

# Offences Against One's Self: Paederasty

by Jeremy Bentham

*Edited by Louis Crompton*

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Editor's Abstract: This is the first publication of Jeremy Bentham's essay on "Paederasty," written about 1785. The essay which runs to over 60 manuscript pages, is the first known argument for homosexual law reform in England. Bentham advocates the decriminalization of sodomy, which in his day was punished by hanging. He argues that homosexual acts do not "weaken" men, or threaten population or marriage, and documents their prevalence in ancient Greece and Rome. Bentham opposes punishment on utilitarian grounds and attacks ascetic sexual morality. In the preceding article (*Journal of Homosexuality*, 3(4), 1978, p. 383-387) the editor's introduction discussed the essay in the light of 18th-century legal opinion and quoted Bentham's manuscript notes that reveal his anxieties about expressing his views. [*Louis Crompton*]

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*Stephen Paul Davis, Curator, "Stonewall and Beyond" Online Exhibition*

## OFFENCES AGAINST ONE'S SELF: PAEDERASTY Jeremy Bentham

To what class of offences shall we refer these irregularities of the venereal appetite which are stiled unnatural? When hidden from the public eye there could be no colour for placing them any where else: could they find a place any where it would be here. I have been tormenting myself for years to find if possible a sufficient ground for treating them with the severity with which they are treated at this time of day by all European nations: but upon the principle utility I can find none.

### *Offences of impurity--their varieties*

The abominations that come under this heading have this property in common, in this respect, that they consist in procuring certain sensations by means of an improper object. The impropriety then may consist either in making use of an object

1. Of the proper species but at an improper time: for instance, after death.
2. Of an object of the proper species and sex, and at a proper time, but in an improper part.
3. Of an object of the proper species but the wrong sex. This is distinguished from the rest by the name of paederasty.
4. Of a wrong species.
5. In procuring this sensation by one's self without the help of any other sensitive object.

### *Paederasty makes the greatest figure*

The third being that which makes the most figure in the world it will be proper to give that the principal share of our attention. In settling the nature and tendency of this offence we shall for the most part have settled the nature and tendency of all the other offences that come under this disgusting catalogue.

### *Whether they produce any primary mischief*

1. As to any primary mischief, it is evident that it produces no pain in anyone. On the contrary it produces pleasure, and that a pleasure which, by their perverted taste, is by this supposition preferred to that pleasure which is in general reputed the greatest. The partners are both willing. If either of them be unwilling, the act is not that which we have here in view: it is an offence totally different in its nature of effects: it is a personal injury; it is a kind of rape.

### *As a secondary mischief whether they produce any alarm in the community*

2. As to any secondary mischief, it produces not any pain of apprehension. For what is there in it for any body to be afraid of? By the supposition, those only are the objects of it who choose to be so, who find a pleasure, for so it seems they do, in being so.

### *Whether any danger*

3. As to any danger exclusive of pain, the danger, if any, must consist in the tendency of the example. But what is the tendency of this example? To dispose others to engage in the same practises: but this practise for anything that has yet appeared produces not pain of any kind to any one.

### *Reasons that have commonly been assigned*

Hitherto we have found no reason for punishing it at all: much less for punishing it with the degree of severity with which it has been commonly punished. Let us see what force there is in the reasons that have been commonly assigned for punishing it.

The whole tribe of writers on English law, who none of them knows any more what they mean by the word "peace" than they do by many other of the expressions that are most familiar to them, reckon this among offences against the peace. It is accordingly treated in all respects as an offence against the peace. They likewise reckon forgery, coining, and all sorts of frauds among offences against the peace. According to the same writers it is doubted whether adultery be not a breach of the peace. It is certain however that whenever a gallant accepts an invitation of another man's wife he does it with force and arms. This needs no comment.

### *Whether against the security of the individual*

Sir W. Blackstone is more particular. According to him it is not only an offence against the peace, but it is of that division of offences against the peace which are offences against security. According to the same writer, if a man is guilty of this kind of filthiness, for instance, with a cow, as some men have been known to be, it is an offence against somebody's security. He does not say whose security, for the law makes no distinction in its ordinances, so neither does this lawyer or any other English lawyer in his comments make any distinction between this kind of filthiness when committed with the consent of the patient and the same kind of filthiness when committed against his consent and by violence. It is just as if a man were to make no distinction between concubinage and rape.

### *Whether it debilitates--Montesquieu*

The reason that Montesquieu gives for reprobating it is the weakness which he seems to suppose it to have a tendency to bring upon those who practice it. (Esp. des Loix, L. 12, ch. 6. "11 faudroit le proscrire quand il ne feroit que donner a un sexe les faiblesses de l'autre et preparer a une vieillesse infame par une jeunesse honteuse." "It ought to be proscribed were it only for its giving to the one sex the weaknesses of the other and paving the way by a scandalous youth for an infamous old age." J.B.) This, if it be true in fact, is a reason of a very different complexion from any of the preceding and it is on the ground of this reason as being the most plausible one that I have ranked the offence under its present head. As far as it is true in fact, the act ought to be regarded in the first place as coming within the list of offences against one's self, of offences of imprudence: in the next place, as an offence against the state, an offence the tendency of which is to diminish the public force.

If however it tends to weaken a man it is not any single act that can in any sensible degree have that effect. It can only be the habit: the act thus will become obnoxious as evidencing the existence, in probability, of the habit. This enervating tendency, be it what it may, if it is to be taken as a ground for treating the / [192] practise in question with a degree of severity which is not bestowed upon the regular way of gratifying the venereal appetite, must be greater in the former case than in the latter. Is it so? If the affirmative can be shewn it must be either by arguments a priori drawn from considerations of the nature of the human frame or from experience. Are there any such arguments from physiology? I have never heard of any: I can think of none.

### *What says history?*

What says historical experience? The result of this can be measured only upon a large scale or upon a very general survey. Among the modern nations it is comparatively but rare. In modern Rome it is perhaps not very uncommon; in Paris probably not quite so common; in London still less frequent; in Edinburgh or Amsterdam you scarce hear of it two or three times in a century. In Athens and in antient Rome in the most flourishing periods of the history of those capitals, regular intercourse between the sexes was scarcely much more common. It was upon the same footing throughout Greece: everybody practised it; nobody was ashamed of it. They might be ashamed of what they

looked upon as an excess in it, or they might be ashamed of it as a weakness, as a propensity that had a tendency to distract men from more worthy and important occupations, just as a man with us might be ashamed of excess or weakness in his love for women. In itself one may be sure they were not ashamed of it. Agesilaus, upon somebody's taking notice of the care he took to avoid taking any familiarities with a youth who passed for being handsome acknowledges it, indeed, but upon what ground? Not on account of the turpitude but the danger. Xenophon in his retreat of the ten thousand gives an anecdote of himself in which he mentions himself as particularly addicted to this practise without seeming to entertain the least suspicion that any apology was necessary. In his account of Socrates's conversation he introduces that philosopher censuring or rather making merry with a young man for his attachment to the same practise. But in what light does he consider it? As a weakness unbecoming to a philosopher, not as a turpitude or a crime unbecoming to a man. It is not because an object of the one sex more than one of the other is improper game: but on account of the time that must be spent and the humiliation submitted to in the pursuit.

What is remarkable is that there is scarce a striking character in antiquity, nor one that in other respects men are in use to cite as virtuous, of whom it does not appear by one circumstance or another, that he was infected with this inconceivable propensity. It makes a conspicuous figure in the very opening of Thucydides's history, and by an odd accident it was to the spirit of two young men kindled and supported by this passion that Athens according to that historian stood indebted on a trying occasion for the recovery of its liberty. The firmness and spirit of the Theban band--the band of lovers as it was called--is famous in history; and the principle by which the union among the members of it was commonly supposed to be cemented is well known. (Plutarch, in vita Pelopidae. Esp. des Loix, L. 4, ch. 8. J.B.) Many moderns, and among others Mr. Voltaire, dispute the fact, but that intelligent philosopher sufficiently intimates the ground of his incredulity--if he does not believe it, it is because he likes not to believe it. What the antients called love in such a case was what we call Platonic, that is, was not love but friendship. But the Greeks knew the difference between love and friendship as well as we--they had distinct terms to signify them by: it seems reasonable therefore to suppose that when they say love they mean love, and that when they say friendship only they mean friendship only. And with regard to Xenophon and his master, Socrates, and his fellow-scholar Plato, it seems more reasonable to believe them to have been addicted to this taste when they or any of them tell us so in express terms than to trust to the interpretations, however ingenious and however well-intended, of any men who write at this time of day, when they tell us it was no such thing. Not to insist upon Agesilaus and Xenophon, it appears by one circumstance or another that Themistocles, Aristides, Epaminondus, Alcibiades, Alexander and perhaps the greatest number of the heroes of Greece were infected with this taste. Not that the historians are at the pains of informing us so expressly, for it was not extraordinary enough to make it worth their while, but it comes out collaterally in the course of the transactions they have occasion to relate.

It were hardly worth while after this to take up much time in proving the same thing with regard to the Romans, in naming distinguished persons of consequence whom history has mentioned as partakers in this abomination, or in bringing passages to shew that the same depraved taste prevailed generally among the people. Not to mention notorious profligates such as the Antonies, the Clodius's, the Pisos, the Gabinius's of the age, Cicero, if we may believe either his enemy Sallust or his admirer Pliny neither avoided this propensity nor thought proper to dissemble it. That austere philosopher, after writing books to prove that pleasure was no good and that pain was no evil and that virtue could make a man happy upon the rack, that affectionate husband, in the midst of all his tenderness for his wife Terentia, could play at blind man's buff with his secretary (i.e. Marcus Tullius Tiro. Pliny, Letters, VII, 4. Ed.) for pipes and make verses upon this notable exploit of gallantry. / [193]

With regard to the people in general it may be presumed that if the Gods amused themselves in this way--if Apollo loved Hyacinthus, if Hercules could be in a frenzy for the loss of Hylas, and the father of Gods and men could solace himself with Ganymede, it was neither an odious nor an unfrequent thing for mortal men to do so. The Gods we make, it has been well and often said, we make always after our own image. In times much anterior to those of Cicero and in which according to the common prejudice the morals of the people are supposed to have been proportionately more pure, when certain festivals were suppressed on account of their furnishing opportunities for debauchery, irregularities of this kind were observed according to Livy to be more abundant than ordinary intrigues. This circumstance would scarcely perhaps have been thought worth mentioning, had not the

idea of excess in this, as it is apt to do on all occasions, struck the imagination of the historian as well as of the magistrate whose administration he is recording.

This much will probably be thought enough: if more proofs were necessary, it were easy to collect materials enough to fill a huge, a tedious and a very disgusting volume.

It appears then that this propensity was universally predominant among the antient Greeks and Romans, among the military as much as any. The antient Greeks and Romans, however, are commonly reputed as a much stouter as well as a much braver people than the stoutest and bravest of any of the modern nations of Europe. They appear to have been stouter at least in a very considerable degree than the French in whom this propensity is not very common and still more than the Scotch in whom it is still less common, and this although the climate even of Greece was a great deal warmer and in that respect more enervating than that of modern Scotland.

If then this practise was in those antient warm countries attended with any enervating effects, they were much more than counteracted by the superiority of [illegible] in the exertions which were then required by the military education over and above those which are now called forth by ordinary labour. But if there be any ground derived from history for attributing to it any such enervating effects it is more than I can find.

### *Whether it enervates the patient more than the agent*

Montesquieu however seems to make a distinction--he seems to suppose these enervating effects to be exerted principally upon the person who is the patient in such a business. This distinction does not seem very satisfactory in any point of view. Is there any reason for supposing it to be a fixed one? Between persons of the same age actuated by the same incomprehensible desires would not the parts they took in the business be convertible? Would not the patient be the agent in his turn? If it were not so, the person on whom he supposes these effects to be the greatest is precisely the person with regard to whom it is most difficult to conceive whence those consequences should result. In the one case there is exhaustion which when carried to excess may be followed by debility: in the other case there is no such thing.

### *What says history?*

In regard to this point too in particular, what says history? As the two parts that a man may take in this business are so naturally convertible however frequently he may have taken a passive part, it will not ordinarily appear. According to the notions of the antients there was something degrading in the passive part which was not in the active. It was ministring to the pleasure, for so we are obliged to call it, of another without participation, it was making one's self the property of another man, it was playing the woman's part: it was therefore unmanly. (Paedicabo vos et irrumabo, Antoni [sic] pathice et cinaede Furi. [Carm. 16] Catullus. J.B.) On the other hand, to take the active part was to make use of another for one's pleasure, it was making another man one's property, it was preserving the manly, the commanding character. Accordingly, Solon in his laws prohibits slaves from bearing an active part where the passive is borne by a freeman. In the few instances in which we happen to hear of a person's taking the passive part there is nothing to favour the above-mentioned hypothesis. The beautiful Alcibiades, who in his youth, says Cornelius Nepos, after the manner of the Greeks, was beloved by many, was not remarkable either for weakness or for cowardice: at least, [blank] did not find it so. The Clodius whom Cicero scoffs at for his servile obsequiousness to the appetite of Curio was one of the most daring and turbulent spirits in all Rome. Julius Caesar was looked upon as a man of tolerable courage in his day, notwithstanding the complaisance he showed in his youth to the King of Bithynia, Nicomedes. Aristotle, the inquisitive and observing Aristotle, whose physiological disquisitions are looked upon as some of the best of his works--Aristotle, who if there had been anything in this notion had every opportunity and inducement to notice and confirm it--gives no intimation of any such thing. On the contrary he sits down very soberly to distribute the male half of the species under two classes: one class having a natural propensity, he says, to bear a passive part

in such a business, as the other have to take an active part. (Probl. Sect. 4 art. 27: The former of these propensities he attributes to a peculiarity of organization, analogous to that of women. The whole passage is abundantly obscure and shows in how imperfect a state of anatomical knowledge was his time. J.B.) This observation it must be confessed is not much more satisfactory than that other of the same philosopher when he speaks of two sorts of men--the one born to be masters, the other to be slaves. If however there had appeared any reason for supposing this practise, either with regard to the passive or the active part of it, to have had any remarkable effects in the way of debilitation upon those who were addicted to it, he would have hardly said so much / [194] upon the subject without taking notice of that circumstance.

### *Whether it hurts population?*

A notion more obvious, but perhaps not much better founded than the former is that of its being prejudicial to population. Mr. Voltaire appears inclined in one part of his works to give some countenance to this opinion. He speaks of it as a vice which would be destructive to the human race if it were general. "How did it come about that a vice which would destroy mankind if it were general, that an infamous outrage against nature...?" (Questions sur l'Encyclop. "Amour Socratique." J.B.)

A little further on, speaking of Sextus Empiricus who would have us believe that this practise was "recommended" in Persia by the laws, he insists that the effect of such a law would be to annihilate the human race if it were literally observed. "No", says he, "it is not in human nature to make a law that contradicts and outrages nature, a law that would annihilate mankind if it were observed to the letter." This consequence however is far enough from being a necessary one. For a law of the purport he represents to be observed, it is sufficient that this unprolific kind of venery be practised; it is not necessary that it should be practised to the exclusion of that which is prolific. Now that there should ever be wanting such a measure of the regular and ordinary inclination of desire for the proper object I as is necessary for keeping up the numbers of mankind upon their present footing is a notion that stands warranted by nothing that I can find in history. To consider the matter a priori [?], if we consult Mr. Hume and Dr. Smith, we shall find that it is not the strength of the inclination of the one sex for the other that is the measure of the numbers of mankind, but the quantity of subsistence which they can find or raise upon a given spot. With regard to the mere object of population, if we consider the time of gestation in the female sex we shall find that much less than a hundredth part of the activity a man is capable of exerting in this way is sufficient to produce all the effect that can be produced by ever so much more. Population therefore cannot suffer till the inclination of the male sex for the female be considerably less than a hundredth part as strong as for their own. Is there the least probability that [this] should ever be the case? I must confess I see not any thing that should lead us to suppose it. Before this can happen the nature of the human composition must receive a total change and that propensity which is commonly regarded as the only one of the two that is natural must have become altogether an unnatural one.

I have already observed that I can find nothing in history to countenance the notion I am examining. On the contrary the country in which the prevalence of this practise I is most conspicuous happens to have been remarkable for its populousness. The bent of popular prejudice has been to exaggerate this populousness: but after all deductions [are] made, still it will appear to have been remarkable. It was such as, notwithstanding the drain of continual wars in a country parcelled out into paltry states as to be all of it frontier, gave occasion to the continued necessity of emigration.

This reason however well grounded soever it were in itself could not with any degree of consistency be urged in a country where celibacy was permitted, much less where it was encouraged. The proposition which (as will be shewn more fully by and by) is not at all true with respect to paederasty, I mean that were it to prevail universally it would put an end to the human race, is most evidently and strictly true with regard to celibacy. If then merely out of regard to population it were right that paederasts should be burnt alive, monks ought to be roasted alive by a slow fire. If a paederast, according to the monkish canonist Bermondus, destroys the whole human race Bermondus destroyed it I don't know how many thousand times over. The crime of Bermondus is I don't know how many times worse than paederasty.

That there should be the least colour for supposing of this practise that in any situation of things whatever it could have the least possible tendency to favour population is what nobody I suppose would easily have suspected. Since, however, we are embarked on this discussion, it is fit that everything that can contribute to our forming a right judgment on the question should be mentioned. Women who submit to promiscuous embraces are almost universally unprolific. In all great towns a great multitude of women will always be in this case. In Paris, for instance, the number of these women has been computed to amount to at least 10,000. These women, were no more than a certain quantity of prolific vigour to be applied to them, might all of them stand in as good a way of being prolific as other women: they would have indeed rather a better chance since the women who came to be reduced to the necessity of embracing this profession are always those who by their beauty are more apt than an equal number of women taken at random to engage the attention of the other sex. If then all the vigour that is over and above this quantity were to be diverted into another channel, it is evident that in the case above supposed the state would be a gainer to the amount of all the population that could be expected from 40,000 women, and in proportion as any woman was less prolific by the diverting of any part of this superfluous / [195] vigour, in the same proportion would population be promoted.

No one I hope will take occasion to suppose that from any thing here said I mean to infer the propriety of affording any encouragement to this miserable taste for the sake of population. Such an inference would be as ill founded as it would be cruel. (I leave anyone to imagine what such a writer as Swift, for instance, might make upon this theme, "A project for promoting population by the encouragement of paederasty." J.B.) The truth is, the sovereign, if he will but conduct himself with tolerable attention with respect to the happiness of his subjects need never be in any pain about the number of them. He has no need to be ever at the expense of any efforts levelled in a direct line at the purpose of increasing it. Nature will do her own work fast enough without his assistance if he will but refrain from giving her disturbance. Such infamous expedients would be improper as any coercive ones are unnecessary. Even monks in the countries that are most infested with them are not near so pernicious by the deductions they make from the sum of population, as by the miseries which they produce and suffer, and by the prejudices of all kinds of which they are the perpetrators and the dupes.

### *Whether it robs women*

A more serious imputation for punishing this practise [is] that the effect of it is to produce in the male sex an indifference to the female, and thereby defraud the latter of their rights. This, as far as it holds good in point of fact, is in truth a serious imputation. The interest of the female part of the species claim just as much attention, and not a whit more, on the part of the legislator, as those of the male. A complaint of this sort, it is true, would not come with a very good grace from a modest woman; but should the women be estopped from making complaint in such a case it is the business of the men to make it for them. This then as far as it holds good in point of fact is in truth a very serious imputation: how far it does it will be proper to enquire.

In the first place the female sex is always able and commonly disposed to receive a greater quantity of venereal tribute than the male sex is able to bestow. If then the state of manners be such in any country as left the exertion of this faculty entirely unrestrained, it is evident that (except in particular cases when no object of the female sex happened to be within reach) any effort of this kind that was exerted by a male upon a male would be so much lost to the community of females. Upon this footing the business of venereal enjoyment seems actually to stand in some few parts of the world, for instance at Otaheite. It seems therefore that at Otaheite paederasty could hardly have footing, but the female part of that community must in proportion be defrauded of their rights. If then paederasty were to be justified in Otaheite it could only be upon this absurd and improbable supposition-that the male sex were gainers by such a perversion to a greater amount than the female sex were losers.

But in all European countries and such others on which we bestow the title of civilized, the case is widely different. In these countries this propensity, which in the male sex is under a considerable degree of restraint, is under an incomparably greater restraint in the female. While each is alike prohibited from partaking of these enjoyments but on the terms of marriage by the fluctuating and

inefficacious influence of religion, the censure of the world denies it [to] the female part of the species under the severest penalties while the male sex is left free. (In speaking on this occasion of the precepts of religion I consider not what they are in themselves but what they may happen to be in the opinion and discourse [?] of those whose office it is to interpret them. J.B.) No sooner is a woman known to have infringed this prohibition than either she is secluded from all means of repeating the offence, or upon her escaping from that vigilance she throws herself into that degraded class whom the want of company of their own sex render unhappy, and the abundance of it on the part of the male sex unprolific. This being the case, it appears the contribution which the male part of the species are willing as well as able to bestow is beyond all comparison greater than what the female part are permitted to receive. If a woman has a husband she is permitted to receive it only from her husband: if she has no husband she is not permitted to receive it from any man without being degraded into the class of prostitutes. When she is in that unhappy class she has not indeed less than she would wish, but what is often as bad to her--she has more.

It appears then that if the female sex are losers by the prevalence of this practise it can only be on this supposition--that the force with which it tends to divert men from entering into connection with the other sex is greater than the force with which the censure of the world tends to prevent those connections by its operation on the women. / [196]

In countries where, as in Otaheite, no restraint is laid on the gratification of the amorous appetite, whatever part of the activity of that appetite in the male sex were exercised upon the same sex would be so much loss in point of enjoyment to the female. But in countries where it is kept under restraint, as in Europe, for example, this is not by any means the case. As long as things are upon that footing there are many cases in which the women can be no sufferers for the want of sollicitation on the part of the men. If the institution of the marriage contract be a beneficial one, and if it be expedient that the observance of it should be maintained inviolate, we must in the first place deduct from the number of the women who would be sufferers by the prevalence of this taste all married women whose husbands were not infected with it. In the next place, upon the supposition that a state of prostitution is not a happier state than a state of virginity, we must deduct all those women who by means of this prevalence would have escaped being debauched. The women who would be sufferers by it ab initio are those only who, were it not for the prevalence of it, would have got husbands. (I say ab initio for when a woman has been once reduced to take up the trade of prostitution, she also would be of the number of those who are sufferers by the prevalence of this taste, in case the effect of it were to deprive her of any quantity of this commerce beyond that which she would rather be without. It is not in this business as in most other businesses, where the quantity of the object in demand is in proportion to the demand. The occupations with respect to which that rule holds good are those only which are engaged in through character, reflection, and upon choice. But in this profession scarce any woman engages for the[se] purposes. The motive that induces a woman to engage in it is not any such circumstance as the consideration of the probability of getting custom. She has no intention of engaging in it when she takes the step that eventually proves a means of her engaging in it. The immediate cause of her engaging in it is the accident of a discovery which deprives her of every other source of livelihood. Upon the supposition then that a given number have been debauched there would be the same number ready to comply with sollicitation whenever so little was offered as whenever so much was offered. It is a conceivable case therefore that upon the increased prevalence of this taste there might be the same numbers of women debauched as at present, and yet all the prostitutes in the place might be starving for want of customers. J.B.)

The question then is reduced to this. What are the number of women who by the prevalence of this taste would, it is probable, be prevented from getting husbands? These and these only are they who would be sufferers by it. Upon the following considerations it does not seem likely that the prejudice sustained by the sex in this way could ever rise to any considerable amount. Were the prevalence of this taste to rise to ever so great a height the most considerable part of the motives to marriage would remain entire. In the first place, the desire of having children, in the next place the desire of forming alliances between families, thirdly the convenience of having a domestic companion whose company will continue to be agreeable throughout life, fourthly the convenience of gratifying the appetite in question at any time when the want occurs and without the expense and trouble of concealing it or the danger of a discovery.



Were a man's taste even so far corrupted as to make him prefer the embraces of a person of his own sex to those of a female, a connection of that preposterous kind would therefore be far enough from answering to him the purposes of a marriage. A connection with a woman may by accident be followed with disgust, but a connection of the other kind, a man must know, will for certain come in time to be followed by disgust. All the documents we have from the ancients relative to this matter, and we have a great abundance, agree in this, that it is only for a very few years of his life that a male continues an object of desire even to those in whom the infection of this taste is at the strongest. The very name it went by among the Greeks may stand instead of all other proofs, of which the works of Lucian and Martial alone will furnish any abundance that can be required. Among the Greeks it was called Paederastia, the love of boys, not Andrerastia, the love of men. Among the Romans the act was called Paedicare because the object of it was a boy. There was a particular name for those who had past the short period beyond which no man hoped to be an object of desire to his own sex. They were called exoleti. No male therefore who was passed this short period of life could expect to find in this way any reciprocity of affection; he must be as odious to the boy from the beginning as in a short time the boy would be to him. The objects of this kind of sensuality would therefore come only in the place of common prostitutes; they could never even to a person of this depraved taste answer the purposes of a virtuous woman.

### ***What says history?***

Upon this footing stands the question when considered a priori: the evidence of facts seems to be still more conclusive on the same side. There seems no reason to doubt, as I have already observed but that population went on altogether as fast and that the men were altogether as well inclined to marriage among the Grecians in whom this vitious propensity was most prevalent as in any modern people in whom it is least prevalent. In Rome, indeed, about the time of the extinction of liberty we find great complaints of the decline of population: but the state of it does not appear to have been at all dependent on or at all influenced by the measures that were taken from time to time to restrain the love of boys: it was with the Romans, as with us, what kept a man from marriage was not the preferring boys to women but the preferring the convenience of a transient connection to the expense and hazard of a lasting one. (See Pilati, Traite des Loix Civiles, ch. du mariage. J.B.)

### ***How is it at Otaheite?***

To judge how far the regular intercourse between the sexes is probably affected by this contraband intercourse in countries where, as in Europe, the gratification of the venereal appetite is kept upon a footing of restraint, it may help us a good deal if we observe in what degree it is affected by the latter in countries where the gratification of that appetite is under no restraint. If in those countries paederasty prevailed to so considerable a degree as to occasion a visible diminution of the regard that was shewn to women, this phaenomenon, unless it / [197] could be accounted for from other causes, would afford a strong argument to prove that prevalence of it might have the effect of diminishing the regard that might otherwise be paid to them in other countries and that the prevalence of it in those countries was owing not to the comparative difficulty of getting women but to a comparative indifference, such as might turn to the prejudice of the women in any state of things: and in short that what was transferred to boys was so much clear loss to women. But the fact is that in Otaheite it does not appear that this propensity is at all prevalent.

### ***If it were more frequent than the regular connection in what sense could it be termed unnatural?***

The nature of the question admits of great latitude of opinion: for my own part I must confess I can not bring myself to entertain so high a notion of the alluringness of this preposterous propensity as some men appear to entertain. I can not suppose it to [be] possible it should ever get to such a height as that the interests of the female part of the species should be materially affected by it: or that it could ever happen that were they to contend upon equal ground the eccentric and unnatural propensity should ever get the better of the regular and natural one. Could we for a moment suppose this to be the case, I would wish it to be considered what meaning a man would have to annex to the

expression, when he bestows on the propensity under consideration the epithet of unnatural. If contrary to all appearance the case really were that if all men were left perfectly free to choose, as many men would make choice of their own sex as of the opposite one, I see not what reason there would be for applying the word natural to the one rather than to the other. All the difference would be that the one was both natural and necessary whereas the other was natural but not necessary. If the mere circumstance of its not being necessary were sufficient to warrant the terming it unnatural it might as well be said that the taste a man has for music is unnatural.

My wonder is how any man who is at all acquainted with the most amiable part of the species should ever entertain any serious apprehensions of their yielding the ascendant to such unworthy rivals.

### *Among the antients--whether it excluded not the regular taste*

A circumstance that contributes considerably to the alarms entertained by some people on this score is the common prejudice which supposes that the one propensity is exclusive of the other. This notion is for the most part founded on prejudice as may be seen in the works of a multitude of antient authors in which we continually see the same person at one time stepping aside in pursuit of this eccentric kind of pleasure but at other times diverting his inclination to the proper object. Horace, in speaking of the means of satisfying the venereal appetite, proposes to himself as a matter of indifference a prostitute of either sex: and the same poet, who forgetting himself now and then says a little here and there about boys, says a great deal everywhere about women. The same observation will hold good with respect to every other personage of antiquity who either by his own account or that of another is represented to us as being infected with this taste. It is so in all the poets who in any of their works have occasion to say anything about themselves. Some few appear to have had no appetite for boys, as is the case for instance with Ovid, who takes express notice of it and gives a reason for it. But it is a neverfailing rule wherever you see any thing about boys, you see a great deal more about women. Virgil has one Alexis, but he has Galateas [blank] in abundance. Let us be unjust to no man: not even to a paederast. In all antiquity there is not a single instance of an author nor scarce an explicit account of any other man who was addicted exclusively to this taste. Even in modern times the real womenhaters are to be found not so much among paederasts, as among monks and catholic priests, such of them, be they more or fewer, who think and act in consistency with their profession.

### *Reason why it might be expected so to do*

I say even in modern times; for there is one circumstance which should make this taste where it does prevail much more likely to be exclusive at present than it was formerly. I mean the severity with which it is now treated by the laws and the contempt and abhorrence with which it is regarded by the generality of the people. If we may so call it, the persecution they meet with from all quarters, whether deservedly or not, has the effect in this instance which persecution has and must have more or less in all instances, the effect of rendering those persons who are the objects of it more attached than they would otherwise be to the practise it proscribes. It renders them the more attached to one another, sympathy of itself having a powerful tendency, independent of all other motives, to attach a man to his own companions in misfortune. This sympathy has at the same time a powerful tendency to beget a proportionable antipathy even towards all such persons as appear to be involuntary, much more to such as appear to be the voluntary, authors of such misfortune. When a man is made to suffer it is enough on all other occasions to beget in him a prejudice against those by whose means or even for whose sake he is made to suffer. When the hand of every man is against a person, his hand, or his heart at least, will naturally be against every man. It would therefore be rather singular if under the present system of manners these outcasts of society should be altogether so well disposed towards women as in antient times when they were left unmolested. The Helotes had no great regard, as we may suppose, for the Lacedaemonians; Negroes, we may suppose, have not now any violent affection for Negro-drivers; the Russian boors for the Boyards that are their masters; native Peruvians / [198a is blank] / [198b follows] for Spaniards; Hallashores [?] for Bramins, Bice and Chehterees; thieves for justices and hangmen; nor insolvent debtors for bum-bailiffs. It would not be wonderful if a miserable paederast of modern times should look upon every woman as a merciless creditor at whose suit he is in continual danger of being consigned not to a prison only but either to the gallows or to the

flames. The reason which there may be in point of utility or on any other account for treating these people with such severity makes no difference in the sentiments which such severity is calculated to inspire; for whatever reason there may be, they, one may be certain, do not see it. Spite of such powerful incentives it does not appear that the effect of this propensity is in general even under the present system to inspire in those who are infected with it an aversion or even an indifference to the other sex: a proof how powerful the force of nature is and how little reason the sex whose dominion is supported by the influence of pleasure have for being apprehensive of any permanent alienation in the affections of those fugitive vassals, were no harsh measure taken to drive them into rebellion.

### ***The notion that it does has sometimes operated by accident in favor of persons under prosecution***

The popular notion that all paederasts are in proportion women haters is the ground of a medium of exculpation which we see commonly adopted in the few instances that occur in England of a man's being prosecuted for this offence. It is common in any such case for those who are concerned in behalf of the defendant to produce as many presumptions as they can collect of his propensity to women. Such evidence may have some weight with those who are under the influence of this prejudice, although the many instances in which it has been opposed by the clearest positive evidence of the fact are sufficient of themselves to shew the weakness of it. It may be of use to mention this to the end that, if it should be thought expedient to punish this offence, those who are to judge it may be put on their guard against a medium of exculpation which appears to be fallacious.

### ***As it excludes not the regular taste, it is liable to disturb marriage***

This circumstance, however, which in one set of circumstances tends to the exculpation of the practise in question, in another situation of things, and, in another point of view, operates to the commination of it. I have already given the considerations which seem to render it probable that this propensity does not in any considerable degree stand in the way of marriage: on that occasion we took it for granted for the time that if it did not hinder a man from engaging in matrimonial connection, it was of no prejudice to the other sex at all. When a man was once lodged within the pale of matrimony, we took no notice of any danger there might be of his deviating afterwards into such extravagances. This however is an event which, from the two propensities not appearing to be exclusive of one another, we have reason a priori to suppose not to be in itself absolutely improbable, and which from occasional observation, but particularly from antient history, we find not to be uncommon. The wretches who are prosecuted for this offence often turn out to be married men. The poet Martial, we find, has a wife with whom he is every now and then jarring on the score of the complaints she makes of his being unfaithful to her in this way. It is to be considered however that it is [not] to the amount of the whole sum of the infidelities the husband is guilty of in this way that a wife is a sufferer by this propensity but only to the surplus, whatever it may be, over and above what, were it not for this propensity, the same man would be guilty of in the natural way. A woman would not be a sufferer by this propensity any further than as it betrays her husband into an act of infidelity to which he would not have been betrayed by the allurements of any female rival. Supposing the degree of infidelity in both cases to be equal, there seems reason to think that a woman would not be so much hurt by an infidelity of this sort as by an infidelity into [199] which her husband had been betrayed by a person of her own sex. An attachment of the former kind could not be lasting, that is confined for any length of time to the same individual; of the other she might not be satisfied but that it might be lasting. It is for the same reason that a woman's affection would not be so much wounded, however her pride might, by her husband's intriguing with a servant wench or other woman of a condition very much her inferior as by his intriguing with a woman of a condition near about the level of her own. It is indeed a general observation that in all cases of rivalry the jealousy is the greater the nearer in all respects the condition of the rival is to your own. It is on the same principle that in matters of religion Jansenists and Molinists are often apt to be more averse to one another than either are to Protestants; Methodists and regular Church of England men than either are to Presbyterians; Protestants and Catholics than either are to Jews; and in general Schismatics in any church than either are to Heretics or to persons of a different religion.

This at least would seem likely to have been the case in times in which the propensity was not held in the abhorrence in which it is held at present, and where consequently the wife would [not] have as at present to add to her other motives of concern the infamy with which under the present system it is one effect of such behavior to cast upon any man who is guilty of it.

### *Causes of this taste*

I have already intimated how little reason there seems to be to apprehend that the preference of the improper to the proper object should ever be constant or general. A very extraordinary circumstance it undoubtedly is that it should ever have arrived at the height at which we find it to have arrived. The circumstance is already an extraordinary one as it is: it would be much more so if it were common under equal importunities for the improper object to meet with a decided preference. But such an incident there is every reason, as I have already observ[ed], for not looking upon as likely to become otherwise than rare. Its prevalence, wherever it prevails to a considerable degree, seems always to be owing to some circumstance relative to the education of youth. It is the constraint in which the venereal appetite is kept under the system of manners established in all civilized nations that seems to be the principal cause of its deviating every now and then into these improper channels. When the desire is importunate and no proper object is at hand it will sometimes unavoidably seek relief in an improper way. In the antient as well as the modern plans of education young persons of the male sex are kept as much as possible together: they are kept as much at a distance as possible from the female. They are in a way to use all sorts of familiarities with each other: they are kept as much as possible from using any sorts of familiarities with females. Among the antients they used to be brought together in circumstances favourable to the giving birth to such desires by the custom of exercising themselves naked. (See *Esp. des Loix*, L. 8, ch. ii. *Plut. Morals*. J.B.) On the present plan they are often forced together under circumstances still more favourable to it by the custom of lying naked together in feather beds, implements of indulgence and incentives to the venereal appetite with which the antients were unacquainted. When a propensity of this sort is once acquired it is easier to conceive how it should continue than how it should be at first acquired. It is no great wonder if the sensation be regarded as if it were naturally connected with the object, whatever it be, by means of which it came to be first experienced. That this practise is the result not of indifference to the proper object but of the difficulty of coming at the proper object, the offspring not of wantonness but of necessity, the consequence I of the want of opportunity with the proper object, and the abundance of opportunity with such as are improper is a notion that seems warranted by the joint opinions of Montesquieu and Voltaire. "The crime against nature," says the former, "will never make any great progress in society unless people are prompted to it by some particular custom, as among the Greeks, where the youths of that country performed all their exercises naked; as amongst us, where domestic education is disused; as amongst the Asiatics, where particular persons have a great number of women whom they despise, while others can have none at all." (*Esp. des Loix*, L. 12, ch. 6. J.B.)

"When the young males of our species," says Voltaire, "brought up together, feel the force which nature begins to unfold in them, and fail to find the natural object of their instinct, they fall back on what resembles it. Often, for two or three years, a young man resembles a beautiful girl, with the freshness of his complexion, the brilliance of his coloring, and the sweetness of his eyes; if he is loved, it's because nature makes a mistake; homage is paid to the fair sex by attachment to one who owns its beauties, and when the years have made this resemblance disappear, the mistake ends.

*And this is the way:  
Pluck the brief Spring, the first flowers of youth.*

[Ovid, *Metamorphoses*, X, 84-85. Ed]

"It is well known that this mistake of nature is much more common in mild climates than in the icy north, because the blood is more inflamed there and opportunity more also, what seems only a weakness in young Alcibiades is a disgusting abomination in a Dutch sailor or a Muscovite sutler." [Philosophical Dictionary. Ed.]

"Pederasty," says Beccaria, "so severely punished by law and so freely subjected to tortures which triumph over innocence, is based less on man's needs when he lives in freedom and on his own, than on his passions when he lives with others in slavery. It draws its strength, not so much from a surfeit of every other pleasure, as from that education which begins by making men useless to themselves in order to make them useful to others. In those institutions packed with hot-blooded ( youth natural vigour, as it develops, is faced with insurmountable obstacles to every other kind of relationship and wears itself out in an activity useless to humanity, and which brings on premature old age." [Of Crimes and Punishments, ch. 36. Ed.]

### ***Whether, if it robbed women, it ought at all events to be punished?***

The result of the whole is that there appears not any great reason to conclude that, by the utmost increase of which this vice is susceptible, the female part of the species could be sufferers to any very material amount. If however there was any danger of their being sufferers to any amount at all this would of itself be ample reason for wishing to restrain the practise. It would not however follow absolutely that it were right to make use of punishment for that purpose, much less that it were right to employ any of those very severe punishments which are commonly in use. It will not be right to employ any punishment, 1. if the mischief resulting from the punishment be equal or superior to the mischief of the offence, nor 2. if there be any means of compassing the same end without the expense of punishment. Punishment, says M. Beccaria, is never just so long as any means remain untried by which the end of punishment may be accomplished at a cheaper rate. / [200c and 200d are blank] / [201]

### ***Inducements for punishing it not justified on the ground of mischievousness***

When the punishment [is] so severe, while the mischief of the offence is so remote and even so problematical, one cannot but suspect that the inducements which govern are not the same with those which are avowed. When the idea of the mischievousness of an offence is the ground of punishing it, those of which the mischief is most immediate and obvious are punished first: afterwards little by little the legislator becomes sensible of the necessity of punishing those of which the mischief is less and less obvious. But in England this offence was punished with death before ever the malicious destruction or fraudulent obtainment or embezzlement of property was punished at all, unless the obligation of making pecuniary amends is to be called a punishment; before even the mutilation of or the perpetual disablement of a man was made punishable otherwise than by simple imprisonment and fine. (It was the custom to punish it with death so early as the reign of Ed. 1st. See Miroir des Justices, ch. 4, 14. Fleta. J.B.)

### ***But on the ground of antipathy***

In this case, in short, as in so many other cases the disposition to punish seems to have had no other ground than the antipathy with which persons who had punishment at their disposal regarded the offender. The circumstances from which this antipathy may have taken its rise may be worth enquiring to. 1. One is the physical antipathy to the offence. This circumstance indeed, were we to think and act consistently, would of itself be nothing to the purpose. The act is to the highest degree odious and disgusting, that is, not to the man who does it, for he does it only because it gives him pleasure, but to one who thinks [?] of it. Be it so, but what is that to him? He has the same reason for doing it that I have for avoiding it. A man loves carrion--this is very extraordinary--much good may it do him. But what is this to me so long as I can indulge myself with fresh meat? But such reasoning, however just, few persons have calmness to attend to. This propensity is much stronger than it is to be wished it were to confound physical impurity with moral. (I pass without examination from the literal use of the word impunity [to] the figurative. J.B.) From a man's possessing a thorough aversion to a practice himself, the transition is but too natural to his wishing to see all others punished who give into it. Any pretence, however slight, which promises to warrant him in giving way to this intolerant propensity is eagerly embraced. Look the world over, we shall find that differences in point of taste and opinion are grounds of animosity as frequent and as violent as any opposition in point of interest. To disagree with our taste [and] to oppose our opinions is to wound our sympathetic feelings and to affront our pride. James the 1st of England, a man [more] remarkable for weakness than for cruelty, conceived a violent

antipathy against certain persons who were called Anabaptists on account of their differing from him in regard to certain speculative points of religion. As the circumstances of the times were favourable to [the] gratification of antipathy arising from such causes, he found means to give himself the satisfaction of committing one of them to the flames. The same king happened to have, an antipathy to the use of tobacco. But as the circumstances of the times did not afford the same pretences nor the same facility for burning tobacco- smokers as for burning Anabaptists, he was forced to content himself with writing a flaming book against it. The same king, if he be the author of that first article of the works which bear his name, and which indeed were owned by him, reckons this practise among the few offences which no Sovereign ever ought to pardon. This must needs seem rather extraordinary to those who have a notion that a pardon in this case is what he himself, had he been a subject, might have stood in need of.

### *Philosophical pride*

This transition from the idea of physical to that of moral antipathy is the more ready when the idea of pleasure, especially of intense pleasure, is connected with that of the act by which the antipathy is excited. Philosophical pride, to say nothing at present of superstition, has hitherto employed itself with effect in setting people a-quarrelling with whatever is pleasurable even to themselves, and envy will always be disposing them to quarrel with what appears to be pleasurable to others. In the notions of a certain class of moralists we ought, not for any reason they are disposed to give for it, but merely because we ought, to set ourselves against every thing that recommends itself to us under the form of pleasure. Objects, it is true, the nature of which it is to afford us the highest pleasures we are susceptible of are apt in certain circumstances to occasion us still greater pains. But that is not the grievance: for if it were, the censure which is bestowed on the use of any such object would be proportioned to the probability that could be shewn in each case of its producing such greater pains. But that is not the case: it is not the pain that angers them but the pleasure.

### *Religion*

We need not consider at any length [the length] to which the rigour of such philosophy may be carried when reinforced by notions of religion. Such as we are ourselves, such and in many respects worse it is common for us to make God to be: for fear blackens every object that it looks upon. It is almost as common for men to conceive of God as a being of worse than human malevolence in their hearts, as to stile [?] him a being of infinite benevolence with their lips. This act is one amongst others which some men and luckily not we ourselves have a strong propensity to commit. In some persons it produces it seems, for there is no disputing a pleasure: there needs no more to prove that it is God's pleasure they should abstain from it. For it is God's pleasure that in the present life we should give up all manner of pleasure, whether it stands in the way of another's happiness or not, which is the sure sign and earnest of the pleasure he will take in bestowing on us all imaginable happiness hereafter; that is, in a life of the futurity of which he has given us no other proofs than these. / [202]

This is so true that, according to the notions of these moralists and these religionists, that is, of the bulk of moralists and religionists who write, pleasures that are allowed of, are never allowed of for their own sake but for the sake of something else which though termed an advantage or a good presents not to any one so obviously and to them perhaps not at all, the idea of pleasure. When the advantage ceases the pleasure is condemned. Eating and drinking by good luck are necessary for the preservation of the individual: therefore eating and drinking are tolerated, and so is the pleasure that attends the course of these functions in so far as it is necessary to that end; but if you eat or if you drink otherwise than or beyond what is thus necessary, if you eat or drink for the sake of pleasure, says the philosopher, "It is shameful"; says the religionist, "It is sinful." The gratification of the venereal appetite is also by good luck necessary to the preservation of the species: therefore it is tolerated in as far as it is necessary to that end, not otherwise. Accordingly it has been a question seriously debated whether a man ought to permit himself the partaking of this enjoyment with his wife when from age or any other circumstance there is no hope of children: and it has often been decided in the negative. For the same reason or some other which is not apparent, for a man to enjoy his wife at unseasonable times in certain systems of laws has been made a capital offence. Under the above restriction however it has been tolerated. It has been tolerated, but as the pleasure appeared great,

with great reluctance and at any rate not encouraged; it has been permitted not as a good but as a lesser evil. It has indeed been discouraged and great rewards offered in a future life for those who will forego it in the present.

It may be asked indeed, if pleasure is not a good, what is life good for, and what is the purpose of preserving it? But the most obvious and immediate consequences of a proposition may become invisible when a screen has been set before by the prejudices of false philosophy or the terrors of a false religion.

### ***Hatred of pleasure***

Nero I think it was, or some other of the Roman tyrants, who is said to have offered a reward to any one who should discover a new pleasure. That is, in fact, no more than what is done by those who offer rewards for new poems, for new mechanical contrivances, for improvements in agriculture and in the arts; which are all but so many means of producing new pleasures, or what comes to the same thing, of producing a greater quantity of the old ones. The object however that in these cases is advertised for is not advertised for under the name of pleasure, so that the ears of these moralists are not offended with that detested sound. In the case abovementioned, from the character of the person who offered the reward it is natural enough to presume that the sort of pleasure he had in view in offering it was sensual and probably venereal, in which way no new discoveries would be endured. It is an observation of Helvetius and, I believe, of Mr. Voltaire's, that if a person were born with a particular source of enjoyment, in addition to the 5 or 6 senses we have at present, he would be hunted out of the world as a monster not fit to live. Accordingly nothing is more frequent than for those who could bear with tolerable composure the acts of tyranny by which all Rome was filled with terror and desolation to lose all patience when they come to the account of those miserable devices of lasciviousness which had no other effect than that of giving surfeit and disgust to the contemptible inventor.

### ***How far the antipathy is a just ground***

Meanwhile the antipathy, whatever it may arise from, produces in persons how many soever they be in whom it manifests itself, a particular kind of pain as often as the object by which the antipathy is excited presents itself to their thoughts. This pain, whenever it appears, is unquestionably to be placed to the account of the mischief of the offence, and this is one reason for the punishing of it. More than this--upon the view of any pain which these obnoxious persons are made to suffer, a pleasure results to those by whom the antipathy is entertained, and this pleasure affords an additional reason for the punishing of it. There remain however two reasons against punishing it. The antipathy in question (and the appetite of malevolence that results from it) as far as it is not warranted by the essential mischievousness of the offence is grounded only in prejudice. It may therefore be assuaged and reduced to such a measure as to be no longer painful only in bringing to view the considerations which shew it to be ill-grounded. The case is that of the accidental existence of an antipathy which [would have] no foundation [if] the principle of utility were to be admitted as a sufficient reason for gratifying it by the punishment of the object; in a word, if the propensity to punish were admitted in this or any case as a sufficient ground for punishing, one should never know where to stop. Upon monarchical principles, the Sovereign would be in the right to punish any man he did not like; upon popular principles, every man, or at least the majority of each community, would be in the right to punish every man upon no better reason.

### ***If it were, so would heresy***

If this were admitted we should be forced to admit the propriety of applying punishment, and that to any amount, to any offence for instance which the government should find a pleasure in comprising under the name of heresy. I see not, I must confess, how a Protestant, or any person who should be for looking upon this ground as a sufficient ground for / [203] burning pederasts, could with consistency condemn the Spaniards for burning Moors or the Portuguese for burning Jews: for no

paederast can be more odious to a person of unpolluted taste than a Moor is to a Spaniard or a Jew to an orthodox Portuguese.

### ***The antipathy itself a punishment***

Besides this, the antipathy in question, so long as it subsists, draws with it in course, and without having recourse to the political magistrate, a very galling punishment, and this punishment is the heavier the greater the number of persons is by whom the antipathy is entertained and the more intense it is in each person: it increases therefore in proportion to the demand there is for punishment on this ground. Although the punishing it by the hands of the magistrate were not productive of the ill consequences just stated, it would seem hard to punish it in this way upon the ground of that circumstance which necessarily occasions it to be punished another way; its being already punished beyond what is enough is but an indifferent reason to give for punishing it more.

### ***Punishment however not an incentive***

Some writers have mentioned as an objection to the punishing of practises of the obscene kind, that the punishment is a means of putting men in mind to make experiment of the practise: the investigation of the offence and the publicity of the punishment being the means of conveying the practise to the notice of a multitude of persons who otherwise would never have thought of any such thing. From the circumstance of its being punished they learn of its being practised, from the circumstance of its being practised they conclude that there is a pleasure in it; from the circumstance of its being punished so severely they conclude that the pleasure is a great one, since it overcomes the dread of so great a punishment. That this must often happen is not to be denied, and in so far as it does happen and occasions the offence to be repeated it weighs against the benefit of the punishment. This is indeed the most popular argument of any that can be urged against the punishment of such practises; but it does not appear to be well-grounded. It proves nothing unless the punishment tends as strongly in the one way to spread the practise as it does in the other to repress it. This, however, does not appear to be the case. We should not suppose it a priori for at the same time that it brings to view the idea of the offence it brings to view in connection with that idea the idea not only of punishment but of infamy; not only of the punishment which should prevent men's committing it in the face of the public, but of the infamy which should prevent their discovering any inclination to commit it to the nearest and most trusty of their friends. It does not appear to be the case in point of experience. In former times, when it was not punished, it prevailed to a very great degree; in modern times in the very same countries since it has been punished it has prevailed in a much less degree. Besides this, the mischief produced by the punishment in this way may be lessened in a considerable degree by making the trial and all the other proceedings private, which may be done without any danger of abuse by means of the expedient suggested in the book relative to procedure.

### ***Danger of false prosecutions greater in this case than others***

A very serious objection, however, to the punishment of this offence is the opening it makes for false and malicious prosecutions. This danger in every case weighs something against the reasons for applying punishment, but in this case it weighs much more considerably than perhaps in any other. Almost every other offence affords some particular tests of guilt, the absence of which constitutes so in any criterions of innocence. The evidence of persons will be in some way or other confirmed by the evidence of things: in the ordinary offences against property the circumstance of the articles being missing or seen in undue place, in offences against persons the marks of violence upon the person. In these and, in short, in all other or almost all other cases where the offence has really been committed, some circumstances will take place relative to the appearance of things, and will therefore be expected to be proved. In any offences which have hatred for their motive the progress of the quarrel will afford a number of characteristic circumstances to fix the imputation upon the person who is guilty. In the case of rape, for instance, where committed on a virgin, particular characteristic appearances will not fail to have been produced, and even where the object has been a married woman or a person of the same sex marks of violence will have been produced by the resistance. But when a filthiness of this sort is committed between two persons, both willing, no such circumstances need have been exhibited; no proof therefore of such circumstances will be required. Wherever,



therefore, two men are together, a third person may alledge himself to have seen them thus employing themselves without fear of having the truth of his story disproved. With regard to a bare proposal of this sort the danger is still greater: one man may charge it upon any other man without the least danger of being detected. For a man to bring a charge of this sort against any other man without the possibility of its being disproved there needs no more than for them to have been alone together for a few moments.

### ***Used as an instrument of extortion***

This mischief is often very severely felt. In England the severity of the punishment and what is supported by it, the moral antipathy to the offence, is frequently made use of as a means of extorting money. It is the most terrible weapon that a robber can take in hand; and a number of robberies that one hears of, which probably are much fewer than the ones which one does not hear of, are committed by this means. If a man has resolution and the incidental circumstances are favourable, he may stand the brunt and meet his accuser in the face of justice; but the danger to his reputation will at any rate be considerable. Men of timid natures have often been almost ruined in their fortunes ere they can summon up resolution to commit their reputations to the hazard of a trial. A man's innocence can never be his security; knowing this it must be an undaunted man to whom it can give confidence; a well-seasoned perjurer will have finally the advantage over him. Whether a man be thought to have actually been guilty of this practise or only to be disposed to it, his reputation suffers equal ruin. / [204]

After so much has been said on the abomination of paederasty, little need be said of the other irregularities of the venereal appetite. If it be problematical whether it be expedient upon the whole to punish the former, it seems next to certain that there can be no use in punishing any of the latter.

### ***Between women***

Where women contrive to procure themselves the sensation by means of women, the ordinary course of nature is as much departed from as when the like abomination is practised by men with men. The former offence however is not as generally punished as the latter. It appears to have been punished in France but the law knows nothing of it in England. (Code penal, Tit. 35, p 238. J.B.)

### ***Whether worse between men and women than between men***

It seems to be more common for men to apply themselves to a wrong part in women and in this case grave authors have found more enormity than when the sex as well as the part of the object is mistaken. Those who go after the principle of the affront, which they say in affairs of any such sort is to God Almighty, assure us that the former contrivance is a more insolent affront than the latter. (See Fort. Rep. qua supra. J.B. [i.e., 187b, in "Notes." Ed.]) The affront should be the same if from necessity or caprice a person of the female sex should make use of a wrong part in one of the male. If there be one idea more ridiculous than another, it is that of a legislator who, when a man and a woman are agreed about a business of this sort, thrusts himself in between them, examining situations, regulating times and prescribing modes and postures. The grave physician who, as soon as he saw Governor Sancho take a fancy to a dish, ordered it away is the model, though but an imperfect one, of such a legislator.

Thus far his business goes on smoothly: he may hang or burn the parties according as he fancies without difficulty. But he will probably be a little at a loss when he comes to enquire with the Jesuit Sanchez (De Matrimonio) how the case stands when the man for example, having to do with a woman, begins in one part and consummates in another; thinks of one person or of one part while he is employing himself with another; begins with a woman and leaves her in the lurch. Without calling in the principle of utility such questions may be multiplied and remain undecided for evermore; consult the principle of utility, and such questions never will be started.

## ***Bestiality***

An abomination which meets with as little quarter as any of the preceding is that where a human creature makes use in this way of a beast or other sensitive creature of a different species. A legislator who should take Sanchez for his guide might here repeat the same string of distinctions about the *vas proprium* and *improprium*, the imaginations and the simultaneity and so forth. Accidents of this sort will sometimes happen; for distress will force a man upon strange expedients. But one might venture to affirm that if all the sovereigns in Europe were to join in issuing proclamations inviting their subjects to this exercise in the warmest terms, it would never get to such a height as to be productive of the smallest degree of political mischief. The more of these sorts of prosecutions are permitted the more scope there is given for malice or extortion to make use of them to effect its purpose upon the innocent, and the more public they are the more of that mischief is incurred which consists in shocking the imaginations of persons of delicacy with a very painful sentiment.

## ***Burning the animal***

Some persons have been for burning the poor animal with great ceremony under the notion of burning the remembrance of the affair. (See Puffendorf, Bks. 2, Ch. 3, 5. 3. Bacon's Abridg. Title Sodomy. J.B.) A more simple and as it should seem a more effectual course to take would be not to meddle or make smoke [?] about the matter.

## ***Masturbation***

Of all irregularities of the venereal appetite, that which is the most incontestably pernicious is one which no legislator seems ever to have made an attempt to punish. I mean the sort of impurity which a person of either sex may be guilty of by themselves. This is often of the most serious consequence to the health and lasting happiness of those who are led to practise it. Its enervating influence is much greater than that of any other exertion of the venereal faculty, and that on three different accounts: 1) Any single act of this kind is beyond comparison more enervating than any single act of any of those other kinds. The reason of this is not clear; but the fact is certain. Physicians are all agreed about it. 2) Persons [are] in a way to give into this practise at an earlier age than that in which they are in a way to give in to any of those other practises, that is, at an age when the influence of any enervating cause is greater. As the violence to modesty is rather less in this case than in any of these others, a person will with less difficulty yield to the impulse whether of nature or example. 3) In all those other cases the propensity may be kept within bounds by the want of opportunities; in this case there can scarce ever be any want of opportunities.

Physicians are also agreed that this is not an infrequent cause of indifference in each of the sexes to the other, and in the male sex it often ends in impotence.

It is not only more mischievous to each person than any of those other impurities, but it appears everywhere to be much more frequent.

In popular estimation however the guilt of it is looked upon as much less than that of any of them; and yet the real mischief we see is incomparably greater, and yet it has never been punished by any law. Would it then be right to appoint / [205] punishment for it? By no means; and for this plain reason, because no punishment could ever have any effect. It can always be committed without any danger or at least without any apparent danger of a discovery.

## ***Domestic discipline the proper remedy against impurities***

With regard to all the abuses of the venereal appetite while the party is under age, they seem to be the proper objects of domestic discipline; after he is come to be out of that jurisdiction, or even while he is yet under it, these or any other indecencies committed in the face of the public will be proper

objects of the coercion of the laws; while they are covered with the veil of secrecy the less that is said about them and particularly by the law the better.

## NOTES RELATIVE TO BENTHAM'S ESSAY ON PAEDERASTY

[The following notes were written by Bentham immediately before the above essay, but their substance, though closely related to the essay, was not incorporated into it except for the first three sentences. Ed.]

[187]

### *Distinction between physical impurity and moral*

The propensity is stronger than there is reason to wish it should be, to confound moral impurity and turpitude with physical impurity and turpitude; from observing the latter in any case, especially when combined with pleasure, to impute the [former]. From a man's being thoroughly averse to a practise himself the transition is but too natural to his wishing to see all others punished who give in to it. Any pretense, however slight, which promises to warrant him in giving way to this propensity is eagerly embraced. It is this cause which more perhaps than any other, more even than pecuniary interest, has contributed to produce the persecutions that hath been raised upon the ground of heresy.

Different men will have different opinions but, for my own part, I must confess I can not bring myself to entertain so mean an opinion of the charms of the better part of the species or of the taste of the other as to suppose it can ever be necessary to send a man to make love with a halter about his neck.

### *Antipathy no sufficient warrant*

Non amo te, Sabidi & c. [Martial, I, 32, Ed.] may be quite enough when all the question only is whether one shall see Sabidius or not see him: but when the question is whether Sabidius shall be buried alive or let alone the reasons which a man should give for burning him alive may be expected to be of a cast somewhat more substantial.

### *Whether it is an affront to God?*

According to some there are two sorts of High Treason, High Treason against God, the Heavenly King, and High treason against the earthly king: and this is High Treason against God. (See a book of old English Law entitled Miroir des Justices, Ch. 1, Sect. 4; Ch. 4, Sect. 13; Ch. 2, Sect. 11.J.B.) According to this account of the matter it is an offence scarce distinguishable from that which the Titans were guilty of when they revolted against Jupiter. Judge Fortescue, an Earl of Macclesfield, Chancellor of England, and other sages of the English law seem to have given into this idea. (Fortescue's Reports for the case of the King against Wiseman. J.B.). His Lordship shews how it comes to be High Treason against the King of Heaven. It is of the nature of a challenge of which that Sovereign is the object--"a direct affront to the Author of Nature and insolent expression of contempt of his wisdom, condemning the provision made by him and defying both it and him." According to this account of the matter, the offence should fall indifferently either within our first class, under the title, offences against the persons of individuals (reckoning God as an individual), or within the fourth class under the title of High Treason. But this account of the matter however ingenious seems hardly to be just.

### *Whether it hurts population--Bermondus*

Bermondus, a canonist cited with approbation by the two great English lawyers above mentioned says that in this point of view it is worse than murder. For a murderer destroys but one man whereas a Sodomite puts to death "every man that lives." "Apud Deum tale peccatum reputatur gravius homicidio, eo quia unum homicida unum hominem tantum, Sodomita autem totum genus humanum

delere videtur." This, he assures us, is God's way of taking the account. If this be the case it must be confessed that God's arithmetic is a little different from man's arithmetic.

The author of the article Sodomy in the law abridgement that goes by the name of Bacon's is more moderate. "If any crime," says he, "deserve to be punished in a more exemplary manner this does. Other crimes are prejudicial to society, but this strikes at the being thereof; for it is seldom known that a person who has been once guilty of so unnatural an abuse of his generative faculties has afterwards a proper regard for women."

### ***God's burning Sodom--whether a sufficient warrant?***

It has been observed with regard to this offence that God himself punished it with fire; and this has been given as a reason, not only for its being punished but for its being punished with fire.

1. If God according to supposition has punished any practise, it was either on account of the mischievousness of the practise to society or on some other account. If the practise be of the number of those which are prejudicial to society, it will already be punished on that ground; there is no occasion to mention any other. If it be not prejudicial for society, there can be no other reason for society to meddle with it.
2. If it be for any other reason than being prejudicial to society that God has punished the act in question, this can be no reason at all for man's punishing it. For there can be no reason but this to man. If then God punished it, it was for a reason which men can not know.
3. When it is clear that in any individual instance God has punished an act, in that individual instance the very circumstance of its being he who punished it ought with us to be a sufficient reason for his having done so.

But when we can find no / [188] other reason, if, in any other individual instance of the same sort of act, God does not punish it, there is no reason at all for punishing it. The circumstance of his not punishing it in the latter instance proves as much that it ought not to be punished in that case as the circumstance of his having punished it in the former case proves that it was right to punish it in that former case.

For these or other reasons it is an opinion that seems to spread more and more among divines of all persuasions, that the miraculous and occasional dispensations of an extraordinary providence afford no fit rule to govern the ordinary and settled institutions of human legislators. If they were, simple fornication, sparing enemies taken in battle (the offence of Korah, Dathan and Abiram and their partizans, for which 15,000 of the people suffered death. Numbers ch. 16. J.B.), murmuring against authority, and making mock at old age (the offence for which two and forty children were torn to pieces by bears, at the intercession of Elijah. 2 Kings ch. 2. J.B.), to mention those cases only among a vast number, had need to be made capital offences. If any man, under the notion of its being agreeable to God, would do any act that is prejudicial to society, he should produce a particular commission from God given him in that individual instance. If a man without a special commission from God is to be justified in doing any violent act that has ever been done by a special commission from God, a man might as well kill his son because God commissioned Abraham to kill Isaac.

1. With regard to the offence in question if it had been God's pleasure that it should be punished throughout the earth with the punishment of fire, it seems reasonable to conclude that he would at least have provided for its being punished in that manner among his own people, the Jews. But in the Jewish laws it is only provided that such offenders shall be "put to death" generally, just as several kinds of incest and the offence of performing conjugal duty at an unseasonable conjuncture are to be punished. As a proof that burning was not particularly intended, but rather was meant to be excluded, in the next verse a particular kind of incest is mentioned, that of him who has knowledge of a mother and her daughter: and for this the punishment of burning to death is specially appointed (Levit. ch. 20.J.B.) [The punishment in the Talmud is stoning. Ed.].
2. Even with regard to the cities in question, it is not said that this was the only one nor even the greatest of the offences for which those cities were destroy'd. The offences imputed to them

are in the English translation termed by the general names of "wickedness" (Genesis, ch. 18.J.B.), and "iniquity" (Ibid., ch. 19, v. 15, J.B.), and their conduct opposed to "righteousness." In this particular respect the Canaanites in question could not be more culpable than the antient Greeks in that which is deemed the most virtuous period of their history. Yet it appears not that this punishment was ever inflicted by heaven for such a cause upon the antient Greeks.

3. True it is that the only offence which is mentioned as having been committed by them on any individual occasion is an offence of a sort which appears to have originated in the depraved appetite in question. It is not, however, the same offence precisely which in England is punished with simple death, and in France with burning, but one of a very different complexion and of a much deeper die. The offence attempted by the profligate Canaanites carried with it two enormous aggravations: 1. Personal violence, by which circumstance alone it stands raised as much above the level of the offence which under the name in question men ordinarily have in view as rape does above that of simple fornication. 2. A violation of hospitality, an aggravation of much greater odium and indeed of much greater mischief in a rude than in a civilized state of society.

### ***Zeal shewn against it in the English Marine Law***

In the Articles of War established for the government of the English Navy, in Art. 32, after providing with respect to this offence and other species of impurity that they "shall be punished with death" it is added without mercy. (By Stat. 13. Car. 2. Stat. 1. Ch. 9. J.B.) Of all the offences of which a man in the maritime service can be guilty, burning a fleet, betraying it to the enemy and so forth, this is the only one which it was thought proper to exclude from mercy. The safety of the fleet and of the Empire were in the eyes of the legislator objects of inferior account in comparison with the preservation of a sailor's chastity. [188d follows; see my introduction. Ed.] / [189]

### ***Horror of singularity***

In persons of weak minds, anything which is unusual and at the same time physically disgusting is apt to excite the passion of hate. Hatred when once excited naturally seeks its gratification in the tormenting or destruction of the object that excited it. Many are the innocent animals who are punished in this way for the crime of being ugly. To this head we may refer the propensity persons of weak and irritable temperament, particularly women, have to the killing of toads and spiders. The offspring of a woman when it has had any singularity whereby it has been distinguished in a remarkable degree from the ordinary race of human beings under the name of monster has often met with the same treatment--hermaphrodites [for example] who, not knowing what sex they were, have performed the functions of both. Envy has here joined with antipathy in letting loose against these unfortunate people the fury of the dissocial appetite.

Any desire to hurt any sensitive object which in any way has happened to become a cause of pain to us, nay even insensitive objects, is the natural instantaneous consequence of such pain and it always breaks out into evil, unless where reason and reflection interfere and check it. But in these cases, reason, far from checking has appeared from some cause or other to dictate such behaviour.

### ***Mischief to population reparable by fine***

If population were the only object, the mischief that a rich batchelor did by giving him[self] up to improlific venery might be amply repaired by obliging him to give a marriage portion to two or three couples who wish for nothing but a in order to engage in marriage.

### ***Athenians wanted but permission to marry two wives***

When among the Athenians the number of the people had received a dangerous reduction by an unsuccessful war, what was the step taken to repair it? All that was done was to permit to every man that chose it to take two wives. This shews that it was plain enough at that time of day there was no

want of inclination on the part of the male sex toward [women] and that there wanted nothing but permission to dispose a man to extend his connections with the other sex. And yet at no time and among no people was the irregular appetite in question more predominant.

### *How came scratching not to be held abominable?*

It is wonderful that nobody has ever yet fancied it to be sinful to scratch where it itches, and that it has never been determined that the only natural way of scratching is with such or such a finger and that it is unnatural to scratch with any other. (As in Russia the only way of making the sign of the cross is with two fingers and it is heterodox to make it with three. J.B.) In antient Persia it was infamous to have a cold and to take those measures which nature dictates for relieving oneself from the inconvenience of such an indisposition. (Xenophon, Cyropaedia. J.B.)

Happily for the Persians under the clear and steady atmosphere of that country colds were not altogether so endemical as under the humid and changeable atmosphere of England. But in all countries it is a practise that more or less has always been too frequent to confound misfortune with criminality.

### *Punishment not necessary for the sake of women*

By the mild ordinances of nature the fair sex enjoy already a monopoly as perfect as other monopolies are, and more perfect than they ought to be, of the affections of the other and this monopoly is too well secured by the means that established it to need the support of the harsh constitutions of penal laws. A ribbon or ringlet is a much more suitable and not less powerful tie to bind a lover than the hangman's rope of the executioner. The man may be their friend, but it should seem not a very judicious friend, who would advise them to conciliate affection by horror and by force.