The adoption of Christianity as the state religion of the late Roman empire introduced a pattern of criminalizing male homosexuality that persisted until the 18th century. Even today the effects of centuries of legal stigmatization remain difficult to eradicate. While criminal sanctions for adult homosexual conduct have disappeared from the law codes of most advanced industrial countries (though this is the case in only half of the American states), they linger in some Marxist nations and are even spreading in the Third World. In the light of this mixed picture, a careful study of the premises of sexual law and law reform is necessary.

A valuable, if somewhat longwinded study of the history of homosexual criminalization (chiefly in English-speaking countries), stressing the case for reform. The extensive notes are useful for bibliographical references; for others, see Vern Bullough et al., An Annotated Bibliography of Homosexuality. (New York: Garland, 1976), vol. 1, pp. 278-316.

This scholarly edition of Beccaria’s epochal contribution (1764) to Enlightenment reform of the criminal law is recommended because of the complementary material, showing the impact of his ideas throughout Europe. See chapter 31 (36 in some editions) discussing l’attica venere (Greek love). Several English translations exist.

This is the first publication, edited by Louis Crompton, of the arguments for law reform developed by the English utilitarian thinker, ca. 1785. See also Bentham, The Theory of Legislation. Edited by C. K. Ogden. (London: Kegan Paul, 1931), pp. 476-97 (essay "Offenses against Taste," 1814-16). Like the material published in 1978, this essay drew extensively on continental thinkers of the Enlightenment.
Assesses recent progress of the right of privacy both within the United States and internationally (the latter with particular reference to article 8 of the European Convention on Human Rights).

British jurist's critique of the Wolfenden Committee proposals for law reform; advocates continuing repression of homosexual conduct in obedience to "sound public sentiment." See esp. H. L. A. Hart's rebuttal, below.

Chapter 10, "Liberty and Moralism" (pp. 240-58) offers a sharp critique of Devlin's restrictivist arguments.

Traces the development of the Enlightenment tradition of control over one's body from Beccaria to Hiller.

This work, regarded as a classic of jurisprudential theory, is unfortunately obsessed with the pronatalist notion that celibacy is opposed to the "progress of population" (cf. e.g., vol. 2, p. 4).


Society is seen as dominated by a "condemn or condone" syndrome with regard to sexual law reform. Argues that there is no criminal harm in homosexual behavior in private between consenting adults, as long as there is no underlying need to increase the population.


4075. HILLER, KURT. Das Recht über sich selbst: eine strafrechtspolitische Studie. Heidelberg: Carl Winter, 1908. 114 pp. In this pathfinding work (the author's doctoral dissertation), the concept of the right to control one's body is examined with reference to suicide, abortion, incest, duelling, homosexuality, and bestiality. See "Homosexualverkehr," pp. 67-89.


4078. MACFARLANE, L. J. The Theory and Practice of Human Rights. London: Temple Smith, 1985. 193 pp. This book contains much information on human rights practices and violations. The author also provides a number of personal opinions, including the assertion that the state may ban the promotion of a homosexual lifestyle on grounds of morality.

4079. MILL, JOHN STUART. On Liberty. London: J. W. Parker and Son, 1859. 207 pp. Although this fundamental essay by the English thinker does not deal directly with sexual expression, its powerful and lucid advocacy of individual liberty has exercised a continuing and beneficial influence. There
are several modern editions with useful commentary.

In this many-sided and perennially influential Enlightenment work on the foundations of law, see IV, 4; VI, 13; VII, 9; VIII, 12; XII, 4, 6, and 21; XXXII, 17; XXIV, 15; and XXVI, 3. There have been many subsequent editions and several English translations.

 Though uneven, this article is the earliest historical survey of antihomosexual legislation from ancient times to the time of writing. See also F. Wachenfeld, below.

See "Deviant Sexual Conduct and the Right of Privacy" (pp. 77-134), which discusses the problem of the unnatural; the constitutional right of privacy; love as a primary good; and the constitutionality of prohibiting sexual deviation.

Applies interdisciplinary perspectives to the problem of overcriminalization, suggesting a new approach grounded in a basic respect of the rights of persons and the foundations of American constitutional law. An impressive plea for decriminalization and legislative reform.

On the Wolfenden Report, the Hart-Devlin controversy, and related matters.

Six papers by Western European scholars treating national differences, changes in public opinion and scientific knowledge, "pressure groups" (including homosexuals), the age of consent, etc.

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.


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: JfaZ, 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.


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 [CARPZOVUS], 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" (Par 11, Questio 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 Scat(n)tinia. See now, however, Saara Lilja, Homosexuality in Republican and Augustan Rome (Helsinki: Societas Scientiarum Fennica, 1983), 112-21.

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.


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.


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.

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