *New Statesman*, 100 (1980), 34-35.