

Homosexuals and the Law - Fifty Years On

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A mere fifty years ago gay men who engaged in sex together in private could be prosecuted in the criminal courts. In earlier years they were often sent to gaol. Even if a trial did not lead to a sentence of imprisonment, a conviction was a public humiliation often leading to exclusion from society and a source of considerable shame to relatives and associates. In many fields it might lead to the loss of a man's job and the end of a promising career. The possession of a criminal record would prevent finding new employment or clients and it was a barrier to obtaining a visa to travel to many countries.

The very threat of prosecution made gay men anxious. In general those of their associates in the know about their activities pretended that they did not know, which is why so many politicians, clergymen and professional people could survive as 'closet queers'. A conviction destroyed these benign conspiracies of secrecy, for trials were reported in horrid detail in the local and national press. Permanent disgrace followed. Some fled abroad or even killed themselves to avoid prosecution. In consequence homosexuals were at risk of being blackmailed and, since homosexual behaviour was a criminal offence, they could not easily call on the police for protection.

In 1964 the suicide of one of his constituents faced with prosecution on 'a serious charge' led the Conservative MP, Lieutenant-Colonel Sir Thomas Moore Bt, to table a motion in Parliament calling for the implementation of the Wolfenden Report of 1957 which had recommended that homosexual behaviour should cease to be a criminal offence. The Conservative government of the time had declined to do so. Sir Thomas was a four-square, old-time reactionary and upholder of capital punishment who in 1960 had campaigned to bring back flogging. He could not be ignored, and from that day no prosecutions could be brought without the agreement of the Director of Public Prosecutions. The DPP's policy was to refuse his consent. Three years later the law, which was no longer being applied, was abolished altogether on the sensible utilitarian grounds that it did no good and caused considerable suffering to a very large number of men – homosexuals were between 1 and 3 per cent

of the adult male population. Those who pressed for its abolition never raised questions about rights and there was no oily equality-mongering.

The puzzle for me has always been why the power of the state, including until 1861 capital punishment, could be employed so savagely to persecute men for what I saw as such an utterly trivial matter. Of one thing I am absolutely certain: the existence of the law had nothing whatsoever to do with the upholding of family values or fears about inheritance. Family values were rarely mentioned in this context before the 1980s; it would never have occurred to our ancestors to consider the preservation of the family as in any way relevant to the taking of action against homosexuals. Rather, the reasons for their severity were derived respectively from Old Testament religion, from the disciplinary rules of hierarchical all-male organizations and from the inferior position women held in society.

The Buggery Act of 1533 decreed that capital punishment should be meted out for unnatural sexual acts against the will of God and man, a term which covered both sodomy *per anum* between men and bestiality, sex with animals. What these two forms of behaviour have in common is that they break down the fundamental categories of creation laid down in Genesis, the distinction between humans and animals and between men and women. Sexual behaviour that breaks the boundaries between fundamental categories undermines the Divine Order and causes confusion. It led to the destruction of Sodom and Gomorrah and arguably to Noah's flood. The laws of England of 1533 were essentially those of the Book of Leviticus and in neither case were the punitive laws seen as concerning the family or inheritance but as necessary to the preservation of the entire social order, one based on religion. Buggery was a crime against nature itself and had long been described as the worst of all possible crimes. In 1769 the great English jurist Sir William Blackstone reminded his readers of the destruction by fire of the Cities of the Plain and called sodomy the *peccatum illud horribile inter christianos non nominandum*, a sin so vile that it should never be mentioned. Sodomites, said Blackstone, should be hanged. Other forms of sex between men could not be