On the ambiguity of the term "acts of indecency" in the Canadian and British Criminal Codes, and the question whether homosexual baths and bars constitute "common bawdy houses" because they existed "for no other reason but to provide sexual gratification in the homosexual sense."

Popular account.

G. US LAW: GENERAL

Although the United States has inherited the British common law tradition, it has modified it in two significant respects. 1) According to the principle of constitutional review, no enactment of positive law can stand if it is in conflict with the Constitution of the United States. In addition, state laws must not violate state constitutions. This principle opens the door to challenges of sodomy laws on constitutional grounds. 2) In keeping with the federal system, each of the fifty states has its own penal code. In practice this federalism has meant that legal reform--in the absence of a general decision on the part of the United States Supreme court on the unconstitutionality of sodomy laws--must be achieved on a state-by-state basis. The continuing production of law review articles may be monitored in Index to Legal Periodicals (1909- ).

Intended for legal practitioners and scholars, the work organizes a diverse body of material (with many case citations) under three major categories: Family and Property; Civil Rights and Discrimination; and Criminal Issues. Some users have felt that the volume has an overemphasis on California.

After some years of sidestepping the issue, this was the first positive ACLU statement, becoming a model for national policy.

Sections 213.0, 213.2, 213.6 refer to "deviate sexual intercourse"; sections 251.1, 251.2, and 251.3 refer to open lewdness, prostitution, and loitering. Various tentative and proposed drafts of the code were published in the ten-year period prior to 1962, when this version was finally adopted. The Institute draft codified and modernized law for the use of legislators and commissions considering new codes or reforms of existing portion of codes in the separate states.


Comprehensive review of the historical background of privacy, including purported state interest in the prohibition of sodomy. This valuable survey was prepared by the editors of the Review in connection with the consideration of the (Georgia) Bowers v. Hardwick case, which the U.S. Supreme Court resolved in June 1986, restoring the state law. See also: "Elissa L. Fuller, "Hardwick v. Bowers: An Attempt to Pull the Meaning of Doe v. Commonwealth's Attorney out of the Closet," ibid., 39 (1985), 973-95.


This scholarly work on the philosophy of Constitutional law contains a relevant chapter.


Holds that the notorious California requirement that convicted sex offenders maintain registration with the police for life is unconstitutional.


Following Montesquieu and Beccaria, supports the abolition of the death penalty for the "crime against nature.

"Laws might have been proper for a tribe of ardent barbarians wandering through the sands of Arabia, which are wholly unfit for an enlightened people of civilized and gentle manners" (pp. 20-21).


Summarizes the now-classic arguments from the literature of the 1950s and 1960s to the effect that sodomy should not be a crime: separation of church and state, violation of the right to privacy, victimless offense, and the like.
Surveys historical development and recent enactment as well as social science research. Supports reform as embodied in the Model Penal Code.

Examines the criminal laws and civil discriminations against homosexuals, concluding that they originated in the efforts of theocratic governments of past centuries to enforce morality by penal sanctions.


Maintains that laws regulating sexual behavior are ineffective, serving neither a deterrent, a preventative, nor a rehabilitative function. Calls for vigorous initiative for change by the bar, the churches, and the medical profession.

Assessing the impact of the 1949 Nebraska Sexual Psychopath Statute, concludes that "the present status of medical and legal knowledge does not provide an adequate basis for ... departure from the traditional criminal methods of dealing" with the sex offender.

Problems commonly encountered by homosexuals before the restraints imposed on the police by the Warren Supreme
Court.

4221. CHAITLIN, ELLEN, and V. ROY LEFCOURT. "Is Gay Suspect?" *Lincoln Law Review*, 8 (1973), 24-54. Concludes that "if homosexuality is immutable, homosexuals are clearly entitled to suspect class protection. ... The issue, however, should not hinge on the immutability of homosexuality. ... The legal burden should fall upon those who discriminate."


4223. COHAN, A. S. "Obstacles to Equality: Government Responses to the Gay Rights Movement in the United States," *Political Studies*, 30 (1982), 59-76. The gay rights movement has not progressed as rapidly or as successfully as its adherents have wished for four reasons: the unpopularity of homosexuals and lack of sympathy for their cause; the division of powers and hierarchy of legal codes within the governmental system; the fragmented character of the movement itself and the absence of cohesive support from its own constituency; and the failure of the Supreme Court to accord homosexuals the same rights it has extended to other minorities.


strategy used in each case are equally important in laying the groundwork for a favorable ruling by the United States Supreme Court.

4227. COLEMAN, THOMAS F., et al. Report of the Commis-
sion on Personal Privacy, State of California.
This massive report, assembled by a Commission appointed by Governor Brown, provides an almost encyclopedic dis-
cussion of privacy in current legal practice and thought, with a strong emphasis on sexual orientation.

4228. COLEMAN, THOMAS F. "To Publish or Not to Pub-
Shows that in California many appellate courts habitually refuse publication of opinions favorable to gay rights.

There is a tactical reason for advocates of homosexual rights to eschew novel constitutional theory. Homosexu-
ality is too controversial to expect a court to create new constitutional law in order to protect it. But by extending the right of privacy to all forms of hetero-
sexual conduct, the courts have gone so far that the ex-
clusion of homosexuality cannot be justified.

4230. "Constitutional Protection of Private Sexual Con-
duct among Consenting Adults: Another Look at Sodomy Statutes," Iowa Law Review, 62 (1976), 568-
90.
Consenting male homosexual relations between adults in private should be protected by a fundamental right of privacy. None of the hypothetical interests of the state in preventing private, male homosexual conduct can be shown to be valid.

4231. "Constitutional Status of Sexual Orientation: Homo-
Finding homosexuality to be a suspect classification re-
quires not that a court invalidate every law that discrim-
inates on that basis, but that the court make a finding of actual harm rather than perceived immorality before upholding such a classification.

206-25.
Argues for reform of California's "anachronistic penal laws" prescribing "deviant sexual behavior" between adults, reaffirming the conclusion of the Wolfenden Report.

On a decision which invalidated a local ordinance prohibiting an individual from appearing in public dressed as a member of the opposite sex with an intent to conceal his or her gender in the specific case of two transsexuals who were required to wear women's clothing as part of "psychiatric therapy in preparation for sex-reassignment operations."


Shows that Biblical prohibitions played an important role even after the American Revolution, when, however, fines and imprisonment were substituted for the death penalty.


Two readers provide a comprehensive guide for lay readers covering such topics as buying and selling property, relating to former spouses, child custody and visitation rights, living-together arrangements, and estate planning. Includes sample contracts, forms, agreements and wills.


Courts have begun to recognize that subjecting prisoners to forced homosexual relations and sexual assaults does constitute unusual punishment. The failure of prison authorities to check such abuses may violate an inmate's right under the Eighth Amendment to be free from cruel and unusual punishment.


Designation of a model of judicial review requires that the court commit itself to a view of homosexuality and the part that sexual orientation and behavior play in the life of the homosexual.


See Chapter 1, Part 3, "Consensual Homosexual Acts between Adults in Private--a Crime? A Problem for the Legislature" (pp. 123-201). A digest of opinions by lawyers, sociologists, anthropologists, psychiatrists, and members
of investigative and legislative commissions between 1935 and 1960.


4240. DRZAZGA, JOHN. Sex Crimes. Springfield, IL: Thomas, 1960. 241 pp. Chapter 32, "Homosexuality" (pp. 205-16), constitutes a semipornographic survey of "vice" and vice laws throughout history, drawing upon earlier sexological literature for piquant details.


4243. GARDNER, MARTIN R. "The Defense of Necessity and the Right to Escape from Prison—a Step towards Incarceration Free from Sexual Assault," Southern California Law Review, 49 (1975), 110-52. On a California case (People v. Lovercamp) in which an appellate court held that an escape from prison motivated by "threatened imminent homosexual assault by other inmates" may be justified if the inmate eschews violence and subsequently places himself in the hands of the proper authorities.


4245. "Gay Students Organization v. Bonner: Expressive

Forbidding of a dance on the campus of the University of New Hampshire led to a decision affirming the First Amendment rights of the organization.


Well-reasoned presentation of the case for decriminalization of "victimless crimes." Chapter 2, "Consensual Adult Homosexuality" (pp. 15-52), discusses the damage inflicted on homosexuals, and on society as a whole, by imposing penalties which are clearly counterproductive.


Reporting results of a mail survey of police officials, prosecuting attorneys, and members of homosexual groups in the seven states that had decriminalized homosexuality between consenting adults, concludes that decriminalization had no effect on the involvement of homosexuals with minors, the use of force by homosexuals, or the amount of private same-sex behavior.


See esp. p. 403.


Includes survey of discussions of applicability of First Amendment protections to homosexual rights.


While sodomy laws have a penumbral effect on lesbians, their chief problems lie in the area of divorce and custody—and the difficulties that all women face in our social system.


Ambitious attempt to synthesize a conservative "pro-family" legal philosophy, with a number of anti-gay-rights
implications. Opposes the "duty" of family tradition to the "liberty" of economic individualism.


The "battered wife defense" is not available to the homosexual who kills a violent lover in self-defense, because of prejudice among judges and jurors against homosexual "marriage."


Pulp compilation illustrative of then-current popular attitudes.


Concludes that "the power of government to levy criminal sanctions should not be used to impose majoritarian moral values on the rest of society," but only to protect persons and property against the "tangibly harmful acts of others."


To make criminals out of otherwise law-abiding productive citizens merely because of their mode of sexual expression is a "crime in and of itself." Consensual sodomy legislation infringes the privacy of the individual and is oppressive of the personality of those stigmatized as criminals.


Concludes that Constitutional provisions compel reform of current practices of confinement of homosexuals.


An impressive official study completed and published prior to the implementation of the Wolfenden reforms in Britain.


4260. JULBER, ERIC. "The Law of Mailable Material," ONE Magazine, 2:8 (October 1954), 4-6. This article, by ONE's attorney, seemed to goad the U.S. Postal Service into declaring the issue unmailable. At length a 1958 per curiam decision was obtained from the United States Supreme Court, rejecting the government's claim and establishing full freedom to write and publish about homosexuality in other than narrowly defined medical, psychological or legal terms.

4261. KARST, KENNETH. "The Freedom of Intimate Association," Yale Law Journal, 89 (1980), 624-92. The freedom of intimate association extends to homosexual associations as much as to heterosexual ones. To affirm that freedom is to extend the area of moral choice and moral responsibility.

4262. KATZER, PEGGY R. "Civil Rights--Title VII and Section 1985(3)--Discrimination against Homosexuals," Wayne Law Review, 26 (1980), 1611-23. Protection under Title VII or section 1983(3) against discrimination because of "sex" does not extend to homosexuals.


4266. LASSON, KENNETH. "Homosexual Rights: The Law in Flux and Conflict," University of Baltimore Law Review, 9 (1979), 47-74. The law regarding homosexual rights is clearly in a
state of flux, and this uncertainty extends far beyond
the classroom or military cases. In most jurisdictions,
even apart from the criminal sanction, homosexuals may
be legally discriminated against—a situation that seems
to conflict with our claim to be a free society. See
also his: "Civil Liberties for Homosexuals: The Law in
Limbo," University of Dayton Law Review, 10 (1985), 645-
79.

Rights Project, 1980.
Covers unemployment, wills, shared property, crisis
issues, housing, rights of young lesbians, lesbian
businesses, and so forth.

4268. LEVY, MARTIN R., and C. THOMAS HECTUS. "Privacy
Revisited: The Downfall of Griswold," University of
In Doe v. Commonwealth's Attorney for City of Richmond,
the Supreme Court summarily affirmed a lower court de-
cision denying homosexuals constitutional protection
of the right to privacy in sexual acts among consenting
adults in the privacy of the home. The court has upheld
freedom of speech in this area while denying freedom of
conduct. The decision erodes the precedential value of
the opinion in Griswold.

4269. LODGE, THOMAS E. "There May Be Harm in Asking:
Homosexual Solicitations and the Fighting Words
Doctrine," Case Western Reserve Law Review, 30
(1980), 461-93.
Statutes against homosexual solicitation should be drafted
only to prohibit those solicitations which cause "severe
emotional disturbance," and should require a private
citizen's complaint containing specific allegations of
harassment.

4270. LUDD, STEVEN O. "The Aftermath of Doe v. Common-
wealth's Attorney: In Search of the Right to Be
Left Alone," University of Dayton Law Review, 10
(1985), 705-43.
The Supreme Court's summary affirmation has produced wide
variation in state and federal court determinations of
whether private, adult, consensual behavior is constitu-
tionally protected.

4271. MEYER, ROBERT C. "Legal and Social Ambivalence
Finds a mixed pattern in progress towards decriminal-
ization and securing of civil rights for homosexuals.

4272. MILLER, H. "An Argument for the Application of
Equal Protection Heightened Scrutiny to Classifica-
tions Based on Homosexuality," Southern California
Contends that homosexuals should be granted the advantages
of "heightened scrutiny" because they are the subject of official discrimination. As a status, rather than a chosen activity, homosexuality is not subject to individual control.

Reasonably adequate in its day as an introduction for the lay public.

Argues that homosexuals should enjoy the protection of the 1964 Civil Rights Act, and that antihomosexual arguments cast as "good faith discriminations" are examples of circular reasoning or are self-fulfilling prophecies—rationalizations of religious prejudice.

The California Supreme Court concluded that where a state entity is the employer, homosexuality should not be a basis for discrimination against any qualified individual.

On the attempt to prevent Aaron Fricke from bringing a male date to his high school prom: the court held that this amounted to abridgement of First Amendment rights. See also Fricke's own account of the affair: Reflections of a Rock Lobster (Boston: Alyson, 1980).

Unlike other colonies, Virginia did not have its own sodomy statute, but relied on the English law of 1533. The powerful justices of the peace had the responsibility of interpreting it. See also Oaks: "Things Fearful to Name: Sodomy and Buggery in Seventeenth-century New England," Journal of Social History, 12 (1978), 68-81.

The changing attitude of society toward homosexuality has vastly increased the support for the repeal of the laws which prohibit it (pp. 114-20).

The sodomy laws should be challenged on other constitutional grounds than privacy: as representing an establishment of religion as prohibited by the First Amendment, and as punishing a person for a particular condition in contravention of the Eighth Amendment.


The discrepancy between the Supreme Court's rulings in Griswold and Doe will create even more variation in lower court interpretations of the privacy right, with the constitutionally intolerable result of varying individual constitutional rights in different jurisdictions.


Courts have begun to recognize that sexual assaults and forced homosexual relations in prison constitute cruel and unusual punishment. Tolerating of these abuses by prison authorities may violate Eighth Amendment rights of prisoners.


Because many sex acts classified as deviant are engaged in by a broad range of the population, heterosexual as well as homosexual, laws against them are virtually unenforceable, and should be abolished for consenting adults.


The decision in this case marks a new view by the courts of forced homosexuality as a coercive experience and as a valid defense issue to a charge of escape from prison.


The legal system alone can never exercise society's discrimination against lesbians. What is needed is a far-reaching reevaluation of attitudes toward sexuality in general and toward women in particular. The extent to which the lesbian is ignored by the law reflects society's prejudice against homosexuality as well.


Study by a scholar who has specialized in civil rights
issues in relation to the United States Supreme Court.


The anarchist challenge denies the very belief that the state has a claim to obedience to the law. Free acceptance is often so problematic and basic injustice so often in controversy that citizens of a democracy frequently regard themselves as not bound by law or by the state's view of law.


Seeks to apply the right of privacy to homosexual activity among consenting adults by affirming the principle of love as a civil liberty.


An examination of moral and philosophical theory can fundamentally clarify the constitutional right to privacy. It is wholly improper for the state to impose criminal sanctions on certain forms of consensual sexual activity between adults in private.


The belief that homosexuality per se is immoral lies at the heart of this anti-gay legislation. It is difficult to refute the argument that homosexuality is immoral, since no specific evidence is often introduced to support it. Attorneys challenging such legislation may have to argue that homosexuality is not immoral, but in fact constitutes "a valid and moral lifestyle."


Although numerous federal and state courts, as well as state legislatures, still feel that "questionable standards of morality justify denial of rights" to homosexuals, arguments can be made that the contractual and equitable remedies in Marvin should extend to couples of the same sex, particularly in view of the growing recognition that many homosexual couples "lead relatively stable and conventional lifestyles."

Describes "every civil case dealing with homosexuality available to the author until August 1979." Somewhat sprawling, but well documented (938 footnotes). This and the following item should be consulted for references not included herein.

Updates the previous article with some overlooked cases, as well as new cases decided since 1979. Remarks that "the decisions often seem clearly to be influenced more by social and religious thought than by legal precedent." A further update is her: "Queer Law: Sexual Orientation Law in the Mid-Eighties," University of Dayton Law Review, 10 (1985), 459-540.

Nine papers on the subject of deviance and the use of the law as an instrument of social control. Only occasional mention of homosexuality in its legal aspects.

The decision constitutes one more precedent against a plaintiff challenging the constitutionality of laws against sodomy, but also raises fundamental questions about the role of judicial review.

Since homosexuality involves the willing exchange between consenting persons of a desired product or service, the need for reforming the laws prohibiting such behavior is urgent. Because laws are unenforceable owing to the lack of a complaining victim, they often give rise to secondary offenses such as blackmail and police corruption. An influential statement of this point of view.

Loitering for purposes of solicitation by homosexual men is equated with the same activity by female prostitutes.

The Ohio Supreme Court in the decision in Phipps, upholding the state's same-sex solicitation statute, relied on
an outdated concept of the fighting words doctrine. It has carved out a substantial exception to First Amendment protections, and its poorly reasoned decision demonstrates its prejudice against homosexual lifestyles.

4298. SHERWIN, ROBERT VEIT. "Sodomy," in: Ralph Slovenko (ed.), Sexual Behavior and the Law. Springfield, IL: Charles C. Thomas, 1965, pp. 425-33. Inasmuch as the sex laws of the United States tend to punish a person's sexual desires rather than the methods used to fulfill these desires, they may be considered antiseosexual. This volume contains several other contributions of interest.


4300. SOLOMON, DONALD M. "The Emergence of Associational Rights for Homosexual Persons," JH, 5 (1979-80), 147-55. Court decisions involving the rights of homosexuals to meet together for social and political purposes have begun to acknowledge that such association are to some extent constitutionally protected.


4303. TABER, CARLETON H. A. "Consent Not Morality as the Proper Limitation on Sexual Privacy," Hastings Constitutional Law Quarterly, 4 (1977), 637-64. The Supreme Court has recognized the existence of the right to decisional privacy, but not delineated the boundaries of that right. By adopting a standard of seclusion as against the public, the courts could allow the state to regulate public manifestations of sexual conduct, while protecting those who prefer unconventional modes of private sexual fulfillment.
The California legislature has acknowledged that the private and voluntary sexual behavior of adults is not properly the concern of the state. The "consenting adults" law constitutes a victory for individual freedoms through the elimination of unwarranted intrusion by the state into the private sexual lives of adults.

A survey of lesbian attitudes and political demands in such areas as sado-masochism, family protection, pornography, heterosexual prostitution, cross-generational sex, sexual harassment, and rape.

Asserts that contrary to some misperceptions, the homosexual community does not seek special legal protection but equal treatment without regard to one's sexual orientation.

On the question of the suitability of a state bar committee to decide upon the criminalization of the private homosexual acts of consenting adults. If the question were one of morality, then some moral philosophers should have been included; if the considerations were empirical, then some psychologists and sociologists were needed. The committee failed to include any representatives of the homosexual community.

Originally submitted as an amicus brief in the case of Pryor v. Municipal Court to the Supreme Court of California. The victory in this case was a landmark in legal reform in that state.

On a California case in which the state Supreme Court held that homosexual employees of a privately owned public utility could sue to challenge the employer's policy of arbitrary discrimination against homosexuals.

4310. WEISBERG, D. KELLY. "Children of the Night: The

4311. WILKINSON, J. HARVIE, III, and G. EDWARD WHITE. "Constitutional Protection for Personal Life-styles," Cornell Law Review, 62 (1977), 563-625. Calls for a balanced and sensitive approach to the central dilemma examined in the article. Accommodation must be reached with the rights of dissident members of society, but not such as to leave the fabric of conventional society without legal support.

4312. WILSON, LAWRENCE A., and RAPHAEL SHANNON. "Homosexual Organizations and the Right of Association," Hastings Law Journal, 30 (1979), 1029-74. Examines a series of decisions in the area of gay rights, and concludes that they can best be furthered through the litigation process when the well-established right of association is used as the rationale for challenging restrictive actions on the part of the state.

4313. WOLFF, BENNETT. "Expanding the Right of Sexual Privacy," Loyola Law Review, 27 (1981), 1279-1300. On the constitutional challenge to the sodomy laws. By its summary affirmation in Doe v. Commonwealth's Attorney, the Supreme Court failed to provide the necessary guidance to state and federal courts as to the validity of similar statutes proscribing consensual sodomy. On the other hand, the New York State Court of Appeals, in its decision in Onofre, created a new fundamental value for both right of privacy and equal protection claims.

4314. ZERINGER, BRIAN D. "Tort Liability of the State for Injuries Suffered by Prisoners Due to Assault by Other Inmates," Tulane Law Review, 51 (1977), 1300-06. On a case in which an inmate of the Louisiana State Penitentiary was fatally stabbed while attempting to move a newly admitted prisoner from a dormitory where the latter had received threats upon his life. The Louisiana Supreme Court affirmed the state's liability on the basis of the failure of prison officials to take reasonable precautions against the attack.

H. US SODOMY LAWS

The sodomy laws are generally recognized as the linchpin on which discrimination against homosexuals, legal and extralegal, depends. Accordingly, much effort has gone