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The End of Sodomy: Law, Prosecution Patterns and the Evanescent Will to Knowledge in Belgium, France and the Netherlands, 1770-1830

Author information

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Abstract

This article analyses discourses concerning male same-sex sexuality produced in the context of law and policing in Belgium, France and the Netherlands between 1770 and 1830. Intervening in the debate over making of "the homosexual" and the shift from homosexual "acts" to "identities," it is argued that shifts in sexual discourses were not linear. In the late eighteenth century, the courts and the police displayed a strong "will to knowledge" in same-sex sexual matters, collecting, requesting and recording discourses on inclination and in some regions even innateness. This will to knowledge all but disappeared in the early nineteenth century, when in the aftermath of the official decriminalization of sodomy, same-sex sexual acts became mostly devoid of further meaning in legal and police records. The emergence of sexual discourses was therefore uneven.

Text of article

The question of when "the homosexual" emerged as a person with an innate sexual orientation and a sense of identity and community with other homosexuals, has guided much of the history of male same-sex sexuality since the 1970s. In the last two decades, however, as debates over the precise "moment" of this emergence became tiresome, the question has often been bracketed in favor of a "queer" approach that stresses the incoherence and instability of sexual categories throughout history. In this article, I return to the question of diachronic change, not to identify a "great paradigm shift," but rather to suggest a possibility to reconcile queer and social historical approaches to the history of same-sex sexuality. I will attend to discourses concerning homosexual behavior produced in the context of law and policing in Belgium, France and the Netherlands between 1770 and 1830. In the late eighteenth century, the courts and the police displayed a strong "will to knowledge" in same-sex sexual matters, collecting, requesting and recording discourses on inclination and in some regions even innateness. This will to knowledge all but disappeared in the early nineteenth century, when same-sex sexual acts became mostly devoid of further meaning in legal and police records. The emergence of sexual discourses, I suggest, was therefore uneven and nonlinear.

In an often quoted passage, Michel Foucault argued in the first volume of *The History of Sexuality* (1976) that "[a]s defined by the ancient civil or canonical codes, sodomy was a category of forbidden acts; their perpetrator was nothing more than the juridical subject of them. The nineteenth-century homosexual became a personage, a past, a case history, and a childhood, in addition to being a type of life, a life form, and a morphology, with an indiscreet anatomy and possibly a mysterious physiology."[1] In the early modern era, Foucault seemed to suggest, homosexual acts were not yet connected to people's subjectivities. That only happened in the late nineteenth century.[2] To understand this change, Foucault attended to the rising "will to knowledge," as a part of which sexual behavior became an object of inquiry, leading to the collection and production of same-sex sexual discourses. He underscored the role of psychiatrists, who developed the new concepts of sexuality, and of the criminal courts, which adopted, applied and propagated these concepts.

When Foucault published his provocative analysis, however, some historians were just beginning to argue that a major shift had already occurred in the eighteenth century. Some kind of proto-homosexual emerged, they sustained, long before the word "homosexual" was coined. Randolph Trumbach has notably contended that the early eighteenth century witnessed the "birth of the queen," the making of a minority of men who desired only other men and who were seen as different from a majority of men who desired only women. This minority of men formed a subculture in major North-Western European cities, was characterized by effeminacy and shared a common identity.[3] While Trumbach based his argument mostly on London sources, scholars working on Paris and the Dutch Republic have offered similar analyses, suggesting the rise of a "subculture" of men who had sex with other men in the course of the eighteenth century. "Modern homosexuality," they suggested, had its roots in the eighteenth century, not the nineteenth: it was then that people who engaged in same-sex sexual relations gained a sense of identity and that some in the Dutch Republic even started to formulate ideas about the innateness of sexual desires.[4]

The question continued to occupy subsequent historians: some have shown how new nineteenth-century concepts were also developed and appropriated from below, some have stressed how the changes in sexual subjectivities were class-specific, regionally diverse and incomplete.[5] Some scholars have suggested yet earlier or later periods for a major shift.[6] But debates about when, exactly, the major shift in the history of homosexuality was to be found soon became sterile. In her *Epistemology of the Closet* (1990), literary theorist Eve Kosofsky Sedgwick proposed a way out. The concept of "homosexuality as we know it today" is, she suggested, deeply problematic, as it hides the manifold tensions inherent to contemporary sexual practices and identities. We should therefore not search for a "great paradigm shift," we should not try to pinpoint the moment when homosexuality gained its essential "current" meaning, but rather attend to the incoherence, instability and tensions of sexual discourses at any time. We should study the unrationalized interplay between different, older and newer models of same-sex attraction.[7]

Sedgwick has had a great influence on the field of "queer studies," which has mainly explored the literary imaginings of sexuality, often less embedded in their social historical context.[8] Many historians, for their part, have appropriated queer theoretical insights as tools to destabilize taken-for-granted narratives of

the "making" of the homosexual, going beyond the homo/hetero binary and the "acts-to-identities" paradigm to stress how different and contradictory models often operated at the same time.[9] The question of grand shifts has been relegated to the background.

I return to this question, equipped with some of the concepts and approaches of the queer theorists, by looking at the changes occurring in continental Europe around 1800, right in between Trumbach's "birth of the queen" in the early eighteenth century and the coming of Foucault's homosexual "personage" in the late nineteenth century. This was a period of a great fluidity in sexual discourses and, especially, of a great awareness of this fluidity.[10] Although there has been relatively little scholarly attention for same-sex sexuality in this period, the decades around 1800 were marked by important legal changes, most visibly the decriminalization of sodomy in large parts of continental Europe. It makes sense, therefore, to examine sources produced by the law, the police and the criminal courts – "institutions of punishment," to borrow Judith Butler's term – in order to interrogate the contingency and fluidity of sexual discourses.[11]

Sources produced by institutions of punishments provide valuable insights in same-sex sexual history. Unlike most literary sources or personal correspondence, for instance, they also connect us to the lives of common and illiterate people.[12] Moreover, influential theorists of the study of sexuality and subjectivity such as Michel Foucault and Judith Butler have long stressed the formative power of these institutions.[13] Arrests, interrogations and trials could stimulate people to reflect on their behavior and to relate to others in the same situation. In some cases, as we will see, magistrates explicitly demanded extensive reflections on the part of suspects, obliging them to formulate sexual discourses.

Of course, the discourses produced by and in reaction to the law stand among many others. Different settings could stimulate people to produce different, perhaps conflicting discourses. But the discourses created and recorded by the police and the courts are important because of their central and powerful, officially sanctioned position. These discourses often had a wide-ranging influence, socially and geographically, that must not be ignored. Understanding the eagerness and methods of institutions of punishment to demand, collect and record discourses that connected sexual behavior to identities and

subjectivities – the will to create, obtain and preserve sexual knowledge – or the lack of this will, is crucial for understanding the history of sexuality.[14]

Given my interest in legal records, I explicitly aim to address the situation both before and after the decriminalization of sodomy and will cover the period from c. 1770 to c. 1830. My analysis starts from sources in the Belgian archives of the police and criminal justice. Little research has been conducted on same-sex sexuality in what is often called the "Southern Netherlands" in this period.[15] I will, however, put the Southern Netherlands in a broader continental European context and interpret my findings against the backdrop of the situations in France and the Netherlands.[16] These three regions were closely connected: people in the Southern Netherlands regularly referenced events and places in France and the Dutch Republic. Between 1810 and 1813 they even formed one and the same country and the decriminalization of sodomy in the Low Countries only occurred under French rule. At the same time, the three regions were characterized by religious and political differences. Before the Revolution, France was an officially Catholic centralist monarchy, the Southern Netherlands were an officially Catholic monarchy with strong regional states, and the Northern Netherlands a predominantly Protestant Republic with strong regional states. Comparison between the three regions is as a result not always self-evident: while the Dutch legal systems operated in a similar vein and produced similar sources as in Belgium, the French procedures and sources are different, especially for the eighteenth century, due to the existence of a specialized police force in Paris, which did not have its equal in the Low Countries. Yet my main reason for comparing these three regions is that despite all these differences, a similar evolution occurred with respect to legal and police discourses of same-sex sexuality. While it manifested in different ways, I will show that institutions of punishments in all three regions shared an initially strong but evanescent will to knowledge with regard to same-sex sexuality between 1770 and 1830.

A Crime with Few Convicts

In 1770, despite their political and religious differences, France, the Southern Netherlands and the Dutch Republic shared similar legal doctrines on same-sex sexual activities and magistrates in all three countries

often referred to the same legal manuals.[17] The key term was "sodomy." The manifold religious and cultural meanings of this term have been explored by many scholars.[18] In legal parlance, sodomy could refer to bestiality, masturbation, sexual acts between men, sexual acts between women and sexual acts between men and women "when they do not use the ordinary route of procreation." Precise definitions varied among legal scholars; regardless, in the eighteenth century, the police, magistrates and common people used the term "sodomite" mainly to designate men who engaged in sexual encounters with other men. The prescribed punishment for sodomy (though generally only for anal sex between men, sometimes with the additional requirement of anal ejaculation) was death by fire.[19]

In most of continental Europe, despite these harsh laws, few sodomites were actually subjected to capital punishment in the late eighteenth century. In France, the last execution for sodomy alone took place in 1750.[20] In the Southern Netherlands, the last public burning of a sodomite took place in 1658.[21] The Dutch Republic was the exception. Between 1770 and the last execution for sodomy in 1803, at least six men were still capitally punished.[22] Sodomy had become a highly politicized problem in the Republic after the discovery of the existence of networks of sodomites in the 1730s, and its prosecution was accordingly very visible and often accompanied by publications on the topic. Commenting on the contrast with the silence that was usually kept in sodomy cases, one author had declared in 1731 that "there is a time to be silent and a time to speak out."[23]

Nevertheless, while sodomites in the Dutch Republic faced harsh and visible punishments, their chances of being arrested were rather low, mainly owing to the limited and fragmented means of policing. Between 1770 and 1810, the last year in which the old legal system was in use, 161 suspects have been counted in sodomy cases in the jurisdictions of Amsterdam, The Hague, Utrecht and the Courts of Holland and Utrecht.[24] Besides occasional harassment, there do not seem to have been any other official dealings with sodomites – if they were not prosecuted, they were generally left alone.[25] The situation was entirely different in France, or at least in Paris. The stronger central state had enabled the formation of a much more extensive police force in Paris, with agents who moved among the sodomites.[26] Sodomy was accordingly not dealt with by legal prosecutions and public executions, but by police measures. The Paris police is

estimated to have arrested several thousands of men on suspicion of sodomy in the 1780s alone. They were generally imprisoned for some time or banned from the city.[27] This approach was much less visible, but more actively intervened in the lives of those who engaged in sodomy.

The Southern Netherlands were, in comparison, a much safer place to engage in sodomy. Nowhere in the country was there such an extensive police force as in Paris; indeed, local officials often complained of understaffing and fragmentation, which prevented even carrying out their basic tasks.[28] In contrast with the Dutch Republic, sodomy was not seen as a major problem: it was not politicized and most authorities assumed that it was non-existent or at least rare.[29] As a result, sodomites were almost never arrested or prosecuted: I have discovered only 12 suspected sodomites between 1770 and 1795; and while there may have been some more, it is unlikely that there were many.[30] Most cases were dismissed after correspondence with the central government in Brussels, which was adamant that cases of sodomy not be publicized, so as to avoid that people would learn about its existence. In a reply to a request for legal advice concerning a sodomy case in 1785, the Privy Council reflected that "to avoid scandal, we have adopted the principle of keeping trials as secret as possible."[31] Many local courts agreed: in 1792, for instance, the magistrates in Poperinghe lamented that a public trial would involve a "sad and pernicious revelation to three quarters of the inhabitants of this town, who are ignorant of this sort of horrors."[32] They did not want the populace to know of the possibility of sodomy, and certainly not of the fact that it occurred locally. The few sodomites who were prosecuted were therefore exiled or locked away for a long term.[33]

Despite these different ways of dealing with sodomites, when they investigated sodomy, the courts in the Southern Netherlands and the Dutch Republic and the Paris police shared an important characteristic: they all displayed a strong "will to knowledge" in matters of same-sex sexual behavior. While the increasing gathering of information on the part of institutions of punishment was a general evolution, it was particularly outspoken for sodomy investigations. Throughout continental Europe, trial records of sixteenth- and early-seventeenth-century sodomy cases were often short and focused on the act of sodomy.[34] In many places, this changed in late seventeenth and eighteenth centuries.

Following the criminal justice reforms of 1670, a police force was established in Paris.[35] By the early eighteenth century, this police force employed agents to collect and record extensive information about sodomites, not only about their direct offences, but also about their daily lives, their desires and their acquaintances. Spies encouraged sodomites to detail the circumstances connected to the act of sodomy and reported this information to the police.[36] Later in the eighteenth century, particularly in the 1780s, inspectors filed many reports on the arrest and interrogations of men whom they suspected of same-sex sexual activities.[37] These reports not only reveal the existence of same-sex sexual activities, but also that the police often understood these same-sex sexual activities as connected to specific "inclinations." In the discourses recorded by the police, this inclination was generally acquired, not innate, but difficult to abandon. The Paris police did not produce much discourse, however, on motivations or on the origins of same-sex sexual behavior, except when expressing a concern for corruption of the youth, implying that the "tastes" of the young were particularly at risk.[38]

While no similar gathering of information took place in the Dutch Republic, the increasing will to knowledge is visible in a different way, starting with the prosecutions of the 1730s. Magistrates sought detailed confessions, far beyond what was necessary for a conviction. Suspects were interrogated, often several times, about their sexual contacts, about the exact positions in which they had committed sodomy, about their networks and their habits.[39] Especially later in the century, interrogations also attended more to the origins and motives of a suspect's behavior, even though this was not of direct legal relevance. In this respect, the Dutch legal records were more explicit than the Paris police reports. In interrogation transcripts, some sodomites in the Dutch Republic were reported to refer to their desires as "inborn weaknesses," and they professed a stronger and more overt sense of identity and community: Theo van der Meer has found that "by the final quarter of the eighteenth century, expressions like 'being of the family' regularly show up in court documents, and in the 1790s one man could say to another, 'it is a weakness you and I share with thousands of others.'"[40] The Dutch courts, more than the Paris police, produced and recorded extensive discourses that connected same-sex sexual behavior to people's subjectivities.

Even with the limited number of cases, a similar development is visible in the Southern Netherlands. While not all cases were as thorough, of course, it is striking that, even in comparison with trials for crimes such as murder, some investigations and interrogations were truly extensive. In Antwerp in 1776, magistrates interrogated Henricus Masso, who had already been condemned to corporal punishment for thefts, about a confession-cum-accusation of sodomy. They asked him where he had lodged, with whom he had shared a bed, what they had done together. These were valid legal questions and Masso related his sexual encounters in some detail. But that did not suffice for the magistrates: they continued the interrogation, asking "what Carnou [his partner] had given or promised him" for his sexual cooperation, whether "no other boys frequented" the same house, "with whom Carnou had done such deeds as well," whether his partner "associated with any women," and whether he himself had committed sodomy with others. Masso's answers were diligently and extensively written down. The magistrates not only wanted his confession, but wanted to know and record everything about this event and its context.[41] The interrogation of Masso is typical of the sort of questions magistrates in the Southern Netherlands asked in sodomy cases in this period: they went beyond the legal necessities, but stopped short of explicitly inquiring about motivations or inclinations.[42]

In the case of Peter Stocker in 1780, however, magistrates went much further. The case is exceptional for the extent and detail of the interrogations and witness statements, but also typical of the thorough approach of magistrates to sodomy trials. Stocker was investigated by the Antwerp magistrates after two young men had testified that he had seduced them to commit sodomy. The ensuing enquiry revealed that Stocker had had sexual relations with many more men, and the magistrates displayed great interest in how and why he had done that. Both Stocker and some of his partners were extensively interrogated. Again, magistrates asked not just about the actual occurrence of sodomy, but also about other partners, about how Stocker had "seduced" his younger partners and about his relations with women. But they went even further, asking about the suspects' moral awareness of the graveness of their actions, about the words they used to speak about their actions, about "which discourses Stocker held" when he tried to penetrate his partners. They asked Stocker's partners why they had agreed to continue to have sex with

Stocker after the first time and after they had been instructed of the evil of sodomy by their confessors or friends. After Stocker eventually confessed, magistrates wanted to know every detail of his sexual encounters: with whom, where, how often, in what positions? And especially: why did he do the things he did? Why did he try to get his partners to accompany him out of the city? Why did he tell them that he was not married? No detail was spared. "Why did he ask Mainard [one of his partners] at one point to stand on a stove, table or chair?"[43]

This "will to knowledge" in sodomy cases should be understood in a broader context. Criminal investigations in the Southern Netherlands as in the Dutch Republic became more thorough in almost all matters in the course of the eighteenth century.[44] Most questions in sodomy cases where, moreover, while not immediately legally relevant as evidence, useful in attempts to "contain" the problem of sodomy. The increasing will to knowledge was therefore not unique to sodomy cases and was embedded in the new means of surveillance and control that were set up in the eighteenth century.[45] Nevertheless, certainly in the Southern Netherlands, the will to knowledge in sodomy cases was much more outspoken than in other cases. In murder cases, for instance, questions as explicit about motivations and moral awareness as in the Stocker case would only be asked in the nineteenth century.[46]

Despite the many questions, discourses of a sense of community among sodomites were limited in the Southern Netherlands. The Stocker case is, as a result of the extensive investigations of the magistrates, again the most revealing. Although Stocker often frequented the same bars, these were not prototypical "gay bars." One of his partners related to the magistrates that Stocker once reassured him that sodomy was not that bad, for "in France, they do this publically, and they even have particular houses for this purpose." While he did not specify whether he had ever visited such houses, he did regularly go to Lille and may have actually witnessed these designated establishments. These visits to Lille and other cities reveal not only the cultural links with France, but also the extent of Stocker's network. He promised one of his partners in Antwerp that there was good money in sodomy, and that he would introduce him to his acquaintances in Ghent and Lille, among whom there were "many decent folks," who would pay well for "using him from behind."[47] There are, however, few indications of a clear sense of community beyond these personal

networks. It is revealing that in all the cases that I have found, there was only one person who explicitly used the term "sodomite" to talk about himself. This was Christiaan Bel, a fugitive from the Dutch Republic. When he was being extorted, he professed that "although I am a sodomite, I have nothing to fear, for I am in a free country."[48] The Dutch seem to have been more inclined to accept this label to talk about themselves, which may connect to their greater exposure to discourses of community.

Nevertheless, the act of sodomy was sometimes connected to specific inclinations in the criminal courts of the Southern Netherlands as well. The most common discourse seems to have been that sodomy was an acquired taste, resulting from a lack of self-control, luxuriousness and other sins. The main way to interpret sodomites' behavior was through the psychology of the slippery slope, which was also very popular in the Dutch Republic, though primarily in the first half of the eighteenth century.[49] This psychology was especially well articulated in the case of the Leuven theologian Jean-Noël Paquot in 1771. Paquot had been accused of sodomy by his academic rivals. In turn, one of his friends wrote a long poem to defend him. Indeed, the poet wrote, mankind is weak, and love may sometimes eclipse virtue. But "joining man with man" was beyond Paquot, for he was always working hard. Sodomy was a sin of "those unfortunates, plunged in delights, who, caressing their every whim with unashamed luxury, to animate their lustful desires, dare vary their pleasures with a crime so dark."[50] People who let themselves go, by womanizing, gambling and other pleasures, could eventually end up committing sodomy, just to try something new. Once they had experienced sodomy, it would be difficult to abstain. For this reason, for instance, magistrates in the Stocker case officially accused him of having "implanted and taught this godlessness" to his younger partners.[51] It was perfectly normal, therefore, that many of the sodomites who appeared before the courts were married and that some of them had children. Their difference from other men was gradual: they had gone further down the slippery slope of sin.

At the same time, however, some sodomites stressed their difference from other men in more absolute terms. While they refrained from explicitly referring to innateness or using the word "inclination," some sodomites were exclusive in their choice of male sexual partners, or at least they professed to be so or were expected to be so. Some of Stocker's partners related to the court that Stocker had told them that "he

wouldn't leave this trade even if he saw the gallows erected before him" and that, when one of them had suggested that he should engage with women instead of boys, he had said "blech, blech, that's filth!" Although Stocker was in fact married, he could present himself as interested only in other men.[52] In the Masso case, magistrates explicitly asked whether the suspect also had sexual relations with women.[53] They seem to have suspected that there were men who only had sex with other men.

In all three countries, the will to collect and record information on homosexual behavior was, in different forms, visible in the late eighteenth century. As a result, sodomy cannot simply be seen as a forbidden act in the criminal records: in every country, discourses can be found to connect the act to people's subjectivities. The Dutch criminal justice records reveal the most elaborate sexual ontology, with sodomites expressing a relatively strong sense of community and even referring to ideas about the innateness of their desires. The Paris police records also reveal ideas about same-sex sexual inclinations, but more rarely speculate on their origins. In the Southern Netherlands, discourses of inclination, identity or community were least developed in the records of criminal justice, even though in some cases, such as the case of Peter Stocker, reflection on same-sex sexual behavior was clearly present.

These discourses connecting same-sex sexual behavior to people's subjectivities were more prominent in the records of the police and criminal justice in the eighteenth century than before. Yet it is difficult to determine to what extent they were truly new for those involved, and to what extent the increasing will to know, to record and to preserve only reveals discourses that had previously been held in other settings. However, the very fact that these discourses were now being sought and recorded by powerful institutions is important by itself: it gave them a new shape, stabilized them, and infused them with power. In the late eighteenth century, in the context of criminal justice and the police, sodomy was certainly not always an unreflective forbidden act, but was often given multiple, sometimes contradictory meanings.

The End of an Era

The late-eighteenth-century revolutions brought along thorough reforms of criminal justice. These reforms had been prepared by Enlightenment authors such as Cesare Beccaria, who in his influential *Essay on*

Crimes and Punishments (1764) had argued for a more humane, and at the same time more efficient penal system. Along the way, Beccaria suggested that more work should be done to prevent sodomy (meaning sex between men), rather than punish it so severely.[54] In his wake, many sought to reform criminal justice, and while sodomy did not usually play a central part in their arguments, they often accepted that the death penalty for sodomy was too harsh and too public. Most stopped short, however, of proposing a complete decriminalization.[55] Many other legal thinkers argued against these reformers, but conservatives were losing ground in many countries.[56]

While the Southern Netherlands and the Dutch Republic had their own political troubles, revolutions and attempted legal reforms, it was the French Revolution that would have the most lasting impact on criminal justice in all three regions. After the outbreak of the Revolution, the *constituante* sought to implement the legal reforms proposed by the Enlightenment authors and installed a new legal system between 1789 and 1791. The *Code pénal* of 1791 was the keystone of criminal justice reforms.[57] While there is no record of any debate on this matter in the assembly and the legislators' motives remain unclear, the most obvious change implicating homosexual behavior was that "sodomy" (or any similar term) was absent from the new criminal codes.[58] Instead, they mentioned other sex-related crimes. Rape remained a criminal offence, as it had been before. Moreover, the police law of July 19, 1791 created a new type of crime: public offences against decency, which included "public indecency," "outrage against the decency of women," "encouraging debauchery" and "corrupting young people of either sex."[59] Concerns about public indecency and corruption of minors were not new – they had been monitored by the Paris police already in the eighteenth century – but the new laws allowed for them to be formally brought to court. After these legislative reforms, the penal codes were refined, but not significantly altered for what concerns sex-related offences. The Napoleonic *Code pénal* of 1810, which would remain in vigor in France until 1994, again punished rape, but also sexual assault. Public offences against decency were punished with prison sentences of up to one year and a fine. Encouraging debauchery and corruption of the youth, which was primarily meant to tackle child prostitution, could lead to up to two years of imprisonment.[60] Sodomy was again not explicitly mentioned.

Along with the criminal justice reforms, the new French authorities implemented an overhaul of policing and criminal procedure. Especially under Napoleon's reign, police forces throughout the country became more centralized and their operation more homogenous. The number of police officers increased, and with it people's chances of getting caught in the act of committing crimes – although police forces remained understaffed and chances of getting caught were still low. The police had the option to mete out "administrative punishments," often short-time confinements or banishments, on its own authority, without the necessity of a trial, as the Paris police already did before 1789.[61] Moreover, when crimes did come to trial, questions of guilt and innocence would no longer be decided by judges in accordance with specific rules of evidence, but by the "inner conviction" of popular juries or judges. Finally, different levels of criminal jurisdiction were defined. While rape was a criminal offence, tried by the criminal tribunals (the later assize courts), public indecency was tried by the lower correctional courts.[62]

The French Revolutionary and Napoleonic armies spread the new legal and policing systems all over Europe. The Southern Netherlands were incorporated in the French Republic in 1795.[63] In the same year, the Dutch Republic also surrendered to French troops, but managed to maintain its old legal system, including sodomy laws, until 1810, when the country was subsumed in the Napoleonic Empire and the French penal codes came into effect.[64] All three regions now shared the same laws and legal procedures, and they would continue to do so for some time: after Napoleon was defeated, the Low Countries were split off from France and became the Kingdom of the Netherlands. Both in this kingdom and in Restoration France, the Napoleonic penal codes remained in effect.

The changing laws reflected evolutions that had been going for some time: as we have seen, homosexual activities were already mainly dealt with as disturbances of the public order in late-eighteenth-century Paris. In the Southern Netherlands, sodomy was hardly prosecuted at all, leading one fugitive Dutch sodomite, as we have also seen, to claim that he was in a "free country." But we should not forget that under the Old Regime, legal scholars continued to prescribe the application of the harsh punishments. Local and religious authorities in the Southern Netherlands occasionally called to "set an example," as they did, for instance, in the Stocker case: "After a meeting we have had with Monseigneur the Bishop and the

penitentiary," the mayor of Antwerp wrote to the Privy Council, "they have declared that the crime of sodomy strictly speaking reigns in Antwerp, and that it is to be hoped that an exemplary punishment will be made to make the enormity of the crime known and to inspire more horror."[65] In the Dutch Republic, such examples were still being set. The change in laws and official procedures brought an end to this and officialized a new conception of same-sex sexuality.

The change should therefore not be underestimated: up to 1789, sex between men, under the official name of "sodomy," had been a serious offence, associated through the law and religious teachings with bestiality and masturbation, with sinning and the apocalypse.[66] It merited intensive attention from the highest authorities. In the new justice system, under the designation of "public indecency," homosexual acts became associated with prostitution, vice and public disorder.[67] It became a relatively minor concern, to be dealt with by the local police. It is likely that many people continued to think in the terms now abandoned by the law, as some similarly thought about same-sex sexual behavior as a minor disorder before the legal changes. The legal and policing changes may also not have had much effect on actual same-sex sexual behavior or on the ideas and subjectivities of those involved in them. But the French Revolution brought about a profound change in the ideology of the law.

Especially in the former Dutch Republic, the new conception of homosexual behavior was experienced as foreign and the new laws as unsuited to the "mores of the country" – to its perceived superior morality and legal habits. After the fall of Napoleon, lawmakers therefore started working on a new penal code, which was presented in 1827. In this code, "unnatural fornication" would be criminalized again, even if it occurred in private. Offenders would be declared "dishonored," solitarily confined and exiled afterwards. Seducing or forcing others to this crime would even be punished with death.[68] Unsurprisingly perhaps in the light of the late-eighteenth-century public prosecutions of sodomites, the Dutch were unwilling to accept the new legal framework and continued to consider homosexual behavior as a grave crime.

However, in the southern part of the country, the former Austrian Netherlands, the proposal for a new criminal code was severely criticized. Fierce protests lead to its eventual abandonment. The "Belgians"

had become more accustomed to the principles of the French criminal law than their Northern compatriots. Victor Savart, an up-and-coming lawyer, wrote an extensive tract against all aspects of the proposed code, including the proposal to recriminalize sodomy. For one thing, he argued that there was no pederasty in the southern part of the country. Mentioning it in a criminal code would only inspire people. Moreover, "even if sodomy exists, when it is not accompanied by violence, can it be the resort of criminal laws? No; it would be a disgusting horror contrary to morality and to politics, but it would not harm the rights of any person, it would not have any immediate influence on the order of society."[69] Savart clearly articulated the new epistemological framework, which even the most radical eighteenth-century philosophers had been hesitant to accept: sex between men had become a minor nuisance rather than a matter of state, a matter of morality rather than of criminal justice.[70] Savart's position was not marginal: he became famous with his tract and would, after the Belgian independence, become a member of parliament.[71]

The new legal ideology required a new vocabulary. The word "sodomy" (*sodomie* both in Dutch and French) itself was disappearing, not only as a legal concept, but also in everyday use. Already in the eighteenth century, some in France and the Southern Netherlands had preferred to use the term "pederasty" (*pédérastie*). This term lost its age-related meaning and was used to refer to all kinds of homosexual activities.[72] But until the end of the old regime, "sodomy" continued to be the official term in legal and government documents, with all its religious and moral connotations. In an advice on the Stocker case in 1781, the Privy Council in the Southern Netherlands had initially written that Stocker was accused of "the crime of pederasty," but had corrected this to record that the crime was, in fact, "sodomy."[73] Slowly – especially in the Northern Netherlands, terms like "sodomy" and "unnatural sin" continued to be used for some time – but certainly, this word disappeared under the new regime. With the term "pederasty," homosexual sex could be referred to in a way devoid of religious and apocalyptic connotations. While in religious discourse and perhaps in the minds of many people sodomy remained a relevant concept, in the context of law and policing, the end of sodomy had come.[74]

Convicts with Few Crimes

Sodomy thus ceased to be a crime and ceased to be a legitimate legal concept, first in France, then in Belgium and finally in the Netherlands. This was clearly an improvement of the legal situation of those who engaged in sexual activities with people of the same sex. It was not necessarily an improvement of their actual situation, as the new legal ideology was not so easily accepted in practice. The laws on public indecency proved to be open to different interpretations. While it quickly became clear that they could be used to continue to prosecute some same-sex sexual behavior, authorities grappled with the extent of what was "public" and with what to do with homosexual acts in private spaces. In 1805 in Chartres, for instance, discussion rose whether the laws against public indecency did not implicitly proscribe all sodomy, since it was by its very nature a violation of morality. The case even reached Napoleon, who decided otherwise. He suggested that such cases were better dealt with by "administrative punishments" on the police's own authority. In this way, scandals could be avoided.[75]

As a result of both the confusion surrounding the new legislation and the policy of "administratively" dealing with these offences, the number of actual trials for same-sex sexual behavior was limited during the Revolutionary and Napoleonic periods. In a chapter on the regulation of male homosexuality, Michael Sibalis has noted only four trials in Napoleonic France, although he concedes that it is difficult to locate cases given the poor accessibility of relevant archives.[76] But even if we look at the courts in detail, there are few homosexual cases. In the correctional court of Brussels, for instance, few vice cases were tried between 1795 and 1815, and almost all of them concerned prostitution. Only one man, Jean-Baptiste Pain, was tried in 1798 for corrupting young men in his room: neighbors had been able to see through a window how he engaged with them in an "unnatural way." The definition of "public" was in this case stretched to include a private space where neighbors had been able to see him. Pain was convicted for public indecency to one year of imprisonment and a fine.[77] A similar picture emerges from courts in other cities: in the Antwerp courts, for instance, no same-sex sexual offence cases have been found between 1795 and 1815.[78]

After Napoleon's defeat, the courts in the Kingdom of the Netherlands dealt with homosexual acts with a slightly higher frequency than during the Napoleonic period (we know little about the situation in Restoration France). Differences between the northern and the southern part of the country remained. In the North, relatively many men were tried for homosexual public indecency, and the notion of public was stretched very widely – it sufficed if anyone had or could have seen the acts.[79] In Amsterdam between 1814 and 1830, 57 men were tried for homosexual public indecency; in Utrecht 38 and in The Hague 23. They often received the maximum sentence.[80] In contrast, in the correctional court in Antwerp during the same period, only four men were tried for homosexual public indecency.[81] Two of these cases involved minors; only one case concerned consensual sex between adults: in 1821, a 24-year-old soldier and a 40-year-old tailor were caught in the streets in Antwerp by two firemen. They were both convicted to the maximum sentence of one year imprisonment and a fine.[82]

Few cases discovered by the police came to the courts; indeed, public prosecutors had a large part to play in deciding which incidents they would prosecute. We get some insight in the policing of pederasty through a register of *procès-verbaux* of the Antwerp police from 1822 to 1834. During this period, seven reports were filed for which the crime was reported as "unnatural sin." None of the cases reported as "public indecency" concerned homosexual behavior. The police officers still considered same-sex sexual behavior a crime and even used the legally obsolete language of "sin" to record it. All of these men were arrested and put at the disposal of the public prosecutor. Only one of them was eventually prosecuted (for molesting several of his employer's children); it is unknown what happened to the others.[83] It is not always clear why certain people were prosecuted while others were not: in a case quite similar to the case that lead to two convictions in 1821, a servant and a trumpeter were caught in the act in 1825 by the military watch. They were arrested, but their case did not come to court.[84]

The new legislation seems to have done little to affect the different prosecution rates between the north and the south. The northern courts continued to prosecute consensual sexual relations between men in a way that was quite similar to what they had been doing in the century before, but with less lethal sentences. The southern courts continued to prefer silence. This relates in large part to the continued local

embeddedness of the new legal system: many among the legal staff also peopled the courts of the old regime.[85] They tried to translate their old habits and priorities onto the new legal rules. Still, if the prosecution patterns in the former Dutch Republic implied a slight decrease in the number of trials, the number of cases in the Belgian territories was somewhat higher than during the ancien régime.[86] (Again, we lack a detailed study of Restoration France, but it seems that pederasty was not a prime concern for justice and was still primarily dealt with by the police.[87]) The new way of dealing with homosexual offences caused less scandal – indecency trials were generally held behind closed doors – and required a lower standard of proof. This made it more attractive for police officers to make arrests. The elasticity of the notion of "public" indecency allowed for many cases to lead to a conviction, even if the Antwerp prosecutor was more reserved than his northern colleagues. Ironically, therefore, in the Southern Netherlands, somewhat more people were arrested for the "unnatural sin" than in the century before, when it was still a crime.

If prosecution patterns kept pace with a previous period, the nineteenth-century trial records and police reports changed in one important respect: few traces were left of the eighteenth-century will to knowledge in homosexual matters. In France, police surveillance of same-sex sexual behavior continued, but at a much lower intensity than during the eighteenth century. Not only do the archives of the Paris police prefecture contain fewer records of pederasts, they are also quite summary. The information they provide is incomparable to the information the eighteenth-century records give us. Only in the 1830s would surveillance of pederasts once again increase.[88] Only a few cases in the French provinces, such as the case in Chartres in 1804 and a case in Issoudun in 1807, seem to have given occasion to the articulation of same-sex sexual discourses in the new institutions of punishment, attending to networks of pederasts and specific "tastes."[89] That did not mean that such discourses were not held in other contexts, nor that people did not continue to practice particular identities or form communities. Traces of flamboyant and effeminate subcultures and pederast networks have been found around the Palais-Royal in Paris and in other parts of the country.[90] But the police and the courts most commonly declined to record this.

Similarly, in the Northern Netherlands, except for some trials in 1816, investigations were summary and interrogations limited to the verification of punishable actions, particularly of where the public

indecencies had taken place.[91] As a result, the extensive legal discourses on innateness and community became much less frequent. The main exception is a case file from 1826, in which references to "the family" and to "an innate weakness" can be found. These references were not recorded by the judiciary, however, but part of private letters that had been included in the file as part of the evidence.[92] The juridical will to knowledge had significantly declined.

In the Southern Netherlands, police reports rarely contained more than a dry description of the material facts that had taken place either. The report on the case of Peter Dehaes and a certain Deraadt in Antwerp in 1825 is typical. Inspector Ulrichs (unrelated) wrote that the military watch had arrested both gentlemen on a square near the castle, where they had "committed vices against nature." "Having taken more information on this disgrace, it results from the mutual statements of the accused that they were urinating on the said Castle Square and have touched each other with their male member." They were arrested and put at the disposal of the prosecutor. No more was said on the case.[93]

If a trial took place, we get little more information. Detailed records of interrogations and witness statements in these cases were not deemed of great worth and have often been destroyed after the trials as part of pruning processes, signaling a declining will to preserve knowledge about homosexual practices. Even when statements have been preserved, as public indecency cases were not high profile cases, the trials were generally summary and interrogations were short and to the point. In none of the cases that I have found did magistrates inquire into motivations or explanations, never did they use words like inclination, never was there any indication that judges or prosecutors wanted to find out more about the accused.

I have found only one police report that was more extensive: the case of Louis Braeckeniers in Antwerp in 1820. Braeckeniers was accused by Johannes Lambrechts, a 21-year-old tinsmith, of having sexually abused him. Lambrechts was extensively questioned and two witnesses were heard. But in contrast with the Stocker case forty years earlier, the police showed little interest in Braeckeniers and instead questioned Lambrechts' story of sexual abuse – if he had been abused, why did he stay with Braeckeniers for so long? How did he abuse him? How often had they slept together? Did he not defend himself? No

questions were asked and no statements were recorded about networks, habits, identities, inclinations or motivations. The case remained without consequence.[94]

The declining will to knowledge about same-sex sexual behavior on the part of the police and the criminal courts underlines that, despite all the continuities with an earlier era, the shift in legal ideology described in the previous section had an important impact. As sodomy ceased to be one of the most heinous crimes and became a minor correctional affair, an immorality like prostitution but not an announcement of the coming apocalypse, it no longer merited the excessive attention it had received before. This attitude had been foreshadowed by the Paris police in the eighteenth century, but found its conclusion in the early nineteenth. Same-sex sexual behavior entirely lost its special interest, even to the police force. It was only to be punished when it directly disturbed the public order. In this sense, the treatment of pederasts did indeed not differ much from that of prostitutes.[95]

The declining will to knowledge related in part to a broader legal evolution: it was no longer the task of magistrates to decide on morality or to prevent the wrath of God. They simply had to determine whether a crime defined by the penal code was proven to have taken place and to administer the predetermined sentence (at least, that was the ideal).[96] But for other crimes, such as murder, the will to knowledge did not disappear, on the contrary: in homicide cases, for instance, it was precisely in the early nineteenth century that inquiries into motivations and individual nature became a prominent preoccupation of magistrates.[97] In the now minor pederasty affairs, the police and the correctional courts did not have the time and the means, and possibly also had no interest, to produce, solicit and investigate extensive discourses on same-sex sexuality.

With this declining will to knowledge, the end of sodomy as a legal concept was also the end of the sodomite as a "personage" with specific characteristics in legal and police discourse. The varieties of sexual relations and practices continued as before, but motivations were rarely discussed. Of one suspect, Jacques Moorjan, a rather farfetched explanation was recorded in Antwerp in 1815. He was suspected of showing indecent pictures to adolescent men, and of touching them "most dishonestly." He explained that he was troubled by a hernia, and that he wanted to heal himself by examining the physique of the youth.[98] None of

the other pederasts that I have found talked about – or were asked about – their motivations or inclinations in the legal or police records; none of the witnesses offered any such information either. If some continued to think about their sexual identities and inclinations, this was no longer sought nor recorded by the institutions of punishment.

Epistemology of the Criminal Archives

Up to the late eighteenth century, sodomy was a severe crime, but it was almost never prosecuted in France and the Southern Netherlands. In Paris, the police tracked sodomites' movements and arrested them frequently, but they did not bring them to trial. Only in the Dutch Republic, magistrates still sentenced sodomites to death, and the death penalty was retained up to 1810. At different moments, all three countries adopted the French revolutionary and Napoleonic criminal codes, which did not mention sodomy as a crime. For the general public and for many involved in everyday policing, however, "the unnatural sin" or "pederasty" remained a crime that needed to be punished. "Administrative punishments" of a few weeks' imprisonment or exile were a preferred method in Napoleonic France. Another common method, especially in the Northern Netherlands, was to prosecute unnatural acts under laws against public indecency, which could lead to up to one year of imprisonment and a fine.

So there were surprising continuities in the face of the changing legislation: male homosexual behavior continued to be seen as a crime. National differences in prosecution rates also remained. Prosecutors in the Northern Netherlands continued to be much more active than in the southern part of the country; in France, especially in Paris, it seems that police surveillance continued to be a method preferred over legal dealings, though now with less intensity. As far as we can assess, the new laws also did little to change the existence of networks and subcultures of pederasts. The strongest references to a sense of identity and community continued to occur in the Northern Netherlands, both before and after the introduction of new legislation.

These continuities should not conceal that the decriminalization of sodomy – and all its concomitant legal, societal and cultural changes – did have important effects for those who engaged in homosexual

practices, and not only with regard to the possible punishments they could receive. In the late eighteenth century, criminal courts and the police practiced a strong "will to knowledge" with respect to same-sex sexuality: they collected extensive information on the backgrounds, networks, methods and inclinations of suspects, wanting to understand sodomy. They oversaw the recording and sometimes production of discourses that connected same-sex sexual behavior to subjectivities, identities and communities. In some cases, especially in the Dutch Republic and to a lesser extent in the Southern Netherlands, they demanded that sodomites reflected on their behavior and related to each other. In this way, they could stimulate the people involved in a trial to think about themselves in new ways.

This will to knowledge all but disappeared with the coming of the new legal system. Suspects were hardly pressed to confess their crime and magistrates and police officers did not enquire into their backgrounds, networks or inclinations. In the new legal ideology, same-sex sexual behavior lost its urgency and became associated with prostitution and disorderly behavior rather than with the coming of the apocalypse. Judges were no longer required to treat cases of same-sex sexual behavior with so much diligence. If some police officers, prosecutors or magistrates still wanted to enquire further, their ardor was quickly smothered in the everyday practice of policing and justice. As a result, magistrates and the police no longer stimulated the formation of extensive same-sex sexual discourse; they required no reflection and articulation of sexual identities or communities. In this light, it is not surprising that more historians have studied the eighteenth-century homosexual subcultures and identities than the early-nineteenth-century ones, as much less information on the latter can be found in the legal and police archives.

The legal developments in the late eighteenth and early nineteenth century allow us to more or less reverse Foucault's famous dictum: at least to some extent, the sodomite in the legal and police discourses of the late eighteenth century had been a person with a past, with a specific morphology and characteristics, with inclinations and motivations, with an inner self. For the police and the courts in the early nineteenth century, public indecency "was a category of forbidden acts: their perpetrator was nothing more than the juridical subject of them."[99] The evanescent will to knowledge negates the myth that "the homosexual" as a

person was discovered or constructed at some point in time and has only become a more important organizing sexual principle ever since.

This is not to suggest, of course, that the historiography of same-sex sexuality should establish a new caesura around 1800. What I do aim to show, however, is the uneven development of sexual discourses, even within one set of institutions. There are no clear "older" and "newer" discourses, there is no gradual movement towards the late-nineteenth-century homosexual. Same-sex sexual discourses changed in nonlinear ways and in this way allowed for a certain fluidity. The evanescent will to knowledge did therefore not form a sharp break in the lives of most people. Despite the focus on sexual acts in legal discourse and the lack of incentives for pederasts to self-reflect in the nineteenth-century criminal justice systems, different sexual discourses, some focusing on sexual identities and inclinations, continued to occur in other areas. Still, the decreased interest of the courts in sexual identities and inclinations was significant, as it signaled a decreasing visibility of discourses surrounding same-sex sexuality. It is for this reason that renewed interest of the police, the courts and psychiatrists in the late nineteenth and twentieth centuries has seemed so novel. At that time, their impact would prove even more profound than before.[100]

Endnotes

[1] Michel Foucault, *The History of Sexuality. Volume I: An Introduction* (New York, 1978), 43.

[2] This interpretation has been challenged, e.g. in David M. Halperin, *How to Do the History of Homosexuality* (Chicago, 2002), 27–31.

[3] Randolph Trumbach, "The Birth of the Queen: Sodomy and the Emergence of Gender Equality in Modern Culture, 1660-1750," in *Hidden from History: Reclaiming the Gay and Lesbian Past*, ed. Martin Duberman, Martha Vicinus, and George Chauncey (New York, 1989), 129–40. For a recent formulation of his argument, see Randolph Trumbach, "The Transformation of Sodomy from the Renaissance to the Modern World and Its General Sexual Consequences," *Signs* 37 (2012): 832–48.

[4] Michel Rey, "Parisian Homosexuals Create a Lifestyle, 1700-1750: The Police Archives," in *Unauthorized Sexual Behavior during the Enlightenment*, ed. Robert Perks MacCubbin (Williamsburg, 1985), 179–91; Theo van der Meer, "Premodern Origins of Modern Homophobia and Masculinity," *Sexuality Research and Social Policy* 1, no. 2 (2004): 77–90; Theo van der Meer, "Sodomy and Its Discontents: Discourse, Desire, and the Rise of a Same-Sex Proto-Something in the Early Modern Dutch Republic," *Historical Reflections / Réflexions Historiques* 33 (2007): 41–67; Jeffrey Merrick, "Patterns and Concepts in the Sodomitical Subculture of Eighteenth-Century Paris," *Journal of Social History* 50 (2016): 273–306.

[5] The literature is abundant, but see e.g. George Chauncey, *Gay New York. Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York, 1994); Harry Oosterhuis, *Stepchildren of Nature: Krafft-Ebing, Psychiatry, and the Making of Sexual Identity* (Chicago, 2000); Régis Revenin, *Homosexualité et prostitution masculines à Paris: 1870-1918* (Paris, 2005); Wannes Dupont, "Modernités et homosexualités belges," *Cahiers d'histoire*, no. 119 (2012): 19–34; Robert Beachy, *Gay Berlin: Birthplace of a Modern Identity* (New York, 2014).

[6] E.g. Ulinka Rublack, "Interior States and Sexuality in Early Modern Germany," in *After the History of Sexuality: German Genealogies with and beyond Foucault*, ed. Scott Spector, Helmut Puff, and Dagmar Herzog (New York, 2012), 43–62; John D'Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940-1970* (Chicago, 1983).

[7] Eve Kosofsky Sedgwick, *Epistemology of the Closet* (Berkeley, 1990).

[8] See the debate on queer "unhistoricism": Valerie Traub, "The New Unhistoricism in Queer Studies," *PMLA* 128, no. 1 (2013): 21–39. On the tensions between queer theory and history, see also Laura L. Doan, *Disturbing Practices: History, Sexuality, and Women's Experience of Modern War* (Chicago, 2013).

[9] See e.g. Matt Houlbrook, *Queer London: Perils and Pleasures in the Sexual Metropolis, 1918-1957* (Chicago, 2005); Brian Lewis, ed., *British Queer History: New Approaches and Perspectives* (Manchester: Manchester University Press, 2013). They often refer to David Halperin's work as a theoretical guideline: Halperin, *How to Do the History of Homosexuality*. See also Andrew E. Clark-Huckstep, "The History of Sexuality and Historical Methodology," *Cultural History* 5, no. 2 (2016): 179–99; Umberto Grassi, "Acts or Identities? Rethinking Foucault on Homosexuality," *Cultural History* 5, no. 2 (2016): 200–221.

[10] Andrew J. Counter, *The Amorous Restoration: Love, Sex, and Politics in Early Nineteenth-Century France* (Oxford, 2016), 6.

[11] Judith Butler, *Giving an Account of Oneself* (New York, 2005), 49.

[12] Arlette Farge, *Le goût de l'archive* (Paris, 1989), 13.

[13] Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York, 1995), 29–30; Michel Foucault, *Mal faire, dire vrai: fonction de l'aveu en justice*, ed. Fabienne Brion and Bernard E. Harcourt (Louvain-la-Neuve, 2012), 12–13; Judith Butler, "Critically Queer," *GLQ: A Journal of Lesbian and Gay Studies* 1 (1993): 17–18; Butler, *Giving an Account*, 15.

[14] Foucault, *The History of Sexuality*, 11–12; Clark-Huckstep, "The History of Sexuality," 188.

[15] A recent overview aimed at a general audience summarizes the state of research: Wannes Dupont, Elwin Hofman, and Jonas Roelens, eds., *Verzwegen verlangen. Een geschiedenis van homoseksualiteit in België* (Antwerp, 2017).

[16] My analysis of France and the Netherlands is necessarily indebted to earlier work on these countries, particularly by Theo van der Meer concerning the Netherlands and by Michel Rey, Jeffrey Merrick, Michael Sibalis and Thierry Pastorello concerning France.

[17] Jos Monballyu, *Six Centuries of Criminal Law: History of Criminal Law in the Southern Netherlands and Belgium (1400-2000)* (Leiden, 2014), 18–19.

[18] Jonathan Goldberg, *Sodometries: Renaissance Texts, Modern Sexualities* (Stanford, 1992); Mark D. Jordan, *The Invention of Sodomy in Christian Theology* (Chicago, 1997); Harry Cocks, *Visions of Sodom: Religion, Homoerotic Desire, and the End of the World in England, c. 1550-1850* (Chicago, 2017).

[19] See e.g. Filips Wielant, *Corte instructie in materie criminele*, ed. Jos Monballyu (Brussels, 1995), 91; Daniel Jousse, *Traité de la justice criminelle de France* (Paris, 1771), pt. IV, 118; Pierre-François Muyart de Vouglans, *Les loix criminelles de France dans leur ordre naturel* (Paris, 1780), 243. These views were echoed by the Antwerp mayor in a 1781 request to the central government: National Archives of Belgium (NAB), *Privy Council Austrian Period – Cartons (PCAP-C)*, 576/B, Letter of Jean Dewael to the government, s.d. [1781].

[20] Maurice Lever, *Les bûchers de Sodome. Histoire des "infâmes"* (Paris, 1985), 383–84; Jeffrey Merrick, "'Brutal Passion' and 'Depraved Taste'. The Case of Jacques-François Pascal," *Journal of Homosexuality* 41, no. 3–4 (2002): 85–103.

[21] Jonas Roelens, "Mayken en Magdaleene," in *Verzwegen verlangen. Een geschiedenis van homoseksualiteit in België*, ed. Wannes Dupont, Elwin Hofman, and Jonas Roelens (Antwerp, 2017), 71–72.

[22] Count based on Theo van der Meer, *Sodoms zaad in Nederland: het ontstaan van homoseksualiteit in de vroegmoderne tijd* (Nijmegen, 1995), 147–48, 474–80.

[23] Cited in Van der Meer, "Premodern Origins," 48.

[24] Count based on Van der Meer, *Sodoms zaad*, 474–80.

[25] Van der Meer, *Sodoms zaad*, 126–33.

[26] Michel Rey, "Police and Sodomy in Eighteenth-Century Paris: From Sin to Disorder," in *The Pursuit of Sodomy: Male Homosexuality in Renaissance and Enlightenment Europe*, ed. Kent Gerard and Gert Hekma (New York, 1989), 130–33.

[27] Jeffrey Merrick, "Commissioner Foucault, Inspector Noël, and the 'Pederasts' of Paris, 1780-3," *Journal of Social History*, 32 (1998), 287–307; Merrick, "Brutal Passion and Depraved Taste," 85. Research on the French provinces is lacking, but it seems that there were few sodomy prosecutions in the eighteenth century, resulting in a situation similar to that in the Southern Netherlands: Michael Sibalis, "Homosexuality in Early Modern France," in *Queer Masculinities, 1550-1800: Siting Same-Sex Desire in the Early Modern World*, ed. Katherine O'Donnell and Michael O'Rourke (Basingstoke, 2006), 212–13.

[28] Monballyu, *Six Centuries*, 414–15. As an indicator of the insufficiencies of the Brussels police, see the discussion in Catherine Denys, *La police de Bruxelles entre réformes et révolutions (1748-1814): police urbaine et modernité* (Turnhout, 2013), chap. 1.

[29] The Antwerp mayor wrote as much in a letter to the Privy Council in 1781: NAB, *PCAP-C*, 576/B, Letter of Jean Dewael to the government, s.d. [1781].

[30] This number is based on an analysis of the archives of the urban courts of Antwerp, Bruges, Brussels, Ghent, Kortrijk, Leuven, Mechelen and Namur, and the archives of the Privy Council. It is possible that some trials were held in smaller towns, or that records have been destroyed. It is unlikely, however, as most of the cases for which records have been preserved were also reported in the archives of the Privy Council.

[31] NAB, *PCAP-C*, 576/B: Extract from the protocols of the privy council, 31/10/1785.

[32] NAB, *PCAP-C*, 576/B: Request of the magistrates of Poperinghe, 5/1792.

[33] Peter Stocker was eventually banished in Antwerp in 1781: NAB, *PCAP-C*, 576/B: Decision of the Governor, 28/4/1781. Jan Baptist Jacobs, however, was condemned to thirty years in a house of correction in Bruges in the same year: Bruges State Archives (BRSA), *TBO 119*, 716, cahier 6 II: Sentence of Jan Baptist Jacobs, 19/6/1781.

[34] Lever, *Les bûchers de Sodome*, 87–98; D.J. Noordam, *Riskante relaties. Vijf eeuwen homoseksualiteit in Nederland, 1233 - 1733* (Hilversum, 1995), 84–85; Helmut Puff, *Sodomy in Reformation Germany and Switzerland, 1400-1600* (Chicago, 2003), 33; Roelens, "Mayken en Magdaleene," 74.

[35] Vincent Milliot, *L'admirable police: tenir Paris au siècle des Lumières* (Ceyzérieu, 2016).

[36] Rey, "Parisian Homosexuals Create a Lifestyle," 179.

[37] Rey, "Police and Sodomy," 130–33; Merrick, "Commissioner Foucault," 287–88. See examples of police reports in Jeffrey Merrick, ed., *Sodomites, Pederasts, and Tribades in Eighteenth-Century France: A Documentary History* (University Park, 2019), 91–117.

[38] Merrick, "Commissioner Foucault," 302; Merrick, "Patterns and Concepts," 289. See also Rey, "Parisian Homosexuals Create a Lifestyle"; Rey, "Police and Sodomy"; Merrick, *Sodomites, Pederasts, and Tribades*, 118–20.

[39] Van der Meer, "Premodern Origins," 48–49.

[40] Van der Meer, "Premodern Origins," 85–86.

[41] Felix Archives Antwerp (FA), *Vierschaer (V)*, 112 (Henricus Masso, 1776).

[42] E.g. FA, *V*, 116 (Stephanus Janssens, 1782); BRSA, *TBO 119*, 716, cahier 6 II (Joannes Baptiste Jacobs, 1781).

[43] FA, *731*, 1514 (Peter Stocker, 1781)

[44] Sjoerd Faber, *Strafrechtspleging en criminaliteit te Amsterdam, 1680-1811. De nieuwe menslievendheid* (Arnhem, 1983), 296.

[45] Michel Foucault, *Surveiller et punir. Naissance de la prison* (Paris, 1975); Thomas Nutz, *Strafanstalt als Besserungsmaschine: Reformdiskurs und Gefängniswissenschaft, 1775-1848* (Munich, 2001).

[46] Elwin Hofman, "The Internalization of Man: Stigma, Criminal Justice and Self in the Southern Netherlands, 1750-1830" (unpublished PhD dissertation, KU Leuven, 2017), 380–83.

[47] FA, *731*, 1514/2.

[48] FA, *731*, 1514/1: Declaration of Sophia Margerita Janssens, 26/2/1767.

[49] Cf. Van der Meer, "Premodern Origins," 81–85.

[50] Cited in Jacques Lambert, "Jean-Noël Paquot de Florennes, philosophe inconnu de ses concitoyens, sa vie, son procès, sa bibliographie," *Florinas* 3, no. 1 (1958): 16–20.

[51] FA, *731*, 1514/2: Accusation and conclusion, 5/4/1781.

[52] FA, *731*, 1514/2.

[53] FA, *V*, 112: Interrogation of Henricus Masso, 4/1/1776.

[54] Cesare Beccaria, *An Essay on Crimes and Punishments* (London, 1767).

[55] Bryant T. Ragan, "The Enlightenment Confronts Homosexuality," in *Homosexuality in Modern France*, ed. Jeffrey Merrick and Bryant T. Ragan (Oxford, 1996), 8–29; Michael Sibalis, "Male homosexuality in the Age of Enlightenment and Revolution, 1680-1850," in *Gay life and culture: a world history*, ed. Robert Aldrich (London, 2006), 114–16.

[56] Jeffrey Merrick, "Sodomy, Suicide, and the Limits of Legal Reform in Eighteenth-Century France," *Studies in Eighteenth-Century Culture* 46 (2017): 188.

[57] Lynn Hunt, *Inventing Human Rights: A History* (New York, 2007), 136–37; Emmanuel Berger, *La justice pénale sous la Révolution: les enjeux d'un modèle judiciaire libéral* (Rennes, 2008), 19; Frédéric Chauvaud, *Le juge, le tribun et le comptable: histoire de l'organisation judiciaire entre les pouvoirs, les savoirs et les discours (1789-1930)* (Paris, 1995), 20–23.

[58] Michael David Sibalis, "The Regulation of Male Homosexuality in Revolutionary and Napoleonic France, 1789-1815," in *Homosexuality in Modern France*, ed. Jeffrey Merrick and Bryant T. Ragan (Oxford, 1996), 82; Thierry Pastorello, *Sodome à Paris. Fin XVIIIe - milieu XIXe siècle: L'homosexualité masculine en construction* (Grâne, 2011), 196–98.

[59] *Décret relatif à l'organisation d'une police municipale et correctionnelle*, 19/7/1791 (https://criminocorpus.org/fr/ref/25/17133/, accessed April 24, 2019). See also Sibalis, "The Regulation," 82–83. On the legal history of public indecency (from the Napoleonic codes onwards), see Marcela Iacub, *Par le trou de la serrure: Une histoire de la pudeur publique, XIX-XXIe siècle* (Paris, 2008).

[60] See Sibalis, "The Regulation," 98n23.

[61] Sibalis, "The Regulation," 94; Xavier Rousseaux and Axel Tixhon, "Du 'sergent à verge' à la 'profileuse': pistes pour l'histoire des polices dans l'espace belge, du Moyen Age au 21e siècle," in *Les archives des polices en Belgique: des méconnues de la recherche?*, ed. Jonas Campion (Brussels, 2009), 19–22; Jacques-Olivier Boudon, *L'Empire des polices. Comment Napoléon faisait régner l'ordre* (Paris, 2017).

[62] Berger, *La justice pénale*, 25–26. For an extensive overview of revolutionary criminal procedure, see Robert Allen, *Les tribunaux criminels sous la Révolution et l'Empire 1792-1811* (Rennes, 2005).

[63] Emmanuel Berger et al., "La justice avant la Belgique: tentatives autrichiennes, influences françaises et expériences néerlandaises (1780-1830)," in *Tweehonderd jaar justitie. Historische encyclopedie van de Belgische justitie / Deux siècles de justice. Encyclopédie historique de la justice belge* (Bruges, 2015), 26–50.

[64] Van der Meer, *Sodoms zaad*, 34.

[65] NAB, *PCAP-C*, 576/B, Letter of Jean Dewael to the government, s.d. [1781].

[66] See the works referenced in note 18.

[67] Cf. Andrew Israel Ross, "Sex in the Archives: Homosexuality, Prostitution, and the Archives de La Préfecture de Police de Paris," *French Historical Studies* 40 (2017): 267–90.

[68] *Ontwerp van een wetboek op het strafregt voor het Koningrijk der Nederlanden* (Brussels, 1827), 143–44.

[69] Victor A. Savart, *Observations critiques sur le code pénal* (Brussels, 1828), 102–4.

[70] Only Condorcet had voiced a similar opinion in the eighteenth century: see Jeffrey Merrick and Bryant T. Ragan, eds., *Homosexuality in Early Modern France: A Documentary Collection* (Oxford, 2001), 160–61.

[71] Ernest Discailles, "Savart, Victor-Charles-Marie-Jules-César," *Biographie nationale de Belgique*, vol. 21, 468–74.

[72] Rey, "Parisian Homosexuals Create a Lifestyle," 188–89; Merrick, "Commissioner Foucault," 287.

[73] NAB, *PCAP-C*, 576/B, Advice of the Privy Council, 28/4/1781.

[74] Cf. Pastorello, *Sodome à Paris*, 24–25. On the Dutch case, see Van der Meer, *Sodoms zaad*, 417.

[75] Sibalis, "The Regulation," 88–93; Pastorello, *Sodome à Paris*, 215–17.

[76] Sibalis, "The Regulation," 95.

[77] Gerda Allaerts, "De criminaliteit in het Brusselse gedurende de Franse periode 1795-1811" (unpublished master's dissertation, KU Leuven, 1983), 115. See also Emmanuel Berger, *Le tribunal correctionnel de Bruxelles sous le Directoire* (Brussels, 2002), 129–34.

[78] Tom Van Tichelen, "Misdaad en straf te Antwerpen in de Franse tijd" (unpublished master's dissertation, KU Leuven, 2000).

[79] Theo van der Meer, "Private Acts, Public Space: Defining Boundaries in Nineteenth-Century Holland," in *Public Sex/Gay Space*, ed. William L. Leap (New York, 1999), 223–45.

[80] Numbers adapted from Van der Meer, *Sodoms zaad*, 480–85.

[81] Beveren State Archives (BESA), *Court of the First Instance of Antwerp (FIA)*, 442-446 and 459: Registers of cases tried by the Antwerp Correctional Court, 1814-1830. Similar registers do not exist for the courts in other major cities, making it difficult to obtain an overview of relevant cases.

[82] BESA, *FIA*, 169: Case against Lambert Gobert and Jean Holstein, 23/7/1821.

[83] The convicted pederast was Pieter Convents: FA, *450*, 3: Report against Pieter Convents, 28/3/1828; BESA, *FIA*, 176: Case against Pieter Convents, 28/7/1828. The police register is FA, *450*, 443-444.

[84] FA, *450*, 151: Report against Petrus Dehaas and Deraadt, 24/5/1825.

[85] Xavier Rousseaux, "Le personnel judiciaire en Belgique à travers les révolutions (1780-1832). Quelques hypothèses de recherches et premiers résultats," in *Het politiek personeel tijdens de overgang van het Ancien Régime naar het nieuwe regiem in België (1780-1830)*, ed. Piet Lenders (Heule, 1993), 13–40.

[86] On the slight decrease in trials in the northern part of the country, see Van der Meer, *Sodoms zaad*, 423.

[87] Pastorello, *Sodome à Paris*, 218, 226, 232–33.

[88] Sibalis, "The Regulation," 86–87; Michael Sibalis, "The Palais-Royal and the Homosexual Subculture of Nineteenth-Century Paris," *Journal of Homosexuality* 41, no. 3–4 (2002): 120–22. In the second half of the century, the Paris police would even start drafting registers of known pederasts: Jean-Claude Féray, ed., *Pédés: le premier registre infamant de la Préfecture de police de Paris au XIXe siècle* (Paris, 2012); William A. Peniston, *Pederasts and Others: Urban Culture and Sexual Identity in Nineteenth-Century Paris* (New York, 2004).

[89] Sibalis, "The Regulation," 88–92; Michael Sibalis, "'The Dissolute Taste of Vulgar Men': Same-Sex Desire in Issoudun under the First Empire," *Proceedings of the Western Society for French History* 40 (2012): 73–81.

[90] Michael Sibalis, "The Palais-Royal and the Homosexual Subculture of Nineteenth-Century Paris," *Journal of Homosexuality* 41, no. 3–4 (2002): 117–29; Michael Sibalis, "Une subculture d'efféminés? L'homosexualité masculine sous Napoléon Ier," in *Hommes et masculinités de 1789 à nos jours. Contributions à l'histoire du genre et de la sexualité en France*, ed. Régis Revenin (Paris, 2007), 75–95.

[91] Van der Meer, *Sodoms zaad*, 416–17.

[92] Van der Meer, *Sodoms zaad*, 11–13.

[93] FA, *450*, 151: Police report, 24/5/1825.

[94] FA, *731*, 1514/3: Case against Louis Braeckeniers, 1820.

[95] Ross, "Sex in the Archives," 285–86.

[96] Berger, *La justice pénale*, 13–14.

[97] Hofman, "The Internalization of Man," 380–83.

[98] BESA, *FIA*, 163: Trial against Jacques Moorjan, 18/11/1815.

[99] Foucault, *The History of Sexuality*, 43. This supposes a literal and decontextualized reading of Foucault's claim, of course, which, as many scholars have pointed out, is highly problematic: Halperin, *How to Do the History of Homosexuality*, 27–31; Clark-Huckstep, "The History of Sexuality," 186–90.

[100] Peniston, *Pederasts and Others*; Revenin, *Homosexualité et prostitution masculines*; Wannes Dupont, "Free-Floating Evils. A Genealogy of Homosexuality in Belgium" (unpublished PhD dissertation, University of Antwerp, 2015); Gert Hekma, *Homoseksualiteit, een medische reputatie. De uitdoktering van de homoseksueel in negentiende-eeuws Nederland* (Amsterdam, 1987).