

Des Barreaux, who wrote him a letter urging him to die with joy to purify his soul. However, the wind turned in favor of the accused, and his friends did everything in their power to obtain clemency, which was accorded by a decree of the court in September 1625, which annulled the previous death sentence and merely condemned him to perpetual banishment with confiscation of his goods—in effect an acquittal. There was even a reunion with Des Barreaux. But the poet's health had been fatally undermined by his captivity, and he died the following year.

Théophile's poetry appeals to readers even now because of the poet's intense self-awareness and his ability to give personal expression to common human experience. In the course of the seventeenth century there were ninety-three editions of his poetry, compared with sixteen of Malherbe's. His verses remain scattered in various collections, and some of the attributions are incorrect or at least questionable. In the poems a spirit of male camaraderie prevails in the attitude of the speaker to his male reader/listener. A tone of fraternal intimacy excludes women except as the butt of humor. The homosexual theme is far more positive than in the classical authors whom Théophile read and imitated, just as he assimilated the traditions of the medieval low literature of the wandering scholars. The mood of the poems is an affectionate and gentle humor, or else intimate and endearing love. The major theme is sexuality, but the author can also bemoan the indignities of the patron-poet relationship, indulge in social and political commentary, and reveal his consciousness of the fragility of human life and happiness. One of his poems amasses the names of celebrated homosexuals of past and present, ending with James I of England and his favorite the Duke of Buckingham—which suggests that a certain kind of apologetic line had already begun to take shape in the *libertine* subculture of the Renaissance. Singer of love, of pleasure, of liberty,

Théophile de Viau is the spiritual forbear of later generations of poets of the European gay counterculture.

BIBLIOGRAPHY. Claire Lynn Gaudiani, *The Cabaret Poetry of Théophile de Viau: Texts and Traditions*, Tübingen: Günter Narr Verlag, 1981; Maurice Lever, *Les bûchers de Sodome*, Paris: Fayard, 1985.

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### VICTIMLESS CRIMES

The concept of "crimes without victims" has played a major role in the legal and sociological debates of the 1960s and later, when the first serious efforts were mounted to urge repeal of the archaic laws against homosexual acts. It was especially promoted by the work of the American sociologist Edwin M. Schur, *Crimes Without Victims: Deviant Behavior and Public Policy* (1965), which addressed the issues of abortion, homosexuality, and drug addiction.

*Basic Features of the Concept.* Crimes without victims are the willing exchange by adults of strongly demanded but legally proscribed goods or services, or the commission of acts proscribed by law in which no third party is directly harmed or involved. A characteristic feature of such laws is that since no third party is harmed, there is no one who has an immediate interest in complaining to the police and presenting evidence against the culprits. Also, such offenses typically have a low visibility; they are committed as far from public view as the participants can manage, and it is only as a result of prearranged police surveillance or even entrapment that the crimes can be detected at all.

Schur's argument starts from the premise that "criminal laws do not always effectively curb the behavior they proscribe," but that "laws which are highly ineffective from the standpoint of sheer deterrence" may yet "have pronounced impact. . . . Indeed, it is precisely the criminal laws which fail to deter which may be of greatest interest to the sociolo-

gist." The author goes on to say that the "types of deviance examined in this book illustrate a type of unenforceable law that has also created some special interest" because the attempt to repress such behavior by criminal law "seems particularly likely to create secondary deviance and to set the stage for police corruption and demoralization."

In the section on homosexuality Schur concludes that "neither present policy nor a stiffer enforcement of that policy can significantly curb homosexual behavior, and echoes the **Wolfenden Committee's** proposals for "partial legalization of homosexuality." The most evident results of the laws are the heightening of the homosexual's vulnerability to blackmail and other forms of police corruption and repressive enforcement procedures; the secondary results are the alienation of the homosexual from society and the discrimination inflicted upon him, as well as the demoralizing and humiliating behavior in which he must engage.

*Historical Precedents.* All this had been said earlier, though never exactly in the language quoted. It was, strictly speaking, never asserted that homosexual behavior harmed anyone engaging in it, but rather—as the critics of victimless crime largely overlook—that the behavior in question was an offense ("abomination" in the language of the **Old Testament**) to the deity, and that any community tolerating such practices in its midst would be the object of divine wrath and retribution. The Lutheran jurist Benedict Carpzov (1595–1666) even declared in his treatise on the criminal law of the Kingdom of Saxony that "Often for the crime of a single individual God punishes an entire nation." Early medieval criminal law knew a distinction between *tortious* and *sacral* offenses; the former were crimes in which the wronged party, or his kinsmen and supporters, had the task of bringing the charge before the courts, the latter infringing the divinely ordained laws of the community. Only when centuries of Chris-

tian moral teaching had made **sodomy** a wrongful and heinous act were laws prescribing the death penalty for "unnatural vice" placed on the statute books of every European country. There they remained until the eighteenth century, when they began to disappear as the **Enlightenment** critique of the penal legislation of the Old Regime rejected them as relics of medieval superstition and barbarism.

*Resistance to the Concept.* In the English-speaking world the influence of the Enlightenment in this area of the law was severely limited by the fact that the right of the state to punish "immorality" in general, and sexual immorality in particular, went virtually unquestioned. Indeed there was a tacit agreement that the state had a duty to punish such behavior in the interest of society. Only with the rise of public criticism of the existing statutes has there come an erosion of consensus as to the validity or purpose of the law. Those who continue to defend the criminalization of homosexual behavior argue that the criminal law keeps homosexuality in hiding where it belongs. In this view the demonstrations and propaganda of gay liberation groups encourage teenagers to experiment with homosexual activity and drift into homosexual **lifestyles**. The undisguised homosexual **subculture** of the large metropolitan cities spawns prostitution and gay bars and meeting places that further all types of sexual deviance. Then too, homosexuality leads to the moral decay of the family that would ultimately destroy the very fabric of society. Finally, homosexuals are mentally ill and in need of psychiatric treatment, and decent, law-abiding members of society need to be protected from them. Such is the neo-traditionalist response.

*Social Policy Questions.* The concept of "victimless crimes" poses more sharply than any other the question: To what extent should the criminal law be an instrument of social policy? Even if the behavior in question harms no one else directly, there may be larger interests of

society that need to be protected or furthered by criminal legislation, and in the eyes of conservatives the upholding of moral standards is one of those vital interests. The underlying assumption of Christian sexual morality is that erotic pleasure experienced outside the bounds of Christian marriage is immoral and wrongful, and in Christian countries the state should have the task of punishing such behavior by criminal sanctions. Where freedom of conscience and separation of state and church are formalized in the Constitution, as they have been in the United States since 1791, no rational ground can be offered for imposing such a moral standard on the entire community, indeed such an attempt violates the liberty and **privacy** of the individual citizen. On the other hand, a law that punishes an individual who knowingly infects another with a sexually transmitted disease falls wholly outside the category of "victimless crime," since the infected party is clearly the victim, and society has an undeniable interest in preventing the spread of syphilis and gonorrhea, not to speak of **AIDS**, which is frequently fatal to those who contract it by sexual intercourse.

*Conclusion.* The application of the notion of "victimless crime" to homosexual behavior is essentially a restatement of the Enlightenment argument against the laws that prescribed the death penalty for sodomy: namely, that the crime infringes the rights of no other human being, and that in punishing private consensual behavior between adults the state is overstepping its duty to protect the life, liberty, and property of its citizens, while offenses against religion and morality, belonging as they do to the sphere of private conscience, are matters for religious confession and atonement. But given the diffusion of the concept in contemporary sociology, future debates on public policy in regard to homosexuality are likely to see extensive use of the term "crimes without victims."

**BIBLIOGRAPHY.** Robert M. Rich, *Crimes Without Victims: Deviance and the Criminal Law*, Washington, DC: University Press of America, 1978; Edwin M. Schur, *Crimes Without Victims: Deviant Behavior and Public Policy*, Englewood Cliffs, NJ: Prentice-Hall, 1965; Edwin M. Schur and Hugo Adam Bedau, *Victimless Crimes: Two Sides of a Controversy*, Englewood Cliffs, NJ: Prentice-Hall, 1974.

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## VIDEO

The video-art movement, which emerged in the 1970s, uses tape to produce audio-visual works with their own aesthetic, which is sometimes abstract, sometimes more naturalistic in the manner of *cinema vérité*. Museums and galleries of contemporary art have given some attention to video, but have slighted gay and lesbian examples.

One exception to this neglect was a presentation of thirteen video tapes at New York's New Museum of Contemporary Art under the title "Homo Video: Where We Are in the 1980s" from December 1986 to February 1987. The videos shown were heavily influenced by the television documentary model, presenting images and information relevant to **AIDS** and to problems of discrimination, with considerable political awareness, though none of them were conventional documentaries with the standard voice-over narrative. In nearly all cases, these reflected attempts to make videos accessible to a mass audience, or capable of being aired over broadcast television, rather than to present idiosyncratic "pure art" videos.

There was also at least one regularly scheduled cable program featuring gay videos, Rick Schur's "The Closet Case Show," which had a long run in a weekly format during the mid-eighties in New York City. This show included less didactic videos, such as the 30-minute parody "How to Seduce a Preppy," and may have