

NCSEK - San Francisco Sat, 5/28/83 9:30 - 12:30

1. Hardman/Dawson S.F.

10:00 -  
11:00

Major problem in S.F.: elected officials almost exclusively from one party.

Keep "activists" doing something (e.g., parades), so that you can get something done.

"Arch-bigot" Quinn. Re-Development Agency issues Land Purchase Contract <sup>releases</sup> use of personnel statements ("manifest homophobia"), rather than cite specific examples. Pacific Bell case.

Kelly → arguments against attempts to criminalize behaviors because of the AIDS concern can be defeated on the basis of overbreadth. "Gay culture is a subset of the homosexual population." (ACW: "you're talking about dry water.")

11:00 -  
12:30

2. Jim Levin - Review of literature

(Levin has law degree)

Prejudices:

In social science area today, positive but still somewhat defensive. No serious works in anthropology, economics, although later has some dissertations on land use, gentrification.

Topics today are history, specialized topics, no general theories. No major work this year, no Sowell, Mortimer and Johnson, etc.

→ Kufis - Essays, resources (good, basic references). Not the best!

→ Wechs - About England. Serious, after frustrating. ~~Forgot~~ <sup>forgot</sup> ~~and~~ <sup>and</sup> ~~historian,~~ <sup>but</sup> ~~readist~~ <sup>readist</sup> for ideas. Good footnotes.

→ Katz - "With this second 'tone', Katz appears to be learning a little more what history is all about. Nobody needs this book. Has organizing material, but no introductory essays." (Sounds like crap to me.)

↓  
from  
sociology  
and  
psychology

→ Weislich - Tries to be comprehensive in raising all the issues in the areas mentioned in the title. Has usual problems of this sort of book.

→ Hany - psychological, dreary. 106 pages of stats, 1500 sampling.

↓  
Psychology  
Sociology

→ Altman - (check out his last few paragraphs)

→ Berger - "Gay = 40+ ". 115 sample, no women, no minorities, and published by U. of Illinois Press!

→ Wooden - Study of only one California prison. Published by Plenum Press.

subsequent?

(Wayne Dynes: Problem in D'Emilio's work. Methodological problem. Assumes uniqueness of American movement; Hay, et al., in California uses term "homophile", rather than "homophile" from the more mature European movement. American movement is really a reflection of what is going on on the other side of the Atlantic - that is unfortunate for those who can't read French, German.

ACW: "The repealed statutes (Conn, etc.) are a mine of information for the historian." D'Emilio's problem is that he has isolated himself from other sources; e.g., mention of New York without mentioning Madalyn Cervantes from Mattachine Society - she was a woman, and not a lesbian - "she is written out of history"; she was a persecutor of lobbying we do in Washington - with senators from W. Virginia.

MEMPHO

If only he had gone to holdings of Foster Hamilton in Connecticut.

Johannsen - Reception, adaptation, innovation are keys to organizing materials in sociology.

ACW - re Weeks books, "Ideas and Beliefs of the Victorians Sexual Ideas of the Victorians"

"The Privacy Connection" TFC, Kohon, Richards 2:25-

TFC - Intro

Richards - Philosophy, Law; Privacy from an academician's perspective.

Concept which has developed in all liberal democracies. Unique in America: its Constitutionalized. Why as a matter of basic justice, basic democratic theory, three leading candidates for general political theory:

- 1. Shifting moral consensus - up!
- 2. Harm - re Mill
- 3. First amendment - preferable.

1. Grounds privacy in putative shifting values. Lag time involved between public moral to values and laws. It is trivially true, therefore, of appeal to masses, yet provides no firm grounding for law; there are no philosophies. Why, indeed, should a court get itself involved, intervene?

Depress:  
"transphobic"  
new term for  
non-pornographic  
pornography.

Richard Price vs.  
Jeremy Bentham  
→ "Every man his own  
Legislator."

- 3 -

alternative for just criminalization.

2. The harm principle - Mill "On Liberty"

a. Primacy of free expression

b. A right of personal autonomy, to avoid  
overcriminalization.

Mill is not an utilitarian, he is a human rightist -  
because his harm principle is not utilitarian.

How to get the harm principle into American  
constitutional principles, to the central values of  
freedom in the first amendment. Rights and  
democracy are on a par, per Richard Price in his

"Defense of the American Revolution". To be a  
bearer of rights enables one to redefine ones  
self-conception in a positive fashion. To be  
treated as a person, no more AND NO LESS - ref  
the blacks who redefined themselves as a  
community as part of a group of self respect.

These are individuals' highest form of pursuit,  
to define himself in terms of respect. Anti-  
establishment clause demands that law not  
intrude. This is Mill's rights principle reconciled  
to American constitutional theory.

Who is [ELI?]  
who wrote  
attacks on  
abolitionists?

[ "Spirit of Griswold, where everything is drawn in" - DAJR  
Most academics attack privacy, only Richards and  
one or two others defend it. ]

JMKuhon - Comments from a practitioner's point  
of view. Practitioners must make forays into  
the realms of the philosopher. Religion, philosophy,  
metaphysics, psychology, sociology.

TFC - From an Activist's Perspective

Purpose is to provide class-basis (i.e., gap & others)  
support and effectuate change. Marketing change without  
doing serious damage to the basic structure. Privacy is  
valuable because it works from bottom up, as  
well as top down, that is where legs (ators) pass  
legislation before there is a demand for it.

NCSEA - San Francisco - Sunday, 5/29/83

London - Deprivation of personal rights by a state institution.  
Case of Religion, he may take in NY.

Attendance: Robert S. Basher Box 14435 SF 94114 (415) 552-1211  
De Priest 1210 N. Taft St #202, Arlington Va 22201 h. 703 524-3394  
Warren Johnson (212) 804-0361 o. 202 633-899  
Kevin Karp 336 W. Liberty Reno NV 89501 (702) 322-5297  
W. B. Kelley 2930 N. Commonwealth Ave Ch. 60657 (312) 769-6544  
Larry Hoy 914. Brodwick SF 94115 (415) 921-0908  
Bill Gardner Buffalo  
Susan Mc GREIVY LA  
DMP AEW McGowan  
JMK TFC Noble  
Del Dawson 1782 Pacific #4 SF 94109 (415) 673-5950  
PDH JRS FLB

I+II - topic definitions

all definitions of sodomy osculate

(W. Y.)

material def. - penetration <sup>heterosexual</sup>  
working order

or ideal def. - any act, stimulation  
constitute a "homosexual" act  
- based on canon law

(AW) legal reason - definitions - legal consequence  
dealing in court - historically inconsequential

① Henry 8 - is more vulnerable due to vagueness  
Prescription - Henry 8 - abominable crime of buggery <sup>against nature</sup>  
- law due to length of duration  
too late to argue over  
- state law rather are usual no more than a  
century old - challenge  
- only challengeable in this generation

- Other in lang. of modern penal code - 20<sup>th</sup> cent.  
- Henry 8 encompasses - anal intercourse - use of male member  
- lesbian in this case alien to jurisprudence  
- next state court - 1818  
after Revolutionary colonial courts went all over the issue on sodomy

Penetration 1828 repeal of HJ III & Eliz. I

A.C.

this is why we get courts (Georgia) including items like  
lesbianism in sodomy (non member vaginal penetration)

- no distinction on.  
- consent or age - not so in modern interpretation

- preemption in certain states used Type (3)  
- no recognition of consensual sex  
- what valid state purposes is served by this?

Judiciary decisions a factor in other state cases  
due to constitutional ~~relations~~ <sup>relativity</sup>  
or regionalism

examples # W. Virginia on Virginia  
# Maine priority on Mass. cases

if state follows English statute

does it also includes other limiting clauses

how to tackle this type and strike down

argument for more than one type of issue <sup>gross indecency</sup> sodomy  
priority?; gross indecency - sodomy law - 1st?

(3) why the interest of type period of enactment of sodomy  
law?

Iowa decision - case?

new interpretation to what obscenity was

1860 law struck down in 70's - ten years

- conditions have changed to strike down the law

- argument - Kinsey + sexual revolution

the modern interpretation of decency -

① sodomy law based on that sodomy was <sup>isolated</sup> unusual  
small incident rate - today this is not true

- the statute is unsound and false to today's reality

(4) States that reform & then recriminalize - ex. Arkansas  
non-criminality in recent history  
prohibition on human freedom without argument  
- capricious act

Running I - 26/27  
Dynes

\* group digressing & rambling over this section  
A.C.W. explains - relate to D.R.S. in hall (boycott)

ACW advised:

check with 710

Kevin Karp - NV - broadening the class of plaintiffs can help to create standing. all but 2 counties have legalized prostitution. The concept of morals before 19th century was there and couldn't be challenged. Has changed in last 100 years (e.g., birth control), and there is no longer consensus. With Wisconsin, 1/2 of states <sup>were</sup> criminalized - 1/2 of Americans live in sin. Is it unnatural? - That's the next question. You must show that the concept of unnaturalness has changed. [Dentureis, Oxford, Classic text.] With scientific reevaluation (Newton), that starts to change. Today, unnatural means, to most people, against laws of science - but, in fact, no scientific proof has yet been demonstrated against it. YET -> Kinsey said - what is unnatural is what man is incapable of. [Sexual Freedom and the Constitution, Barnes & Noble, \$3.00]

Jay -> Claims unnatural is an "non-issue", re quote in Commission report.

A.C.W. letter from D/A that they do not prosecute - "mockery" of jurisprudence - unusual due to lack of prosecution, \*rational

2 reason  
flow of sodomy law 1) law is unenforceful and also not enforced only enforced in private cases

Pointing out overbreadth to allow court to define law, and may destroy some attempts for legislative re-enactment. (TFC -> it's the job of a conservative court to save the law, so this may be a good technique - possible to win ultimate issues later on.)

- Overbreadth
- Right to travel
- Right to Privacy
- Capriciousness
- Establishment of religion

theory of "guilt by association" theory

ACW The previous concept. The law was to be the enforcer (the preceptor) of morals. Now, there seems to be a reversal, wherein the ~~to~~ morals are to be the enforcer.

Monday, May 30, 1983

Today's parameters 18, 19, & 20th century. 4 countries: U.S., England, Holland, et. A.S.K. Russia.

Kent Gerard - Concept of Eng; Dutch in 17th & 18th centuries → his in-process dissertation.

which Holland? Why early 18th c? Must be put in context of the rest of the continent. Mass repression, "mainly northern <sup>under</sup> Europe", England c 1690-1720 → Society for Moral Purity (forerunner of Moral Majority), 2 yrs after "Louisian Resolution", endorsed by Queen Mary, but "certainly not W.M.". Crossed religious barriers. Public drunkenness, prostitution - Peaked in 1726, that year more than 20 "molly houses" raided, including one run by "Molly Clap". a few of society's agents murdered; composed of upper levels of artisans, craftsmen, etc.

France - milder form than Dutch; Eng. Indemnity formed in 1690's - entered mainly upon complaints, esp. areas like children; kept list of 14,000 "on whom he kept tabs".

[Holland gained ind. from Spain in 1570. Siginity following.]  
Cardinal code of 1532 still being enforced except a few easternmost provinces. "a taste for Italian practices" (It.)  
Calvinist attitude prevailing. "liberal Calvinists among the upper merchantly oligarchy." Gerard [Reference to transition in Brajer's book.]

ACW → capital lapidation, in western Europe, was known only in Spain. Gerard did not know of use in Holland.

Gerard/Johansson c 1730, French applied medical treatment.

Warren Johansson - concentrated on most ~~disputed~~ disputed areas of Nazism and areas needing most research.

Background. In 1930, Germany is the most salient of all countries in this area. Five major problems brought up before in this committee

1. Homosexuality is an error of 19th century thinking.

Seniors: similarity (2 penis) viewed as different by science vis-a-vis religion/metaphysics.

Androphilia is primarily European: Germanic/Celtic

2.

a. Individual defined by sex, age, social <sup>esp. military</sup> condition.

b. Definition of the act itself. Ideal def from Christian; any immoral act giving pleasure

9 Geo 4 C31  
per § 6mm

c. What proof to be brought in court

9 Geo 4 C31 Sank from penetration and emission,  
to any penetration no matter how slight

June 1, 1871. eff. date of 175. Max 2 years in prison. For  
male prostitution, designed for.

By 1930, courts included all acts resembling coitus,  
except masturbation

Camp of Hitler  
3/7/33

Term <sup>NAZI</sup> sodomitism, like Soviets, are "a reaction of  
the 17th & 19th century against the 18th." Both ego,  
liberal and conservative. Political heir of Darwinism;  
if — is true, the corollary cannot be false. Is  
a reaction to urbanism.

Hirschfeld defined in terms of effeminate male and  
lilidinaus habians. Simple observations so doesn't  
require anthropological verification. Doesn't account  
for androphiles, pederasts, etc., so served as basis  
for dissertation and separation of "movement". Dloor, of  
political extreme <sup>from H.</sup> right, rejected H's definition of third sex.  
→ Hitler, in '34, could give history of homosexuality, saying  
spread from effeminate to most virile, upon whom  
our political postivity depended.

Check  
with  
Warner

Was there ever a genocide of homosexuals in Germany?

Using H's 2.4%, there were 400,000+ in Germany, but  
a hard core of only 11% of that number. Nazi documents  
captured after war, use figure of over 2,000,000. Nazis  
revised 175 to make prosecution easier; used, as since  
Byzantine times, for those to whom no political  
crime could be attached.

6/30/34  
Hirschfeld  
punch

[Wayne - "a report sui generis"]

HOUSTON'S  
AND

KARLINSKI - not a historian, but had to touch in  
course of his work because no historian was doing it.  
"Lauritania's 8 pages off Russia in his book is based  
neither on facts nor history."

[Note from Dyles; Karlinsky book on Legal available  
at Walt Whitman Bookstore here.]

Russian penal code based on German and ? #995

Anal intercourse required two witnesses.

19th &  
early 19th  
century

Lawyer orders has institutionalized homosexuality.



Reforms  
of 1860.

1840's - 90's things become more closeted. Legal, Schivshuy, etc. [Langaroy?] is Russian equivalent of Oscar Wilde, a contemporary.

Period following 1905, censorship is curtailed, etc. First gay novel in 1906. "Greatest period of Russian poetry," including gay poetry, Dayliem e.g.

Like 1905 revaluation, 1917 was viewed as positive for liberation. Soviet penal code 1922, revised 1926. Doesn't criminalize sodomy, but such things as male prostitution, oral sex, etc., and - first time - "acts against nature".

in  
prostitution,  
etc.

However, in Caucasus and Mohammed regions there are much stricter laws. In 1933, P 131, ~~from~~ BAD; just being homosexual is crime. In 1934, there is gay pogrom. 1936 speech by [KORLIN<sup>kov</sup>?] prosecutor under Lenin's Stalin in which he regards those who continue homosexuality, an aspect of decadent social systems, are to be regarded as counter-revolutionary.

In last two years, esp in Baltic Republics, hetero enemies are brought to trials as homos, with false witnesses.

In 1976, "Gay Sunshines", an article by Prof. Karlinshy

"Holy Relic" [c. 1922/32?] re gay priests, to discredit clergy, was best Russian "gay novel".

Bill Kelly → Karlinshy article in "The Advocate" was a counterbalance to D'Emilio's book.

Old Believers