

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.

On the trial of homosexual activists challenging Ireland's gross indecency statute.

4168. CRANE, PAUL. **Gays and the Law.** London: Pluto Press, 1982. 244 pp.

A comprehensive work covering both criminal and civil law, as well as such topics as young homosexuals, pedophilia, obscenity, employment, housing, immigration, and child custody. The book concludes that further political action is needed to achieve complete reform.

4169. EDDY, J.P. "The Law and Homosexuality," **Criminal Law Review** (1956), 22-25.

Arguing that punitive laws should be retained as a goad to homosexuals to seek treatment, the author held that "a penal institution of a special kind" was needed where homosexuals could be given appropriate psychiatric attention.

4170. FAIRBURNE, NICHOLAS H. "Homosexuality and the Law," in: J.A. Loraine (ed.). **Understanding Homosexuality: Its Biological and Psychological Bases.** New York: American Elsevier, 1974, pp. 159-64.

Makes the significant but hitherto unmentioned point that "there is no case recorded in Scotland of a prosecution of consenting adults in private ... in the last 100 years." Thus Scottish practice has long **preceded** English statutory law reform. Concludes, however, that homosexual rights are best exercised in private, lest the community be offended. In this volume see also the pro-reform paper of Antony Grey, "Homosexuality: Some Social and Legal Aspects" (pp. 143-149).

4171. GORDON, GERALD H. **The Criminal Law of Scotland.** Edinburgh: W. Green & Son, 1967. lxxiii, 1104 pp.

On sodomy, attempted sodomy, gross indecency, rape ("a male person cannot be raped"), and indecent practices with children. The rule enunciated in a 1934 case is: All shamelessly indecent conduct is criminal. (Pp. 31-32, 120, 156-57, 773-74, 825, 836, 847, 849-52.)

4172. GREAT BRITAIN, CRIMINAL LAW REVISION COMMITTEE. **Working Paper on Sexual Offenses, October 1980.** London: H.M.S.O., 1980. 63 pp.

See esp. pp. 28-29, 33-34, 47-53. Seeks to reevaluate the Wolfenden recommendations on both private and public homosexual behavior.

4173. GREAT BRITAIN, POLICY COMMITTEE ON SEXUAL OFFENSES. **Working Paper on the Age of Consent in Relation to Sexual Offenses.** London: H.M.S.O., 1979.

Among other matters, considers whether the age of consent for homosexual acts should be assimilated to that stipulated for heterosexual acts.

4174. GREENLAND, CYRIL. "Sex Law Reform in an International Perspective: England and Wales and Canada," **Bulletin of the American Academy of Psychiatry and the Law**, 11:4 (1983), 309-30.
Supports reform of the law, including protection of the civil rights of homosexuals, but concedes that public opinion presents a formidable obstacle, as astute politicians avoid being associated with attempts to liberalize the law out of fear of being attacked by religious groups and right-wing opponents.
4175. HALLSHAM, QUINTIN HOGG, 2ND VISCOUNT. "Homosexuality and Society," 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. 21-35.
Favors continued legal sanctions against homosexuality, arguing that homosexual behavior is in the last analysis moral failure. Note also in this volume: John Tudor Rees, "Homosexuality and the Law," pp. 3-20 (a muddled, conservative approach).
4176. "Homosexuality, Prostitution, and the Law; and Report of the Roman Catholic Advisory Committee on Prostitution and Homosexual Offenses and the Existing Law," **Dublin Review**, 230 (Summer 1956), 57-65.
The Committee called for amendment of the criminal law so as to exclude consensual acts in private by adult males, but retain penalties for offenses against minors, public indecency, and criminal vice.
4177. HONORÉ, TONY. **Sex Law in England**. Hamden, CT: Archon Books, 1978. 200 pp.
Scholarly, but accessible treatment by a major British legal historian presenting a moderately conservative position with regard to homosexual behavior (see pp. 41, 84-110, 124, 130-31, 149, 151, 165-67).
4178. JAMES, T. E. "Law and the Sexual Offender," in: Ismond Rosen (ed.), **Pathology and Treatment of Sexual Deviation: A Methodological Approach**. London: Oxford University Press, 1964, pp. 461-92.
General review naming three basic homosexual offenses: sodomy, indecent assault, and gross indecency.
4179. JOHNSON, H. A. "Homosexual Propensity and Corroboration," **New Law Journal**, 125 (February 20 and 27, 1974), 189-91 and 203-04.
Problems of corroboration after the 1967 reform as seen in recent English cases.
4180. LAWTON, FREDERICK. "Sexual Offenses: Lord Justice Lawton," **Medico-Legal Journal**, 50 (1982), 19-31.
On the problem of the age of consent and the inconsistency and hypocrisy of the law. The author accepts the view

that sexual orientation is fixed by the age of 16, but maintains that the age of consent for homosexual activity should be 18 to protect "the immature young man, who takes a little longer to fix his sexual orientation."

4181. LYNCH, A. C. E. "Counseling and Assisting Homosexuals," **Criminal Law Review** (1979), 630-44.

On the legal status of a hypothetical Homosexual Advice Centre: would it be guilty of corrupting public morals? Where the aim is to reduce the psychic distress and isolation of homosexuals, the activity is lawful. Where the furtherance of overt sexual activity by homosexuals is involved, statutory--and possibly common law--liability exists.

4182. PANNICK, DAVID. "Homosexuals, Transsexuals and the Sex Discrimination Act," **Public Law** (1983), 279-302.

The degree of protection afforded by the 1975 Sex Discrimination Act to homosexuals and transsexuals will depend upon the judicial construction of the opaque language of the legislation, the actual decisions will reflect the willingness of the courts to protect weak and oppressed minorities.

4183. ST. JOHN-STEVAS, NORMAN. **Life, Death and the Law: Law and Christian Morals in England and the U. S.** Bloomington: Indiana University Press, 1961. 375 pp.

A moralistic approach with comparative perspectives. See pp. 198-231 and esp. 310-35 ("Laws Concerning Homosexual Offences").

4184. SMITH, F. B. "Labouchere's Amendment to the Criminal Law Amendment Bill," **Historical Studies** (Melbourne), 17 (1976), 165-75.

Provides background on the still somewhat obscure circumstances under which gross indecency between males was appended to the 1885 Act, a provision that remained in force until the reform of 1967.

4185. STURGESS, BOB. **No Offence: The Case for Homosexual Equality.** Manchester: Campaign for Homosexual Equality, 1975.

Statement representing the views of Britain's leading gay rights organization.

4186. WALMSLEY, ROY. "Indecency between Males and the Criminal Offenses Act 1967," **Criminal Law Review** (1978), 400-07.

Retrospect: ten years after decriminalization in England and Wales.

4187. WALMSLEY, ROY, and KAREN WHITE. **Sexual Offenses, Consent and Sentencing.** London: H.M.S.O., 1979. 77 pp. (Home Office Research Study, 54)

Attempt to assess the results of recent changes in the law on prosecutions for buggery, attempted buggery, and indecency between males (see pp. 26-28, 38-48).

4188. WOLFENDEN, JOHN, SIR, et al. **Report of the Committee on Homosexual Offenses and Prostitution.**
London: H.M.S.O., 1957. 155 pp.

This pivotal work, generally known as the Wolfenden Report, laid the foundation for the English reform of 1957. The Report represented not only an idea whose time had come, but persuaded with trenchant logic and remarkable clarity of exposition. In the English-speaking world its beneficent effect has probably been second only to that of the two Kinsey Reports. For some of the circumstances surrounding its creation, see Lord Wolfenden's memoirs, **Turning Points** (London: Bodley Head, 1976), pp. 129-46.

E. AUSTRALIA AND NEW ZEALAND

Australia, which became self-governing in 1901, inherited the British legal system, with the exception of the fact that it has a federal structure resembling that of the United States. Accordingly, it has been necessary to proceed to homosexual law reform in each of the state jurisdictions individually. New Zealand, where reform has been slow in coming, has a unitary system.

4189. BARTHOLOMEW, ALLEN A., et al. "Homosexual Necrophilia," **Medicine, Science, and the Law**, 18 (1978), 29-35.

Based on two cases of homosexual necrophilia, argues that defense based on the abnormal state of the accused should be excluded.

4190. CHAPPELL, DUNCAN, and PAUL R. WILSON. "Changing Attitudes towards Homosexual Law Reform," **Australian Law Journal**, 46 (1972), 22-29.

Public opinion on the subject of homosexuality is changing, but a wide disparity still exists between urban and rural attitudes.

4191. GARDINER, JAMIE, et al. **A Proposal for Reform of the Law Relating to Homosexual Offenses.** Second ed. Fitzroy, Victoria: Homosexual Law Reform Coalition, 1979. 28 pp.

Includes legislation.

4192. GRAHAM, CARBERY. "Conditioned Legal Responses to Homosexuality," **Gay Changes**, 2:4 (1979), 23-28.
Shows how in practice Australian lawyers and judiciary are influenced by antihomosexual prejudices.