

Categorising and Codifying Male
Sexual Deviance: A Comparative Study
of England and Spain (1885-1928)

OXFORD BROOKES UNIVERSITY

MA HISTORY

ESSAY INDEPENDENT STUDY

MODULE

ABSTRACT

This paper will analyse the likeliness of being punished due to an accusation of male sexual deviance in Spain or England. In this vein, the paper includes primary sources involving doctors' role in these procedures. Regarding the legal treatment of sexual deviants, this paper will compare the data offered by the press respecting two case studies from each country. As a conclusion, British law proved to be more restrictive than the Spanish. Therefore, British male sexual deviants had fewer possibilities to avoid being judged and punished than the Spanish.

Keywords: male sexual deviance, homosexual, legal, judge, medical.

INTRODUCTION

England and Spain are countries with a different tradition in fields such as medicine or law. However, this does not mean that the prosecution of male sexual deviants was different. In this vein, the aim of this essay will be to compare the factors which could lead a male sexual to be accused, tried, convicted, sentenced and sent to prison in England and Spain. The period of study selected for this inquiry will be 1885 (passing of the Criminal Law Amendment Act in England) and 1928 (passing of the New Legal Code in Spain). To answer this question, the essay's first section will discuss the "categorizing" of male sexual deviance. The paper will analyse to what extent medical specialists played a role in creating categories which affected the conviction or judging of male sexual deviants concerning their studies in those countries. Next, the essay's second section will focus on discussing the resources that male sexual deviants could have used to avoid being convicted, as well as on the possibilities of the interpretation of judges (about the wording of laws). The reason for selecting this approach in this period is to know the differences and similarities between being a sexual deviant in those countries and to contribute more to the studies on the repression of male homosexuality/sexual deviance.

Involving the context, the authors Daniel Pick (1989), Susan Ashley (2019), Rafael Huertas and José Martínez Pérez (1993) gave the context for the study of the so-called 'degeneration theory'. This field of study, according to Harry Oosterhius (2012), the book *Histoire de la Sexualité: La volonté de Savoir* (1976) written by Michel Foucault, has been singled out as particularly important by the historiography (Oosterhius, 2012, pp. 138-141). This book analyses the influence of the medical profession, which, apart

from constructing categories, also tried to control the pleasures of the body. Oosterhius' article is useful to understand the way in which medical professionals designed categories for male sexual deviants in England and Spain. The book *Epistemology of the Closet* (1990), written by Eve Kosofsky Sedgwick, whose more important contributions (in the words of Julie Rivkin and Michael Ryan) had to do with her understanding of terms such as knowledge and secrecy. She managed to provide historians with the notion that all the sexual categories which started to be created at the end of the nineteenth century had to coexist with other ways to conceive sexual deviancy due to the process of specification of individuals (such as homosexuals) (Sedgwick, 2004, pp. 912-913). Foucault and Sedgwick shaped the approaches of historians in both countries, although the studies of medical and legal repression of homosexuality tend to be made on a national level. For example, Francisco Vázquez García and Richard Cleminson (2008) are two salient historians in the area of studies of Spanish homosexuality between the nineteenth and twentieth centuries. They have researched the process of medicalisation of homosexuality in Spain quite thoroughly. These authors and Alberto Mira have mentioned the interaction between law and medical theories in this country. Mira acknowledges the relevance of Foucault and Sedgwick in his works. However, Mira is more interested in the twentieth century (Mira, 2007). In what concerns this historiography in England, several names should be mentioned. Harry Cocks (2003, 2007) is a remarkable historian of the impact of legal procedures and manoeuvres of the law during the nineteenth century. He also acknowledges both Foucault and Sedgwick as influential authors. Ivan Crozier (2007, 2005, 2001) and Janet Weston's (2020) works cover the development of medical theories in this country well. Therefore, this is the literature that a historian needs

before start researching about the situation of male sexual deviants in Spain and England.

The structure that this essay will follow to answer the question will be context, discussion about the categorising and analysis of the codifying. Firstly, a context surrounding the impact of the degeneration theory and the interactions between legal and medical discourses will be provided. Secondly, the already mentioned discussion of the categorising in both countries will consider the influence of German research, the development of endocrinology and the reaction of medical specialists to the law in relation to sexual deviance. Thirdly, the codifying of the law will deal with the importance of social networking, the relevance (or not) of being aware of precedents in legal proceedings and the 'steadfastness' of the law for both countries (the idea of the 'steadfastness' is an original contribution from the author).

CONTEXT

Spain and England are different states in which medical (distinctly, psychiatric) and legal discourses did not always go in the same direction because the influence of the degeneration theory marked the second half of the nineteenth century.

The so-called degeneration theory was a theoretical framework identified by historians in several countries during the second half of the nineteenth century. Pick describes this theory as an ideological product, according to which scholars perceived poverty, low birth rates (in France), ‘complete idiocy,’ sexual deviance, and so on, as permanent and severe menaces to civilisation (Pick, 1989, pp. 37-56). For Spain, Huertas and Martínez Pérez argue that the degeneration theory formulated by the French doctor Benedict-Augustin Morel (1809-1873) related physical signs with mental illnesses (Huertas & Martínez Pérez, 1993, pp. 460-462). This allowed doctors a degree of interference within certain situations that usually fell in the realm of judges, such as sexual deviance. For England, Pick states that the notion of ‘society as an organism’ (basically, social Darwinism), which started to be successful between the 1870s-1880s, was the equivalent of the degeneration theory (Pick, 1989, pp. 176-221). For instance, “degeneration” for England meant “individuals worsening the society (and particularly, the race), and not the other way round. Regarding the relationship between ‘abnormal sexuality’ and degenerationist ideas, Susan Ashley has the answer. She illustrates that the predominant explanation for countries such as Italy and France turned out to be a combination of the impact of social conditions in people’s lives with the attempt of multiple disciplines (criminology, neurology, sexology and so on) to substitute the control of the Catholic Church on sexual matters. Eventually, due to Anglo-Saxon influence, heredity would play a major role in those countries. However, this

explanation started to appear in Latin countries such as France or Spain by the end of the nineteenth century, when degeneration theory started to fade. Despite this influence, Pick explains that combining environmental factors with heredity produced several works with contradictory conclusions (Ashley, 2017, pp. 171-194; Pick, 1989, pp. 48-101). The main difference would be that sexual deviance was partly shaped in Spain by social conditions and not only by the individual (society as a “threat” to individuals). To summarise, the degeneration theory was a set of ideas that allowed medical professionals to intervene more in some aspects of the social order, like male same-sex relationships. Spain fitted perfectly with this ‘doctrine,’ whereas England was, since the beginning, mainly influenced by the notion of inherited traits.

As a further basis for the core analysis, it is essential to consider the changes the practice of law and medicine underwent. In the case of England, Crozier shows that the medicalisation of the law in the nineteenth century had to deal with the conception of ‘unnatural practices.’ This was an obstacle that had already been there for a while (Crozier, 2001, pp. 61-64). In reality, changes in the law regarding sexual deviance in nineteenth-century England were not severe. Referring to Cocks, homosexual offences could be prosecuted under a proceeding that preceded Labouchere’s Amendment Act for three centuries. The statute that allowed this dates back to Henry VIII’s reign. In theory, the ‘problem’ of prosecuting sexual deviance before that act was drawing boundaries. This means authorities were not expected to interfere in homosexual offences in the private sphere (such as rooms or similar).¹ Even though lawmakers abolished the death penalty in 1861 (in disuse since 1835), how to deal with ‘private

¹ According to Cocks, before Labouchere’s amendment, the police tolerated illegal gatherings because they thought the law could not sanction the culprits. Therefore, the police focused more on public spaces (Cocks, 2003, pp. 69-73).

homosexual offences' remained unclear (Cocks, 2007, pp. 109-120). Cocks also states that the mentioned 'Labouchere's Amendment' (the Criminal Law Amendment Act of 1885) did not suppose a significant impact on the sanctioning of sexual deviance. Hence, Labouchere's Amendment was not a radical breach of the past but part of a procedure that had started earlier to criminalise homosexual acts done in public areas (presumably, in the eighteenth century) (Cocks, 2003, pp. 69-73). Though it was not a radical break, several professionals from the field of sexology, such as Havelock Ellis (1859-1939) or John Addington Symonds (1840-1893), asked for the decriminalisation of homosexuality in the private sphere (Crozier, 2005, pp. 133-135; Oostherius, 2000, pp. 56-72). All those developments demonstrate how sanitary and legal narratives of individual responsibility applied to sexual deviance were at odds. As Weston explains, the existence of a judicial definition of responsibility avoided the interference of advances in medicine up to the 1950s. In the case of the so-called 'unnatural offences,' English specialists deemed them a problem of other nations (Weston, 2020, pp. 34-42). Regarding the issue of responsibility, Phil Handler (2013) explains for cases of intoxication, that historians incorporated for these cases a prototype of criminal responsibility based on the defendant's subjective state of mind (Handler, 2013, p. 3). The idea of 'unnatural offences' as a problem of other nations would relegate psychoanalysis and sexology (the two disciplines focused on them) as foreign and potentially bad for England. This perception was shared with Spain. Cleminson states that the developments of medical theories and concepts concerning male sexual deviance happened in Spain later than in other European countries. Those practices were seen as 'foreign' and unworthy of scientific attention (Cleminson and Vázquez García, 2008, p. 39). Plus, between 1830 and 1928, Cleminson argues that there was almost no divergence between medical and legal attitudes toward homosexuality.

Meanwhile, in England, several medical professionals such as Ellis or Symonds advocated for a certain relaxation of the penalties pertaining to homosexuality; Spanish ones did not choose a side. The Legal Code of 1822 was inspired by the Napoleonic Code of 1810, and its successive alterations (in 1848, 1850, 1860, and 1870) did not punish male same-sex deviance. Nevertheless, they also found that the notion of ‘abusos deshonestos’ (dishonest abuses) in Article 454 of the Legal Code of 1870 was a veiled reference to sodomy (Cleminson and Vázquez García, 2008, pp. 33-37). The Legal Code of 1870 was eventually substituted by the Spanish Legal Code of 1928. This happened due to an attempt by the dictatorship of Miguel Primo de Rivera (1923-1929) to control society more effectively the society. The dictatorship also regulated private behaviours such as homosexuality. At that time, the Spanish Legal Code criminalised homosexuality not as a section of an article in public morals but in one itself. (Mira, 2007, pp. 178-184; Cleminson and Vázquez García, 2008, p. 232). Concerning psychiatry and sexology in Spain, Alberto Mira supported the idea that those disciplines helped the “repression and creation” of the “homosexual.” For the first one, homosexuality would be “collateral” damage, and for the second one, “homosexuality” was linked with “pederasty” and even with “bestiality” (Mira, 2007, pp. 39-53).

Thus, these nations were not completely akin, even if they had some similarities. The degeneration theory which affected Spain was closer to the continental tradition than the English one, where social Darwinism and later Anglo-Saxon eugenics had a predominant role. For instance, Spanish professionals paid attention to environmental factors, whilst English professionals paid it to the responsibility of individuals. Yet English and Spanish doctors assessed atypical sexual behaviours as non-native attitudes

in their respective countries. Psychiatric, psychologists and sexologists experts played a significant role in classifying sexual deviance in both countries. However, in how to deal with sexual deviance, they were not that different. Conversely, the reaction of English and Spanish scholars to their Legal Codes was different, as will be discussed in the following section.

Categorising Homosexuality: Labelling “Abnormal” Behaviour

Creating categories related to sexual deviance was a complex process that involved the interaction of multiple disciplines. Indeed, the impact of the degeneration theory and the exchange between law and medicine were crucial. To study this exchange, two Spanish medical journals (*El Siglo Médico*, *España Médica*) will be compared with an English one (*The British Medical Journal*). The reason for making this comparison is that the three medical journals contain relevant medical voices for the period of study (such as Gregorio Marañón, followers of Professor Steinach, and others).² Ellis’ *Studies in the Psychology of Sex* will also be added to this examination. This section will analyse the influence of German authors on the inquiry into homosexuality (especially psychoanalysis). Then, the association between glands and sexual deviance (present in both countries) will be considered. Finally, the relation of these categories with the codifying of the law (which will be deliberated in the second section) will also be assessed.

Germany was at the forefront of the research on sexual deviance during the nineteenth century. By the second half, German essayists left a footprint in both territories. On the one hand, Ellis acknowledged that Karl Westphal (1800-1879) was the first to study homosexuality with a scientific approach. After Westphal, he stated that Karl Heinrich Ulrich (1825-1895) made sexual deviance more popular as a topic of study. Among other men such as Albert Moll (1862-1939), he referred to Richard von Krafft-Ebing (1840-1902) as someone who attempted to classify sexual deviance (a venture which he

² Gregorio Marañón y Posadillo (1887-1960) was a relevant Spanish doctor who stood up as an advanced endocrinologist. Professor Eugen Steinach (1861-1944) was a relevant German doctor who was a pioneer in neuroendocrinology (Ballesteros, 2010, p. 5; Södersten, Crews, Logan, & Werner Soukup, 2014, p. 688).

considered outdated) (Ellis, 1915, pp. 76-92). On the other hand, on the Spanish side, an unknown author acknowledged the relevance of Krafft-Ebing, Magnus Hirschfeld (1868-1935), and Eugen Steinach (1861-1944) in the field of homosexuality. He argued that they had made a salient contribution to endocrinology, a vital discipline to gather more data related to homosexuality. According to this author, endocrinology unfolded the true nature of homosexuality: it was not a 'perverted' psychological state or a penalty but an 'organic state' of humans (caused by testicles in men) ("Los estados de inversión sexual," 1928, pp. 230-232).

Ellis also deliberated on the impact of the psychoanalysis theory of Sigmund Freud (1856-1939). He found it an ideal method to explore many psychic conditions, such as hysteria and obsessions, but not for homosexuality. He thought Freudian doctors would revive the old conception of homosexuality as an acquired condition (Ellis, 1915, pp. 306-307). The Spanish doctor Gonzalo Rodríguez Lafora (1886-1971) similarly placed low reliance on psychoanalysis as a method to deal with 'sexual abnormality.' He disagreed with this theory because "repressed homosexuality" could not be the only "trauma" or the main one in all cases (Lafora, 1921, pp. 1201-1205). In fact, not much evidence has been found about whether Spanish and English doctors openly embraced or not psychoanalysis in relation to sexual deviance in their medical journals. The articles consulted for this essay show that English medical professionals and academics employed the theory of psychoanalysis in relation to sexual deviance. They applied it as an "unconscious trait" that men could have; to explain cases of 'acquired homosexuality,' or to justify the appearance of homosexuality in early stages of life, such as childhood ("Psychoanalysis," 1914, pp. 276-277; "The Making of a Neurotic," 1922, pp. 546-548; "The Nervous Child," 1923, pp. 1098-1099).

Nevertheless, the theory of psychoanalysis in relation to sexual deviance does not seem to have been that popular for the Spanish articles before the 1920s. Gregorio Marañón y Posadillo (1887-1960) wrote in 1925 that psychoanalysis was already very popular among intelligent young men (Marañón, 1925, pp. 577-578). This statement supports Sylvia Levi's argument, according to which Spanish psychiatrists became more interested in psychoanalysis as a whole in the 1920s but notions of psychoanalysis have been present in this country since 1893 (Lévy Lazcano, 2016, pp. 34-47). As a result, it seems that at least before the mid-1920s, psychoanalysis had a better reception in English medical journals than in Spanish ones.

Endocrinology, glands, or hormones seemed to have been an explanation for sexual deviance (both male and female) for several doctors. Marañón was a good representative of endocrinology in Spain. He asserted that men could have pituitary infantilism (infantilismo hipofisario). This diagnosis could be extracted from some symptoms, sexual inversion being one of them. Puberty would be a critical stage because it could define the sexual orientation of the male child. As an unknown author cited previously stated, puberty could be the 'organic stage' that could make a male child 'invert.' In fact, Marañón considered 'sexual inversion' as one of the consequences of inadequate functioning of the endocrine system of the male child (Marañón, 1921, pp. 230-232). The use of concepts such as 'sexual inversion' was not accidental. To quote from Havelock Ellis: "Sexual inversion, as here understood, means sexual instinct turned by inborn constitutional abnormality toward persons of the same sex (Ellis, 1915, p. 322)." Apart from Marañón's ideas, it is possible to find this notion as a 'reason for contraception' in other Spanish authors, such as Fernando Villanueva

(Villanueva, 1016, pp. 1-2). Furthermore, English doctors seem to have embraced theoretical formulations related to endocrinology and sexual inversion as an unavoidable reality that altered the patient. Those were the thoughts of Professor Steinach. English doctors also reported the conceptions of this professor in the *British Medical Journal* positively (“Vienna: Some Recent Medical Work,” 1922, pp. 988-989). The findings reported in this section suggest that the ‘sexual inversion’ hypothesis was flawed because experts searched for irrational symptoms such as the voice or the manners to make diagnoses. Nonetheless, these findings also show that it was possible to make a defence for the right to exist of sexual deviants: they had a ‘hormonal disease,’ but they were not criminals, and they should not be treated as such.

To put it in another way, the penalisation of homosexuality should be changed. Ellis regarded the Spanish Legal Code as some successor to the Napoleonic Code. Following the latter, the Spanish Legal Code would not punish ‘homosexual practices’ in private (Ellis, 1915, pp. 347-348). However, as the section on codifying will explain, this was not truly the case with the Spanish Legal Code of 1870. What is more, the position of Spanish doctors in relation to this debate was not crystal clear. They alluded to the usage of “vicious nature,” homosexuality, or the possibility of curing same-sex attraction with “endocrinal therapies,” but they did not generally discuss the legal situation (Brunon, 1928, pp. 4-7; “En lengua extranjera: Sobre la influencia que sobre la vida sexual ejercen las transplantaciones libres de testículo, por el doctor R. Müsham”, 1920, pp. 653-654). This was not the case for *The British Medical Journal*. In this medical journal, a debate took place between Leonard Williams (1861-1939) and other scholars. Williams was a physician interested in endocrinology who wanted to apply this discipline to other aspects of human life, such as nutrition (“Branch and

Division Meetings to be held,” 1925, p. 163; “Diary of Societies and Lectures”, 1925, p. 64). This paper, dealing with the relationship between sexual deviance and endocrinology, was presumably an exception. Williams advocated for the following: “regarded in the light of pure physiology, it is not more reasonable to punish a man for being homosexual than it would be to punish him for having red hair (Williams, 1922, pp. 833-835).” The reply to Williams’ thesis claimed that even though some cases of inborn homosexuality could exist, society was surely the “element” which inclined people to commit or not acts of homosexuality. The legalisation of it would only increase the number of cases (Beadnell et al., 1922, p. 973).

In short, all the ‘categorisation’ which materialised in relation to male sexual deviants helped scholars to comprehend those individuals better. The influence of German authors (and notably, Freud) implemented the progress of new therapies and insights into the phenomenon. Moreover, endocrinology was not equally incorporated: it could provide the framework to start a defence for decriminalising the offence related to male sexual deviance (England) or a better understanding of male same-sex acts (Spain). Yet, all the medical discourses previously explained did not impact the prosecuting and judging of sexual deviants considerably. In the best-case scenario, judges could ask for a medical opinion on a particular procedure, but that opinion would not necessarily decide the trial’s outcome. Additionally, the Legal Code was cast under doubt in England due to the advancements in medical science (chiefly psychology and endocrinology). As a counterpart, the Spanish scholars may not have wanted to change the law.

Codifying Homosexuality: Typifying “Clumsy” Inclinations

The categories previously presented concerning male sexual deviance were formulations that tried to grasp a reality difficult to understand without a new vocabulary or theory. However, the Legal Codes of the two states would determine the treatment deviants suffered because of their actions. To demonstrate this, two case studies have been selected for this section: “De Cobain’s Case” (England) and “Honour Court against a Forest Engineer” (Spain). The impossibility of accessing the case record causes this section to be covered using newspapers and the academic journal *Madrid Científico*. Of particular importance is to point out that Oscar Wilde’s Trial (1895) has not been selected for this essay because, to date, there is no comparable case in Spain for this period.³ The English example is related to an M.P., whilst the Spanish one concerns a civil servant (the social background still differs but is more manageable).

The two case studies had different outcomes. The Judge Mr. Johnson charged Edward Samuel Wesley De Cobain (1840-1908) with the attempt to commit and the commission of gross indecency with five persons. The legal proceedings took place in 1893, and the judge decided that De Cobain had to face 12 months of imprisonment with hard labour (*Charge against an Ex-M P: De Cobain in the Dock*, 1893, p. 4). After that, he lived a peaceful life until his death in 1908 (*Death of Mr. E.S.W. De Cobain*, 1908, p. 6). By contrast, several forest engineers assembled a legal institution called the “Honour Court” to examine one of their peers’ “clumsy” inclinations in Spain. The Honour Court did not condemn the suspect, so one of the forest engineers wrote to *Madrid Científico* telling them what happened (A Forest Engineer, 1901a, pp. 249-

³ According to Cocks, Wilde’s trial helped to develop the idea of the homosexual as a ‘type,’ outlining a concept only discussed by sexologists until that moment (Cocks, 2007, pp. 120-130).

250).⁴ The former case answered a prosecution started by Belfast's police, in which the authorities arrested De Cobain once he had returned from New York (*Arrest of Mr. De Cobain*, 1893, p. 6). In contrast, the latter did not respond to any police inquiry but rather to a personal motivation of one or some forest engineers. For the Honour Court to proceed, most of its members (10 forest engineers in this case) should have voted against the defendant, a reality that did not occur (4 of them voted against him) (*A Forest Engineer*, 1901a, pp. 249-250). To establish the comparison between the Spanish and the English legal procedures, the two case studies will be examined following this structure: the importance of creating good and strong ties with the proper people, the relevance (or not) of the awareness of precedents, and the steadfastness of the Legal Codes.

For instance, the Spanish matter could be an example of the first point. According to the forest engineer who informed the newspaper, the Honour Court did not have success in its enterprise. This unknown forest engineer leaked to the press a letter by José Secall, who was another forest engineer involved in the process. Secall had heard rumours of a possible interference of the Bishop of Teruel in favour of the suspect (*A Forest Engineer*, 1901b, pp. 287-289). By contrast, De Cobain's experience differed. Since the beginning, this MP explicitly declared that one of his rivals, an influential and more affluent man, was trying to get rid of him. This was the reason why he fled to New York (*The Warrant Against Mr. de Cobain, M.P.*, 1891, p.3). The knowledge of someone powerful was a double-edged sword: it could be profited by the accuser(s) or the defendant(s). De Cobain was affected by the influence of someone powerful, whilst the forest engineer, with or without the interference of the Bishop of Teruel, managed to get more votes in his favour (6 forest engineers endorsed his innocence).

⁴ In practice, this forest engineer wanted to attack the inefficacy of Honour Courts in Spain rather than the notion of sodomy. Despite this, he also despised sodomy.

Concerning the knowledge of previous cases, this is a more complicated issue. That knowledge could give them insights to fight against those charges. Either way, De Cobain knew of some past legal proceedings involving MPs. He cited two: James Sadleir (1815-1881) and Captain Verney (1838-1910). He pointed out that in Sadleir's litigation, there was an admission of guilt, while in Verney's, there was no denial of it (De Cobain always pleaded innocent) (*The Charge Against Mr. de Cobain: Another Letter*, 1891, p.5). Apparently, Sadleir's case was related to a bank fraud in which the accused fled away and was condemned, and Verney's had to do with the procurement of a young girl (*Mr James Sadleir*, 1856, p. 3; Murphy, 1856, p. 2; *Captain Verney's Case: The Accused in Court*, 1891, p. 7). Curiously, De Cobain chose not to consider Boulton and Park (1871) or the Cleveland Street Scandal (1889) because the charges for those cases were analogous to his.⁵ Possibly, he did not want to relate to the idea of "unnatural crimes". By contrast, the Spanish example does not mention earlier instances. In addition, Santiago Pérez Argemil, another forest engineer (presumably one who was on the side of the suspect) rebutted the one who wrote to *Madrid Científico* on a first instance explaining that, if there were a "sodomite" among civil workers, the Honour Court would have ruled about it. Anyway, he stated that a Civil Court could not have done anything about the case either because sodomy was not included in the Spanish Legal Code (Pérez Argemil, 1901, pp. 263-264). It seems there was no prominent lawsuit (or at least they did not know any) to which they could relate for this case. In fact, the unknown forest engineer in the Spanish case was the one who

⁵ The first case corresponds with a trial against two male cross-dressers. The second relates to what happened in No. 19 Cleveland Street, a place used for "purposes of the most nefarious character" (*The Boulton and Park Case*, 1871, p. 4; *The West End Scandals. Trial of Mr. Parke*, 1890, p. 8). Boulton and Park's case is well-known among historians. Charles Upchurch argues that Boulton and Park may have transgressed the limits of acceptance of 'drag' in their context. Regarding press coverage, Judith Rowbotham states that the readers shared that Boulton and Park's social background (middle-rich class) made the English judicial system partial (Upchurch, 2000, pp. 121-157; Rowbotham, 2015, pp. 123-145).

demanded the checking of precedents to prosecute the defendant (A Forest Engineer, 1901a, pp. 287-289). In brief, De Cobain knew he had precedents to call upon, even though those precedents did not work for him. On the contrary, the forest engineer under suspicion did not need to appeal to them.

The argument for the “steadfastness of the law” will be discussed in the following paragraphs. The Spanish Legal Code of 1870 did not directly refer to sexual deviance. This implies that the interpretation of facts and the sympathy towards defendants that judges and related authorities possessed was crucial to deciding the court case outcome. In spite of this, the Spanish Legal Code of 1870 could have encompassed male same-sex relationships according to article 454:

El que abusara deshonestamente de persona de uno ú otro sexo, concurriendo cualquiera de las circunstancias expresadas en el artículo anterior, será castigado según la gravedad del hecho con la pena de prisión correccional en sus grados medio y máximo.

(Who commits dishonest abuse against someone of one or another sex, in relation to the circumstances of the previous article, will be punished depending on the gravity of the fact and with a penalty of correctional prison in his medium and maximum degrees) (Ley provisional autorizando el planteamiento del Código penal reformado adjunto de 17 de junio de 1870, 1870, p. 19).

That “previous article” stated a punishment for the rape of women in certain circumstances, which are the following: with the use of strength or intimidation, when the woman was not in her senses for whatever reason or when she was less than 12 years old (she did not need to meet the other circumstances for the last case) (*Ley provisional autorizando el planteamiento del Código penal reformado adjunto de 17 de junio de 1870, 1870, p. 19*). Consequently, the forest engineer who wrote to the academic journal fiercely replied to Pérez Argemil claiming that:

[...] pero aparte de esta aclaración, seguramente que en la Audiencia y Juzgados han de existir varios procesos incoados por sodomía penados allí bajo el concepto de la palabra misma, ó quizás con la denominación de escándalos, abusos deshonestos ó inmoralidad. [...] besides this clarification, surely in the Hearing and Courts should exist various cases

under the notion of the word sodomy, or maybe under the terms of scandals, dishonest abuses or immorality”). (A Forest Engineer, 1901b, pp. 287-88).

In this respect, the word sodomy may not have been common for Spanish legal proceedings. Indeed, the word ‘sodomy’ was more utilised to refer to sexual deviance in general or outside of Spain. Due to this reason, De Cobain committed “sodomy” in the word of Spanish newspapers. *El Correo Militar* and *El Imparcial* told the same news in relation to De Cobain’s case: “Edward de Cobain [...], ha sido acusado de sodomía y se ha embarcado con rumbo a España, antes de que la policía pudiera detenerle” (Edward de Cobain [...], was accused of sodomy and then he fled towards Spain, anticipating the detention of the police) (“Escándalos ingleses,” 1891, p. 2; “Nuevos Escándalos en Londres,” 1891, p. 3). Despite the idea that ‘he had fled to Spain,’ the findings presented in this essay show that he spent most of his years of exile in New York and never declared that he had been in Spain. (“De Cobain a Revivalist: The Irish Leper Calling Brooklyn Sinners to Repentance,” 1892, p. 2; “Arrest of Mr. De Cobain,” 1893, p. 6).

In contrast with this claim, the forest engineer asserted that sexual deviance could have been prosecuted under another label, such as ‘dishonest abuses.’ It is possible to propose a hypothesis out of this affirmation. For Spain, it was clear how to judge “paedophilia” or abuses between people whose age gap was considerable (disregarding gender). Yet, “De Cobain’s Case” and the “Honour Court against a forest engineer” were cases of sodomy for Spaniards. As a result, it is feasible that they could have assessed ‘paedophilia cases’ appropriately, but their Legal Code could have been vague for same-sex interactions among adults. For example, in the newspaper *El País*, the term ‘dishonest abuse’ refers to a priest having sexual interactions with male children. In addition, a fake priest was caught committing ‘dishonest abuse’ as well, but with

‘young women’ (children). There is even a case in the newspaper *La Dinastía* of a 15-year-old boy engaging in ‘dishonest abuses’ with a 6-year-old male child (“Desde Barcelona: Hábitos clericales,” 1901, p. 1; “Desde Valencia: A Dios rogando y... La denuncia,” 1901, p. 1; “Tribunales: Abusos deshonestos,” 1901, p. 2).⁶ The common motive in those cases is paedophilia.

Be that as it may, the Criminal Law Amendment Act of 1885 differed from the Spanish Legal Code of 1870. Quoting Article 11 of that Act:

Any male person who, in public or private commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and be convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour (An Act to make further provision for the Protection of Women and Girls, the suppression of brothels, and other purposes, 48 & 49 Vict c.69 s.11).

The Act was clear. Relationships between two adult men in the English scenario had all the mechanisms to be judged. The judge’s sympathy towards the defendant and social networking could still play in favour of the accused, but it was more difficult. In other words, there was no room to negotiate the terms or to expect a less strict “interpretation of the law from the judge” in De Cobain’s case.

In brief, the codification of male sexual deviance differed in both countries, but intolerance towards same-sex relationships was also present in both traditions. Knowing someone powerful could help a defendant avoid being convicted, although this could have worked the other way round (as it seems to have happened with De Cobain). Additionally, precedents proved useless in both scenarios, albeit for different reasons: in Spain, there was no knowledge of previous prominent lawsuits, while in

⁶ Many examples are available in the National Archives of Spain.

England, even with that knowledge, De Cobain could not avoid being condemned with hard labour. The “steadfastness of the law” was also a definitive element. The Criminal Law Amendment Act of 1885 did not allow for many different readings, but Article 454 of the Spanish Legal Code permitted diverse interpretations. However, this does not mean that Spaniards were more “indulgent” than the English: the “Honour Court against a Forest Engineer” case was possibly one exception in the common trend. Hence, male sexual deviance in Spain was prosecuted under the banner of ‘dishonest abuses.’ The word sodomy was still in use but was not considered a legal term. The Honour Court case presented here is illustrative in the understanding of male sexual deviance by Spaniards but exceptional in terminology (especially for 1901).

CONCLUSION

Male sexual deviants' experiences between 1885 and 1928 in England or Spain would not be desirable for anyone, but having written this, the reality would not have been the same in both countries. In the first place, the 'categorisation' of male sexual deviance was quite different. This difference was reflected in the varied impact of German authors, particularly psychoanalysis, which seems to have been greater in England than in Spain before the 1920s. However, it was not wholly embraced there either. The same cannot be said about endocrinology, which appears to have been more developed in Spanish medical discourses but was also present in England. Still, endocrinology in the latter country could be attached to the fight for the decriminalisation of homosexual offences, a struggle that did not occur in the former one.

In the second place, the 'codifying' of the law proved surprisingly similar. Knowing someone powerful was a double-edged sword: it could be used against or in favour of the defendant, but it was not guaranteed that the accused could avoid being condemned. Moreover, as the section of codifying explains, looking for precedents to make a defence or an attack was also generally useless. The critical differentiator seemed to be in the interpretation of the law. The Spanish Legal Code of 1870 could have been less 'steadfast' than the English statute of 1885, and that could have been the main reason why the "Honour Court against a Forest Engineer" did not end with him being convicted or arrested.⁷ Additionally, Spanish legislation tended to punish sexual relations related to paedophilia independently of the sex. What is not clear is how Spanish judges were dealing with male same-sex relationships between consenting or

⁷ More records should be researched to know what happened in this legal proceeding. Due to this reason, I encourage historians to visit the Historical Province Archive of Teruel (Spain). This is the place that is more likely to have the sentence of the Honour Court.

non-consenting adults. Presumably, judges would use the term 'dishonest abuses' to confront that charge.

Furthermore, the English example was probably an unfair trial: the defendant does not appear to have been homosexual, and his family continues to claim that the judge found him guilty in error. It could be possible for other historians to find all the 'missing documents' related to this case to infer what happened to this MP (Was Orangeman Edward De Cobain jailed for a crime he didn't commit?, 2011). Anyway, once one accusation of homosexuality started to be prosecuted under the English system, the interpretation of the law was definitively not a resource that suspects could use in their favour (for this period). Lastly, the 'codifying' of the law was different in form but similar in goals: punishing male sexual deviance. The categorisation of male sexual deviance served to understand male same-sex relationships, but the intention to only 'understand' or to better know how to punish/legislate over them did not affect their possibilities of avoiding prison or being taken to trial. Nevertheless, codifying male sexual deviance effectively imprisoned, penalised, and prosecuted those offences.

BIBLIOGRAPHY

Primary Sources

Monographs

Havelock, E. (1915). *Studies in the Psychology of Sex. Vol. 2: Sexual Inversion*, 3rd ed., Philadelphia: F. A. Davis.

Newspapers and journal articles

British Newspaper Archive

(<https://www.britishnewspaperarchive.co.uk>)

"Arrest of Mr. De Cobain." (1893, February 20). *The Yorkshire Herald*.

"Captain Verney's Case: The Accused in Court." (1891, April 25). *The Bristol Mercury*.

"Charge Against an Ex-M.P: De Cobain in the Dock." (1893, March 22). *The South Wales Argus*.

"Death of Mr. E.S.W. De Cobain." (1908, September 24). *The Daily Express*.

"Mr. James Sadleir." (1856, July 29). *The British Banner*.

Murphy, J. J. "The Tipperary Bank: The Tipperary Joint Stock-Bank." (1856, August 7). *The Morning Herald*.

"The Boulton and Park Case." (1871, May 19). *The Potteries Examiner*.

"The Charge Against Mr. de Cobain: Another Letter." (1891, June 17). *Globe*.

"The Warrant Against Mr. de Cobain, M.P." (1891, April 14). *The Evening Telegraph*.

"The West End Scandals. Trial of Mr. Parke." (1890, January 16). *The Bristol Mercury*.

Internet Archive

[\(https://archive.org/\)](https://archive.org/)

Beadnell, Marsh C., R. Douglas Howat, L.R.C.P. and S. Edin. (1922).

"Correspondence: The Interstitial Gland and Sex Problems." *The British Medical Journal*, 2 (3207), pp. 939-982.

"Branch and Division Meetings to be held." (1925). *The British Medical Journal*, (1115), pp. 181-188.

"Diary of Societies and Lectures." (1925). *The British Medical Journal*, (1077), pp. 61-64.

Hadfield, J. A. (1922). "The Making of a Neurotic." *The British Medical Journal* 2, 3221, pp. 537-582.

"Psychoanalysis." (1914). *The British Medical Journal* 1, pp. 1-1440.

"The Nervous Child." (1923). *The British Medical Journal*, (3283), pp. 1071-1126.

"Vienna: Some Recent Medical Work." (1922). *The British Medical Journal*, 2(3229), pp. 953-1004.

Williams, Leonard. "The Interstitial Gland." (1922). *The British Medical Journal*, 1 (3204), pp. 825-862.

Primary sources obtained from other archives

An Act to make further provision for the Protection of Women and Girls, the suppression of brothels, and other purposes. 48 & 49 Vict c.69 s.11.

"De Cobain a Revivalist: The Irish Leper Calling Brooklyn Sinners to Repentance." (1892, August 10). *The Seattle Post-Intelligencer*.

"Ley provisional autorizando el planteamiento del Código penal reformado adjunto de 17 de junio de 1870." (1870). *Gaceta de Madrid*, (243), pp. 9-23.

Spanish Digital Newspapers Library of the National Archives

(<https://hemerotecadigital.bne.es/hd/es/advanced>)

A Forest Engineer. (1901). "Tribunales de Honor." *Madrid Científico*, (349), pp. 257-258.

A Forest Engineer. (1901). "Tribunales de Honor." *Madrid Científico*, (352), pp. 282-292.

Brunon, R. "La psicopatología del genio: Marcel Proust." (1928). *España Médica*, (537), pp. 1-32.

"Desde Barcelona: Hábitos clericales." (1901, August 10). *El País*.

"Desde Valencia: A Dios rogando y... La denuncia." (1901, June 23). *El País*.

"Escándalos ingleses." (1891, April 14). *El Correo Militar*.

Marañón, G. "Infantilismo hipofisario." (1921). *España Médica*, (369), pp. 1-16.

"Nuevos Escándalos en Londres." (1891, April 14). *El Imparcial*.

Pérez Argemil, S. (1901). "Tribunales de Honor: A "Un Ingeniero de Montes", autor del artículo "Tribunales de Honor" inserto en el número 349 de MADRID CIENTÍFICO." *Madrid Científico*, (350), pp. 257-268.

"Tribunales: Abusos deshonestos." (1901, March 3). *La Dinastía*.

Villanueva, F. (1916). "Anticoncepción como problema médico y social." *España Médica*, (196), pp. 1-16.

"En lengua extranjera: Sobre la influencia que sobre la vida sexual ejercen las transplantaciones libres de testículo, por el doctor R. Müsham." (1920). *El Siglo Médico* 67 (3481), pp. 645-664.

"Los estados de inversión sexual." (1928). *El Siglo Médico* 81 (3872), pp. 193-236.

Marañón, G. "La Vida Sexual en España: Bloch, Forel, Ellis." (1925). *El Siglo Médico* 75, (3718), pp. 561-588.

Rodríguez Lafora, G. (1921). "Consideraciones sobre el mecanismo genético de las psicosis paranoides." *El Siglo Médico* 68 (3548), pp. 1197-1224.

Secondary Sources

Monographs

Ashley, S. (2017). *"Misfits" in Fin de Siècle France and Italy: anatomies of difference*. London and New York: Bloomsbury Academic.

Cleminson, R. & Francisco Vázquez, G. (2008). *'Los invisibles:' A History of Male Homosexuality in Spain, 1850-1939*. Cardiff: University of Wales Press.

Cocks, H. (2003). *Nameless Offences: Homosexual Desire in the Nineteenth Century*. London: I.B. Tauris.

Cocks, H. (2007). "Secrets, Crimes and Diseases, 1800-1914." In M. Cook (Ed.), *A Gay History of Britain: Love and Sex Between Men Since the Middle Ages*, (pp. 107-145). Greenwood World Publishing.

- Crozier, I. (2005). "Striking at Sodom and Gomorrah: The Medicalization of Male Homosexuality and Its Relation to the Law." In J. Rowbotham and K. Stevenson (Eds.), *Criminal Conversations: Victorian Crimes, Social Panic, and Moral Outrage*, (pp. 126-139). The Ohio State University Press.
- Kosofsky Sedgwick, E. (2004). "Epistemology of the Closet." In J. Rivkin & M. Ryan (Eds.), *Literary Theory: An Anthology*, (pp. 912-21). 2nd ed. Blackwell Publishing.
- Mira, A. *De Sodoma a Chueca: Una historia cultural de la homosexualidad en España en el siglo XX*. Barcelona: Egales, 2007.
- Oostherius, H. (2000). *Stepchildren of Nature: Krafft-Ebing, Psychiatry, and the Making of Sexual Identity*. Chicago: University of Chicago Press.
- Pick, D. (1989). *Faces of Degeneration: A European Disorder, 1848-1918*. Cambridge: Cambridge University Press.
- Weston, J. (2020). *Medicine, the Penal System and Sexual Crimes in England, 1919-1960s: Diagnosing Deviance*. London: Bloomsbury Academic.

Journal articles

- Ballesteros Fernández, A. (2010). "Gregorio Marañón, académico." *Medicina Balear* 25(2), pp. 5-7.
- Crozier, I. (2007). "Nineteenth-Century British Psychiatric Writing about Homosexuality before Havelock Ellis: The Missing Story." *Journal of the History of Medicine and Allied Sciences* 63 (1), pp. 65-102.
- Crozier, I. (2001). "The Medical Construction of Homosexuality and its Relation to the Law in Nineteenth-Century England." *Medical History* 45 (1), pp. 61-82.
- Huertas, R. & Martínez Pérez, J. (1993). "Disease and crime in Spanish positivist psychiatry." *History of Psychiatry* 4, pp. 459-481.

Handler, P. (2013). "Intoxication and Criminal Responsibility in England, 1819-1920." *Oxford Journal of Legal Studies* 33 (2), pp. 1-33.

Lévy Lazcano, S. (2016). "Delitos inconscientes: Psicoanálisis y teoría penal durante la Segunda República española." *Revista Culturas Psi/Psy Cultures Buenos Aires* (6), pp. 34-64.

Oostherius, H. (2012). "Sexual Modernity in the Works of Richard von Krafft-Ebing and Albert Moll." *Med. Hist.* 56 (2), pp. 133-155.

Rowbotham, J. (2015). "A Deception on the Public: The Real Scandal of Boulton and Park." *Liverpool Law Rev.* (36), pp. 123-145.

Upchurch, C. (2000). "Forgetting the Unthinkable: Cross Dressers and British Society in the Case of Queen vs. Boulton and Others." *Gender & History* 12(1), pp. 121-157.

Södersten, P., Crews, D., Logan, C. & Werner Soukup, R. (2014). "Eugen Steinach: The First Neuroendocrinologist." *Endocrinology* 155(3), pp. 688-695.

Online Resources

Was Orangeman Edward De Cobain jailed for a crime he didn't commit? (2011). *BBC News North Ireland*. Retrieved 27th December 2023 from <https://www.bbc.co.uk/news/uk-northern-ireland-14941512>.