

The Criminalization of Homosexuality

Homosexuality has been a long-contested subject in United States history. Laws prohibiting homosexual conduct existed in every state until Illinois repealed its sodomy statutes in 1961. Sodomy laws prohibit homosexual conduct and interaction as well as other forms of nonprocreative sex. These laws have their roots in Biblical texts and Old Testament limits on sexual conduct as seen in the Book of Deuteronomy, Leviticus, and the story of Sodom and Gomorrah. Sodomy was typically persecuted as a religious crime until the Buggery Act 1533 when sodomy laws and other religious prohibitions against nonprocreative sex were written into English secular law during the split from the Catholic Church and the formation of the Anglican Church. Due to the British influence on the colonial United States, these statutes carried into American common law. These laws covered most if not all forms of nonprocreative sex, not singling out solely same-sex relations until 1880. In the period from 1880 to WWI the number of arrests for so-called “crimes against nature” increased and the interpretation of sodomy laws expanded to include consensual oral sex.

During the late Victorian period, public concern about “decaying morals” and the loss of “traditional values” shifted to focus on gender roles, sexual expression, and the protection of the institution of traditional marriage. Additionally, the birth and expansion of psychology created a new form of condemnation for homosexuality. Early psychological theories used ideas of evolution, stating that homosexuals were at a lesser stage of human development. Most early psychologists believed that sexual difference was degenerate and that homosexuals were linked to criminal behavior and should therefore be denied a place in normative society. Pervasive in all conversations around both the morality and psychology of homosexuality was the intrinsic idea that homosexuality went against nature, whether that nature was established by God or by biology.

The stigmas associated with homosexuality reached beyond criminalization as those who displayed deviant gender expression or sexuality were arrested, fired from jobs, barred from federal employment, and unable to immigrate to the United States during the period following WWII. Additionally, homosexuals were further persecuted and regarded as security risks under anti-Communist scrutiny during the 1950s. Safe spaces for gay individuals became increasingly rare as police surveillance and bar raids became more common, eventually leading to altercations such as the Stonewall riot in 1969.

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Information sourced from Gary Mucciaroni's *Same Sex, Different Politics* (University of Chicago Press, 2008); Aimee D. Dayhoff's "Sodomy Laws: the Government's Vehicle to Impose the Majority's Social Values" in *William Mitchell Law Review*, vol. 27, no. 3, 2001; Ronald Bayer's *Homosexuality and American Psychiatry the Politics of Diagnosis* (New York: Basic Books, 1981); Simon LeVay's *Queer Science : The Use and Abuse of Research into Homosexuality* (MIT Press, 1996); "Sodomy" in *Encyclopedia Britannica Online* (Encyclopedia Britannica, Inc., 2020), and "Why Sodomy Laws Matter" American Civil Liberties Union (www.aclu.org).