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► **To cite this version:**

Jean-François Mignot. Decriminalizing Homosexuality: A Global Overview Since the 18th Century. Annales de démographie historique, In press, 1. hal-03778162

HAL Id: hal-03778162

<https://hal.science/hal-03778162>

Submitted on 15 Sep 2022

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Decriminalizing homosexuality: A global overview since the 18th century

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Remerciements: I would like to thank Gwénaële Calvès, Mark Cooney, Gaëlle Meslay and Daniel Sabbagh for their helpful comments on earlier versions of this article, as well as the organizers of the seminar ‘Histoire de la famille et des populations’ of the Centre Roland Mousnier (Sorbonne Université / CNRS), particularly Michaël Gasperoni, Corinne Gomez, Vincent Gourdon, Clyde Plumauzille, Isabelle Robin and François-Joseph Ruggiu for their helpful comments.

Résumé

La plupart des pays du monde ont, à une époque ou à une autre, interdit les actes homosexuels entre adultes consentants en privé. Où, quand et comment ces actes ont-ils été dépénalisés dans le monde depuis le siècle des Lumières ? Des données historiques sur la légalité des actes homosexuels et sur l'effectif de population dans les 203 États actuels permettent de calculer la part annuelle de la population mondiale qui, depuis 1760, vit dans un pays où les actes homosexuels sont légaux (plutôt qu'une infraction). Si la France a été le premier pays à dépénaliser les actes homosexuels (1791) et si elle a inspiré la première vague de dépénalisation en Europe occidentale, en Amérique latine et dans l'Empire ottoman, au XIXe siècle moins de 25 % des humains vivaient dans un pays qui ne pénalisait pas les relations homosexuelles. La seconde vague de dépénalisation, fondée sur une libéralisation des opinions publiques, a commencé en Europe occidentale et en Amérique du Nord dans les années 1960, puis s'est étendue à l'Océanie, à l'Europe de l'Est et enfin à l'Asie. En 2020, plus de 75% des humains vivent dans un pays qui ne pénalise plus les relations homosexuelles. Cela dit, ces relations constituent toujours une infraction pour la plupart des habitants d'Afrique et des pays à majorité musulmane, et elles sont particulièrement sévèrement punies dans quelques États et entités infra-étatiques de droit islamique. Comme les pays qui pénalisent aujourd'hui connaîtront une croissance démographique relativement rapide dans les décennies à venir, la part des humains qui sont légalement libres d'avoir des relations homosexuelles va probablement diminuer, à moins qu'un nombre suffisamment important de pays suffisamment peuplés dépénalisent bientôt.

Summary

Most of the world's countries have at some point prohibited homosexual acts among consenting adults in private. Where, when and how were homosexual relations decriminalized in the world since the Age of Enlightenment? Historical data on the legality of homosexual acts and on population numbers in 203 present-day countries allows us to compute the annual share of the world population who live in a country where homosexual acts are legal (vs. a criminal offence), since 1760. Although France became the first country to decriminalize homosexual acts (1791) and inspired the first wave of decriminalization in Western Europe, Latin America and the Ottoman Empire, in the 19th century fewer than 25% of humans lived in a country which did not criminalize homosexual relations. The second wave of decriminalization, which was based on increasingly liberal public opinions regarding acts among consenting adults, started in Western Europe and North America in the 1960s and then spread to Oceania, Eastern Europe and finally Asia. In 2020, more than 75% of humans live in a country which no longer criminalizes homosexual relations. Liberalization has been uneven, though: homosexual acts are still a crime for most of the inhabitants in Africa and in Muslim-majority countries, and they are especially harshly punished in a few Islamic-law states and sub-state entities. As the countries which criminalize homosexual acts today will grow demographically relatively fast in the coming decades, the share of humans who are legally free to engage in homosexual acts will likely decrease, except if a sufficiently large number of sufficiently populated criminalizing countries decriminalize soon.

As of January 1, 2020, 21% of the world's inhabitants live in a country that criminalizes homosexual acts, i.e. they do not have the right to have private sexual relations with consenting adults of the same sex, under penalty of a fine, corporal punishment, imprisonment or death (Mendos, 2019). However, this also means that 79 % of the world's inhabitants live in countries that do not criminalize homosexuality. Never in the last few centuries have so many humans been legally free to have homosexual relations.

When, where and how were homosexual relations decriminalized in the world? How many of the world's inhabitants have been living in countries where homosexual acts are not criminalized, since the historical trend of decriminalization started in the Age of Enlightenment? And how does the legal treatment of homosexuality vary from one country to another? This article examines the comparative, global history of the decriminalization of homosexual acts since the 18th century, as well as its current state and its prospects for evolution.

1. Definitions, materials and methods

Of the 70 countries (out of 203) that consider homosexual acts as a criminal offence on January 1, 2020, one third exclusively criminalize sexual acts between men, most often under the legal qualification of 'sodomy' (which may include not only consensual anal penetration of a man by another, but also rape by a man of an adult man or a minor). By contrast, none of these countries exclusively criminalize sexual acts between women. And two thirds of these countries criminalize relations between women as well as between men, particularly under the labels of 'unnatural' or 'immoral' acts (Mendos, 2019); but in these countries too, most of the individuals prosecuted tend to be men. For instance, as Dupret (2021, p. 235) notes, 'To our knowledge, no case of lesbianism has ever been filed in Indonesia, Lebanon or Egypt' in the

contemporary period. The accused persons may express an exclusive and lasting sexual orientation for same-sex partners or even claim a homosexual identity – or not. In any case and strictly speaking, it is sexual *acts* which are legally prosecuted, not a sexual preference or identity.

Even in countries where the repressive legislation is rarely enforced, homosexuals are not free to live their lives as they see fit: risking being denounced, blackmailed and otherwise intimidated by citizens or by the police, they must hide their homosexual relationships; when they are victims of abuse, they may hesitate to file a complaint for fear of being prosecuted (or undergoing anal tests); and the criminalization of homosexual acts justifies various other types of discrimination against homosexuals. Thus, the decriminalization of homosexual acts may be seen as an ‘outcome and index of wider social change’ (Frank et al., 2010), an indicator of the liberalization of state action (Hadler and Symons, 2018) and perhaps also civil society’s values, and also an indicator of the degree of freedom people may enjoy.

Historians, political scientists and sociologists have shown that more and more countries have decriminalized homosexual acts in the last few decades (Hadler and Symons, 2018) and centuries (Pinker, 2018), not just because the overall number of countries has increased but also because more countries have recently decriminalized than have (re)criminalized (Frank et al., 2010). In 2020, most countries (66%) do not criminalize homosexual acts. However, despite these pieces of information we lack a ‘big picture’ of the global historical movement of the decriminalization of homosexuality. First, even though it is countries which decide to criminalize or not, it is people who are affected by the decision, which is why we need a measure indicating to what extent more people (vs. more countries) now benefit from decriminalization. Second, we need to construct this indicator on a longer term than previous research, since the beginning of the first wave of decriminalization in the 18th century.

This is why this article introduces a new measure of the prevalence of decriminalization of homosexual relations: I estimate the *proportion of the world population* who live in a country where homosexual acts are not criminalized (Figure 1). To compute this indicator, I use two types of information relating to the 203 current states (excluding non-state and sub-state entities) and the states that preceded them:

- first, I use data on state law (not customary or religious or ecclesiastical law) indicating whether or not the national legislation in force at each date – most often the Criminal Code, which might itself be partly based on religious law – criminalizes private consensual sexual acts between same-sex adults; my main source, the International Lesbian and Gay Association reports (Carroll and Mendos, 2017; Mendos, 2019; see also Waaldijk 2009), is supplemented with historical information on the British empire (Gupta, 2008; Sanders, 2009; Han and O’Mahoney, 2018), the Arab-Muslim world (Schmitt and Sofer, 1992; El-Rouayheb, 2005; Al Farchichi and Saghiyeh, 2012) and China (Kang, 2009); this legal database is included in the appendix (Table 1);
- second, I use demographic data estimating the national population size in each year (Gapminder, 2019), up to 1949 (Maddison, 2003) and since 1950 (United Nations, 2017a); although imperfect, these population data are the most reliable available data.

The criminalization of private consensual sexual acts between same-sex adults is not the only possible legal discrimination against homosexuality. Indeed, some countries have ages of consent that are higher for homosexual vs heterosexual acts, i.e. they criminalize certain sexual acts only if performed by individuals of the same sex. For instance, this was the case in France from 1942 to 1982, when the age of consent was 21 or 18 years old for homosexual acts and 13 for heterosexual acts (Gauthier and Schlagdenhauffen, 2019); in

France since 1982, the age of consent is 15 years old for all (Idier, 2013). Today, 7 % of the world population live in a country which, although not criminalizing private consensual sexual acts between same-sex *adults*, have ages of consent that are higher for homosexual vs heterosexual acts. In addition, some countries punish certain offenses, such as public indecency, more severely when the act is committed by same-sex vs different-sex individuals. This was also the case in France from 1960 to 1980. Finally, some non-criminalizing countries are known to persecute homosexuals through legal provisions other than the direct criminalization of homosexual acts, such as laws against indecency, debauchery, prostitution, pornography or even hooliganism (or laws related to public security as well as public hygiene). This was the case, for instance, in China from 1979 to 1997 and it is still the case today, for instance, in Iraq. Similarly, in Egypt, judges may use a law against prostitution and assimilate homosexuality with debauchery (*fujur*) to prosecute same-sex relationships, as in the ‘Queen Boat’ case (2001); and in Indonesia, judges may also use articles against pornography to prosecute same-sex relationships, as in the ‘Atlantis Gym and Sauna’ case (2017) (Dupret 2021).

However, I have been unable to gather systematic historical information on these various types of legal discrimination. As a consequence, the indicator this article uses – the proportion of the world population living in a country where homosexual acts among consenting adults in private are not criminalized (Figure 1) – might be considered a maximal estimate of the share of people who are legally free to have same-sex relations.

For countries that have decriminalized before unification or at the level of their federated entities, I estimate the annual proportion of their inhabitants residing in an entity that does not criminalize, such as in the United States (Eskridge, 2002), the United Kingdom and Australia; necessary data are unavailable for Italy and Switzerland, however, so the date

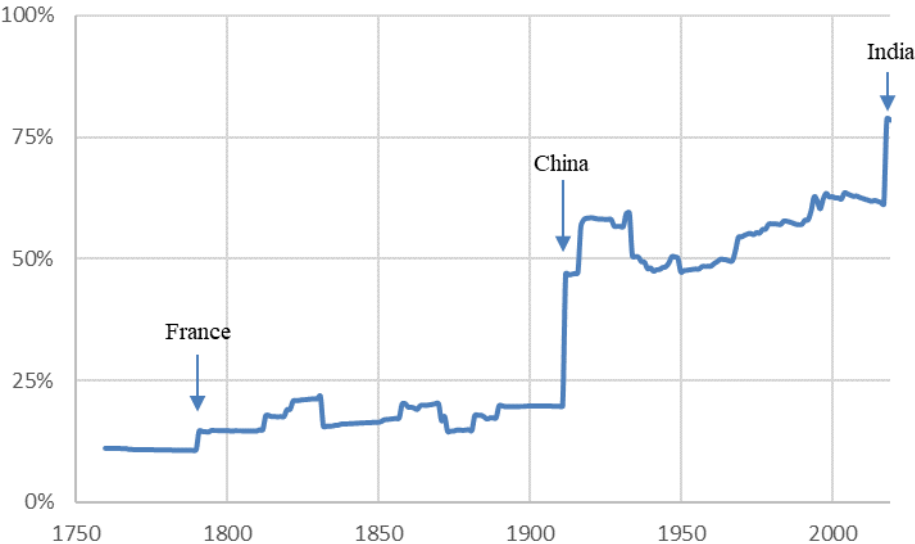
of decriminalization used for these countries is that of the last region or canton to decriminalize.

In total, Figure 1 is based on both legal and demographic data on more than 80% of the world's known inhabitants since the 1760s and more than 99% since the 1950s. Most lacking data concern precolonial Africa: I have information on the criminalization of homosexuality for fewer than 10 % of Africans until the 1850s, and it is only since the 1920s that data exist on more than 80 % of Africans. Data are also to some extent lacking on Oceania until the late 19th century. The map in Figure 2 covers 100% of the world population in 2020. Together, these figures give a global historical overview of the decriminalization of homosexuality.

2. The first wave of decriminalization, from 1791

In the second half of the 18th century, only about 11% of the world's population lived in a country that did not criminalize homosexual acts (Figure 1). This was the case in Cambodia, Laos, Vietnam and Korea, which have not criminalized these practices since at least the 18th century, as well as in Japan – which criminalized them only briefly at the end of the 19th century – and also in the Russian empire. Same-sex relations were prohibited almost everywhere else, such as in Europe and the colonies of the Americas (British, Spanish, Portuguese or French) and in the Ottoman, Mughal and Chinese empires.

Figure 1. Proportion of the world population living in a country where homosexual acts are not criminalized, 1760-2020



Note: As of January 1, 2020, 79% of the world’s population lives in a country that does not criminalize homosexual acts, compared to 63% in 2000, 20% in 1900, 16% in 1800 and 11 % in 1760.

Sources: Carroll and Mendos, 2017; Mendos, 2019; Gapminder, 2019; Maddison, 2003; United Nations, 2017a; complementary sources above.

In this context France became the first country to decriminalize homosexual acts. The French Penal Code of 1791, drafted in the liberal spirit of the Enlightenment by the revolutionary Lepeletier de Saint-Fargeau, abolished a ‘crowd of imaginary crimes’ such as blasphemy, sacrilege and heresy, but also the crime of sodomy, which had given rise to a last execution in 1750 (Pastorello, 2011). Confirmed by the French Criminal Code of 1810 and applied in the Napoleonic empire, decriminalization then became definitive in some states that emerged from the empire (Belgium, Luxembourg, Netherlands, some Swiss cantons), but was temporary in others which recriminalized in part (some Italian states) or in whole (Germany,

Spain) in the 19th or 20th century. The French Criminal Code of 1810 also inspired the newly independent states of Latin America (Brazil, Bolivia and Venezuela in the 1830s, then Mexico in 1872 following the French occupation), as well as the Ottoman empire (1858) which was seeking to reform itself (Tanzimat) to halt its decline. Finally, non-criminalization applied to most French colonies in Africa and Asia, but also to other colonies such as the Dutch (East Indies, now Indonesia), Spanish (Philippines) and Belgian colonies (Belgian Congo, now Democratic Republic of Congo), which have maintained decriminalization since their independence. As for China, it decriminalized homosexual relations in 1912 as part of the abandonment of the Qing Code and a broader modernization of its criminal law.

Despite this transnational wave of liberalization, the proportion of humans who were legally free to engage in homosexual acts increased little in the 19th century (Figure 1). Indeed, several states (re)criminalized durably, like the Russian (1832) and German (1871) empires. Great Britain has criminalized ‘buggery’ since the 16th century (a legal term that includes consensual and non-consensual sexual acts between men as well as some pedophilic and zoophilic acts) and has carried out executions on this ground until 1835. In 1885, the United Kingdom further extended the scope of homosexual acts criminalized on the grounds of ‘gross indecency’, a law that condemned Oscar Wilde (1895), who then left the UK for France, as well as Alan Turing (1952). But above all, the UK disseminated criminalization to its immense empire, with the dual objective of civilizing the colonized and avoiding the moral corruption of its male settlers (Han and O’Mahoney, 2018). Thus, Section 377 of the Indian Penal Code of 1860 punishes homosexual acts (‘whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal’) and this article inspired many other codes applied in the British empire, whether in Asia (Ceylon, Malaysia, Singapore, Brunei), East Africa (Kenya, Uganda, Tanganyika, Zanzibar) or the Middle East. Similarly, the 1885 British law (Labouchere amendment) inspired the 1899 Penal Code of Queensland

(Australia), which in turn influenced other colonial codes such as those of Papua New Guinea and Nigeria. Today in 2020, several world regions formerly colonized by Britain still largely criminalize homosexual acts, such as the Caribbean, former Middle East mandates, South Asia, Melanesia and Polynesia. In South America, the only country that still criminalizes homosexuality, Guyana, is also the only one that has been a British colony (Figure 2).

Overall, the first wave of the decriminalization of homosexuality largely was a top-down, state-led process which consisted in the willing importation (Latin America, Ottoman empire) of the prestigious post-revolutionary French Roman law, or its colonial imposition (Africa, Asia), without public debate on the specific issue of the criminalization of homosexual relations. The colonial imposition of British common law had the opposite effect of criminalizing homosexuality. By contrast, the second wave of the decriminalization of homosexuality was more of a bottom-up, civil society-based process. This second wave was based on increasingly liberal public opinions in matters of homosexuality and social movements in favor of equal rights for all.

3. The second wave of decriminalization, since the 1960s

From 1950 to 2020, the proportion of countries in the world that do not criminalize homosexual acts has almost doubled, from 35% to 66%. This decriminalization trend began in the 1960s in Western and Northern Europe (East and West Germany, United Kingdom) and Canada. In the United States, decriminalization progressed state by state from 1962, before spreading to the entire country by the decision of the Supreme Court *Lawrence v. Texas* (2003). Then decriminalization extended in the 1970s to southern Europe and Australia, and in the 1980s to South America, New Zealand and Micronesia. In the 1990s, following the fall of the Soviet Union (which had decriminalized in 1917 but recriminalized in 1934),

decriminalization spread to Eastern Europe and part of Central Asia. Finally, India decriminalized by the Supreme Court decision *Navtej Singh Johar v. Union of India* (2018).

This wave is first of all linked to a better social acceptance of homosexuality in the West. When a population becomes richer, lives longer and better and thus frees itself from physical and social insecurity and anxiety about the future, and when it benefits from more democratic institutions that expose it to unconventional ideas, its values tend to become more liberal (Inglehart and Norris, 2011; Adamczyk, 2017). People tend to move away from reassuring religious beliefs, place more value on individual rights and freedoms compared to group interest and loyalty, and all this increases their tolerance or even acceptance of non-conformist behaviors such as homosexuality. Thus, in the eyes of an increasing number of citizens in developed countries, governments have lost their legitimacy to govern private sexual behavior between consenting adults. As Pierre Trudeau, Minister of Justice of Canada, put it in 1967, ‘there’s no place for the state in the bedrooms of the nation.’ Accordingly, from 1945 to 2005 the world’s countries increasingly decriminalized not just sodomy but also contraception, pornography and adultery, while also increasingly criminalizing non-consensual sex including rape and child sexual abuse (Frank et al., 2010). In other words, more and more countries have prioritized individual liberty and consent over the collective order and procreation imperative (Frank and Moss, 2017).

But this wave of decriminalization is also linked to the work of interconnected militant groups (following the Stonewall riots in New York in 1969), the combined political pressure of United Nations agencies, states and non-governmental and inter-governmental organizations (e.g., respectively, the International Lesbian and Gay Association and the Council of Europe), as well as the decisions of the supreme courts of common law countries. In both the West and Asia, decriminalization also led to de-pathologizing of homosexuality by national medical authorities, as well as by the World Health Organization (1990). Although

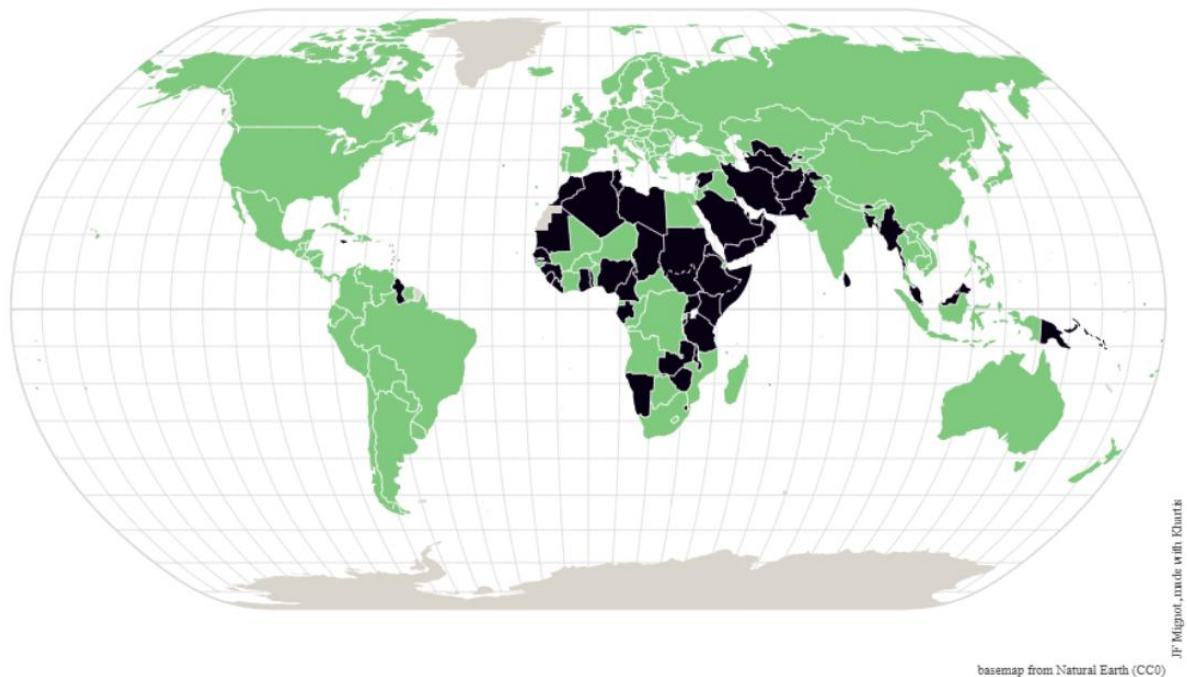
the proximate causes of the second wave of decriminalization seem well identified, the ultimate causal mechanisms that made homosexuality more acceptable in the West remain to be investigated precisely.

Africa is the only one of the five continents where, since 1950, the decriminalization movement has had relatively little success. In contrast, all Europeans live in a country free of laws against homosexual acts, as do almost all Americans and more than three-quarters of Asians and Oceanians (Figure 2). In Africa, many countries have retained colonial legislation, whether it is French or Belgian and therefore liberal (West Africa, Central Africa and Madagascar) or, conversely, British and therefore repressive (East Africa and Southern Africa). Since independence, former Portuguese colonies have abolished laws condemning homosexual acts (Mozambique, Guinea Bissau, Cape Verde and Sao Tome and Principe, as well as Angola in 2019). Additional countries have decriminalized, such as Rwanda, Djibouti, the Seychelles and Botswana (2019), and most importantly South Africa, through the decision of its Constitutional Court *National Coalition for Gay and Lesbian Equality v. Minister of Justice* (1998). But on the other hand, other African countries have decided to (re)criminalize homosexual acts, such as Burundi and Gabon as well as several Muslim-majority countries: Algeria, Mauritania, Senegal, Guinea, Libya, Sudan and Comoros, and most recently Chad (2017). In total, the proportion of Africans who can legally have same-sex relationships has varied little, from 37% in 1950 to 36% in 2020.

In 34 African countries representing close to 80 % of the African population in 2016-2018, an average of 82 % to 91 % of respondents said they would like – or not care – having people from other ethnic groups or other religions or other nationalities as neighbors, but only 20 % said they would like or not care if they had homosexuals as neighbors (Howard 2020, p. 3). The level of tolerance of homosexuals was the same in 2016-2018 as in 2014-2015 and it

was particularly low, on average, in rural areas (16 %), among people with no formal education (11 %) and among Muslims (11 %).

Figure 2. The criminalization of homosexual acts in the world, January 1, 2020



Note: map drawn with Khartis, 2020.

Source: Mendos, 2019; in the course of the year 2019, Angola and Botswana decriminalized and Gabon recriminalized.

4. Recriminalization in the Muslim world?

To this day, the main currents of monotheistic religions condemn homosexual acts, at least male, as immoral ('abomination' according to the Leviticus, 'sin' according to Christian churches, 'fornication' according to Muslim schools of jurisprudence). This is less the case in Asian spiritualities, though. When classifying countries by their modal religious affiliation in 2010 (Pew Research Center 2015), it appears that more and more people in Christian-majority countries benefit from non-criminalization (from 31% in 1950 to 77% in 2020), but this is

even more true for people in countries where the majority denomination is Hinduism, Buddhism or a traditional Asian religion (from 62% in 1950 to 98% in 2020).

But in contrast to these trends, in countries with a Muslim majority, fewer people now live in a country that does not criminalize (from 47% in 1950 to 41% in 2020). Indeed, since the decriminalization in the Ottoman empire (1858), which has been maintained to this day in Turkey but also in Egypt and Iraq, and since the introduction of non-criminalization in Indonesia (1918), which was inherited from the Criminal Code of the Dutch colonizer, the most populous Muslim-majority countries to have decriminalized are Jordan (1960) and Kazakhstan (1998), two countries which are less populated than several of those that have (re)criminalized (see above in Africa). In addition, even some countries that do not formally criminalize homosexual acts, such as Egypt, Iraq and Jordan, use various legal provisions to prosecute homosexuals: if Egypt, Iraq and Jordan were to be considered as criminalizing homosexual acts (de facto if not de jure), then the proportion of people living in Muslim-majority countries where homosexual acts are not criminalized would not be 41 % but 31 %. Overall, the Muslim world is the only cultural area in which the trend seems to be less towards decriminalization than (re)criminalization.

In addition, since the 1990s several sub-state entities not included in Figures 1 and 2 have begun to criminalize or increase the penalties provided for in the name of Islamic law (shariah), based on the Holy Book (Qur'an) and the acts of the Prophet (hadith). This is the case in provinces of southern Somalia; in the Chechen Republic of the Russian Federation (1996), where gays have recently undergone especially serious persecutions; in Indonesia in the province of Aceh (2002) and in the capital of South Sumatra (2006), where imprisonment and lashes penalties are provided for homosexual acts; and in the northern states of Nigeria (1999), where sentences for lesbian acts and for sodomy between men include the death penalty by stoning. More generally today, all the countries that provide for the death penalty

for homosexual acts are under Islamic law: these are Mauritania, Sudan, Saudi Arabia, Yemen, the United Arab Emirates and Iran, along with Brunei (since 2019). The number of death sentences or executions on this ground, however, is unknown.

It is difficult to know to what extent the criminalization of homosexual acts is an effect and/or cause of a lower social acceptance of homosexuality. However, according to the World Values Survey conducted in 1981, 1990, 1995 and 2000 in 76 countries representing about 80% of the world's population (Inglehart and Norris 2011, p. 38-40), the Muslim cultural area is not only the one that expresses the most conservative values in the world (strong religiosity, deference to authority and national pride), but also the one that most widely rejects gender equality and sexual freedoms such as divorce, abortion and homosexuality (Inglehart and Norris, 2011; Adamczyk, 2017). Other international surveys conducted since the 2000s confirm that Muslim-majority countries, along with some African countries, are those in which the most adults consider that homosexuality 'should not be accepted by society' (Pew Research Center, 2014). People from countries of the Organization of Islamic Cooperation are least accepting of homosexuality, and since the 2000s they have become even less accepting (Hadler and Symons, 2018). Largely perceived as foreign, homosexuality – particularly its 'passive' male variant – is reputed to threaten the cohesion, perpetuation and honor of the family, if not society and the nation itself or its image abroad.

In post-industrial societies where individuals can take survival for granted, the growing acceptance of homosexuality is related to a broader priority given to 'self-expression values' (liberty) over 'survival values' (security), also including subjective well-being, emancipation from authority (both traditional and secular), tolerance of outgroups (e.g. foreigners) and of new gender roles, interpersonal trust, protection of the environment and demand for participation in decision-making in political and economic life (World Values

Survey 2021). However, the ultimate causal mechanisms involved in the lower acceptance of homosexuality in the Muslim world and in the recriminalization trend are not well identified.

5. The future of decriminalization

Relatively more humans are now legally free to engage in homosexual acts, but will this long-term trend go on? There are reasons to doubt it. First, the diffusion of religious fundamentalism, especially but not only in the Muslim world, may lead some non-criminalizing countries to recriminalize homosexual acts. Second, countries that today criminalize homosexual acts have higher fertility and will have faster population growth in the future than those that do not criminalize today. If the laws of the countries of the world remained as they were on January 1, 2020, United Nations projections (2017a, based on fertility, mortality and international migration assumptions up to year 2100, as described in United Nations 2017b) indicate that the share of the world population living in a country that does not criminalize could decline from 79% in 2020 to 73% in 2050 and 66% in 2100. For decriminalization to benefit more people, a sufficiently large number of sufficiently populated criminalizing countries will need to decriminalize homosexual acts in the future.

In addition to the freedom to have sexual relations, other rights may be granted to homosexuals (Carroll and Mendos, 2017; see also Caporali and Digoix, 2018). While in 2020 79% of the world's population live in a country that does not criminalize homosexual acts, 72% live in a country that also sets an identical age of sexual consent, whether partners are of different sexes or not. In addition, 28% of the world's population live in a country that includes legal provisions against discrimination on the basis of sexual orientation; 16% live in a country that allows same-sex marriage; and 15% live in a country that allows the adoption of a minor by a same-sex couple – and these proportions have kept increasing since the 2000s.

All in all, these diverging trends could lead to a situation where relatively more people live in countries that criminalize homosexual acts but also, on the other hand, in countries that extend to homosexuals the access to various rights. This is in line with previous research showing that in the early 21st century ‘polarization is occurring at the world level: increasing divergence in national regulation of homosexuality is mirrored by divergence in public opinions between countries’ (Hadler and Symons, 2018). Thus, the history of human emancipation from illiberal state institutions and public opinions remains open-ended.

Références bibliographiques

ADAMCZYK, Amy (2017), *Cross-national public opinion about homosexuality: Examining attitudes across the globe*, Oakland, University of California Press.

AL FARCHICHI, Wahid, SAGHIYEH, Nizar (2012), *Homosexual relations in the penal codes: General study regarding the laws in the Arab countries with a report on Lebanon and Tunisia*, Beyrouth, Helem. <https://www.daleel-madani.org/sites/default/files/Resources/HelemStudy.pdf>

CAPORALI, Arianna, DIGOIX, Marie (2018), « The rights of homosexual families in Europe: The LawsAndFamilies database », *N-IUSSP*. <http://www.niussp.org/article/the-rights-of-homosexual-families-in-europe-the-lawsandfamilies-database/>

CARROLL, Aengus, MENDOS, Lucas Ramón (2017), *State-sponsored homophobia 2017. A world survey of sexual orientation laws: Criminalisation, protection and recognition*, Geneva, ILGA. <https://ilga.org/state-sponsored-homophobia-report>

DUPRET, Baudouin (2021), Playing by the Rules: The Search for Legal Grounds in Homosexuality Cases – Indonesia, Lebanon, Egypt, and Senegal, *Positive Law from the Muslim World: Jurisprudence, History, Practices* (Law in Context, pp. 219-252), Cambridge, Cambridge University Press.

EL-ROUAYHEB, Khaled (2005), *Before homosexuality in the Arab-Islamic world, 1500-1800*, Chicago, University of Chicago Press.

ESKRIDGE, William N. (2002), *Gaylaw: Challenging the apartheid of the closet*, Cambridge, Harvard University Press.

FRANK, David John, MOSS, Dana M. (2017), « Cross-National and Longitudinal Variations in the Criminal Regulation of Sex, 1965 to 2005 », *Social Forces*, 95(3), 941-969.

FRANK, David John, CAMP, Bayliss J., BOUTCHER, Steven A. (2010), « Worldwide Trends in the Criminal Regulation of Sex, 1945 to 2005 », *American Sociological Review*, 75(6), 867-893.

GAPMINDER (2019), *Total Population*. <https://www.gapminder.org/data/>. Accessed November 2019.

GAUTHIER, Jérémie, SCHLAGDENHAUFFEN, Régis (2019), Les sexualités « contre-nature » face à la justice pénale. Une analyse des condamnations pour « homosexualité » en France (1945-1982), *Déviance et société*, 43(3), 421-459.

GUPTA, Alok (2008), *This alien legacy: The origins of “sodomy” laws in British colonialism*, Human Rights Watch. <https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism>

HADLER, Markus, SYMONS, Jonathan (2018), « World Society Divided: Divergent Trends in State Responses to Sexual Minorities and Their Reflection in Public Attitudes », *Social Forces*, 96(4), 1721-1755.

HAN, Enze, O'MAHONEY, Joseph (2018), *British colonialism and the criminalization of homosexuality: Queens, crime and empire*, Oxon, Routledge.

HOWARD, Brian (2020), 'All in this together': Africans tolerant on ethnic, religious, national, but not sexual differences, *Afrobarometer*, 362. https://afrobarometer.org/sites/default/files/publications/Dispatches/ab_r7_dispatchno362_pap17_tolerance_in_africa_2.pdf

IDIER, Antoine (2013), *Les alinéas au placard : l'abrogation du délit d'homosexualité (1977-1982)*, Paris, Cartouche.

INGLEHART, Ronald, NORRIS, Pippa (2011), *Sacred and secular: Religion and politics worldwide, Second Edition*, Cambridge, Cambridge University Press.

- KANG, Wenqing (2009), *Obsession: Male same-sex relations in China, 1900-1950*, Hong Kong, Hong Kong University Press.
- KHARTIS, (2019). <http://www.sciencespo.fr/cartographie/khartis/en/>. Accessed November 2019.
- MADDISON, Angus (2003), *The world economy: Historical statistics*, Paris, OECD. http://www.ggdc.net/MADDISON/Historical_Statistics/horizontal-file_02-2010.xls
- MENDOS, Lucas Ramón (2019), *State-sponsored homophobia 2019*, Geneva, ILGA. https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf
- PASTORELLO, Thierry (2011), « L'abolition du crime de sodomie en 1791 : un long processus social, répressif et pénal », *Cahiers d'histoire : Revue d'histoire critique*, 112/113, 197-208. <https://journals.openedition.org/chrhc/2151>
- PEW RESEARCH CENTER (2015), *Religious Composition by Country, 2010-2050*. <http://www.pewforum.org/2015/04/02/religious-projection-table/2010/percent/all/>
- PEW RESEARCH CENTER (2014), *The global divide on homosexuality: Greater acceptance in more secular and affluent countries*. <http://www.pewresearch.org/wp-content/uploads/sites/2/2014/05/Pew-Global-Attitudes-Homosexuality-Report-REVISED-MAY-27-2014.pdf>
- PINKER, Steven (2018), *Enlightenment now: The case for reason, science, humanism and progress*, New York, Viking.
- SANDERS, Douglas E. (2009), « 377 and the unnatural afterlife of British colonialism in Asia », *Asian Journal of Comparative Law*, 4(1), 1-49.
- SCHMITT, Arno, SOFER, Jehoeda (ed.) (1992), *Sexuality and eroticism among males in Moslem societies*, New York, Haworth Press.
- UNITED NATIONS (2017a), *World population prospects: The 2017 revision*. New York: United Nations. <https://population.un.org/wpp/>

UNITED NATIONS (2017b), *World Population Prospects: The 2017 Revision, Methodology of the United Nations Population Estimates and Projections, Working Paper No. ESA/P/WP.250*. New York: United Nations.

https://population.un.org/wpp/Publications/Files/WPP2017_Methodology.pdf

WAALDIJK, Kees (2009), Legal recognition of homosexual orientation in the countries of the world, draft version.

<https://scholarlypublications.universiteitleiden.nl/access/item%3A2885462/view>

WORLD VALUES SURVEY (2021), Findings and Insights.

<https://www.worldvaluessurvey.org/WVSContents.jsp>. Accessed August 2021.

Appendix

Table 1. Dates of criminalization and decriminalization of consensual homosexual acts among adults in private, from 1760 to January 1, 2020

| Territory | ← Chronological time ← | | | |
|--|------------------------|----------------------|-----------------------------|---------------------------|
| | Last decriminalization | Last criminalization | Former decriminalization(s) | Former criminalization(s) |
| Afghanistan | still illegal | 1924 | | |
| Albania | 1995 | 1946 | 1858 | 1450 |
| Algeria | still illegal | 1966 | | |
| Andorra | 1791 | | | |
| Angola | 2019 | 1886 | | |
| Antigua and Barbuda | still illegal | 1995 | | |
| Argentina | 1887 | 1680 | | |
| Armenia | 2003 | 1832 | | |
| Australia | 1975-1997 | 1788 | | |
| Austria | 1971 | 1768 | | |
| Azerbaijan | 2000 | 1832 | | |
| Bahamas | 1991 | | | |
| Bahrain | 1976 | 1956 | | |
| Bangladesh | still illegal | 1862 | | |
| Barbados | still illegal | 1992 | | |
| Belarus | 1994 | 1934 | 1920 | |
| Belgium | 1795 | | | |
| Belize | 2016 | 1888 | | |
| Benin | 1877 | | | |
| Bhutan | still illegal | 1959 | | |
| Bolivia, Plurinational State of | 1832 | 1680 | | |
| Bosnia and Herzegovina | 1998-2001 | 1929 | | |
| Botswana | 2019 | 1885 | | |
| Brazil | 1831 | 1533 | | |
| Brunei Darussalam | still illegal | 1871 | | |
| Bulgaria | 1968 | 1896 | 1858 | 1382 |
| Burkina Faso | 1877 | | | |
| Burundi | still illegal | 2009 | | |
| Cambodia | never was illegal | | | |
| Cameroon | still illegal | 1918 | | |
| Canada | 1969 | 1583 | | |
| Cape Verde | 2004 | 1886 | | |
| Central African Republic | 1903 | | | |
| Chad | still illegal | 2017 | 1900 | |
| Chile | 1999 | 1680 | | |
| China | 1912 | 1735 | | |
| China, Hong Kong | 1991 | 1865 | | |
| China, Macao | 1996 | | | |
| Colombia | 1981 | 1680 | | |
| Comoros | still illegal | 1981 | | |
| Congo | 1882 | | | |
| Congo, Democratic Republic of the | 1884 | | | |
| Cook Islands | still illegal | 1969 | | |
| Costa Rica | 1971 | 1680 | | |
| Côte d'Ivoire | 1894 | | | |
| Croatia | 1977 | 1929 | 1852 | |
| Cuba | 1979 | 1680 | | |
| Cyprus | 1998 | 1929 | 1858 | 1571 |
| Turkish Republic of Northern Cyprus (internationally unrecognized) | 2014 | 1929 | 1858 | 1571 |
| Czech Republic | 1961 | 1768 | | |
| Denmark | 1933 | 1683 | | |
| Djibouti | 1995 | | | |
| Dominica | still illegal | 1998 | | |

| Territory | ← Chronological time ← | | | |
|--|------------------------------|----------------------|-----------------------------|---------------------------|
| | Last decriminalization | Last criminalization | Former decriminalization(s) | Former criminalization(s) |
| Dominican Republic | 1822 | 1680 | | |
| Ecuador | 1997 | 1680 | | |
| Egypt | 1858 | | | |
| El Salvador | 1822 | 1680 | | |
| Equatorial Guinea | 1963 | | | |
| Eritrea | still illegal | 1957 | | |
| Estonia | 1992 | 1934 | 1920 | 1832 |
| Ethiopia | still illegal | 1957 | | |
| Fiji | 2010 | 1945 | | |
| Finland | 1971 | 1889 | | |
| France | 1791 | 1260 | | |
| Gabon | still illegal | 2019 | 1882 | |
| Gambia | still illegal | 1934 | | |
| Georgia | 2000 | 1832 | | |
| Germany | 1968 (East) / 1969 (West) | 1871 | 1813 | 1532 |
| Ghana | still illegal | 1892 | | |
| Greece | 1951 | | | |
| Grenada | still illegal | 1897 | | |
| Guatemala | 1871 | 1680 | | |
| Guinea | still illegal | 1988 | 1891 | |
| Guinea-Bissau | 1993 | 1500 | | |
| Guyana | still illegal | 1893 | | |
| Haiti | 1791 | | | |
| Holy See | 1890 | | | |
| Honduras | 1899 | 1680 | | |
| Hungary | 1962 | 1878 | | |
| Iceland | 1940 | 1869 | | |
| India | 2018 | 1675 | | |
| Indonesia | 1918 | | | |
| Iran, Islamic Republic of | still illegal | 1794 | | |
| Iraq | 1858 | 1534 | | |
| Ireland | 1993 | 1861 | | |
| Israel | 1988 | 1936 | 1858 | 1517 |
| Italy | 1890 | 1532 | | |
| Jamaica | still illegal | 1864 | | |
| Japan | 1882 | 1873 | not illegal before 1873 | |
| Jordan | 1960 | 1936 | 1858 | 1517 |
| Kazakhstan | 1998 | 1832 | | |
| Kenya | still illegal | 1897 | | |
| Kiribati | still illegal | 1977 | | |
| Korea, Republic of | never was illegal | | | |
| Korea, Democratic People's Republic of | never was illegal | | | |
| Kosovo | 1994 | 1878 | | |
| Kuwait | still illegal | 1960 | | |
| Kyrgyzstan | 1998 | 1832 | | |
| Lao People's Democratic Republic | never was illegal | | | |
| Latvia | 1992 | 1934 | 1920 | 1832 |
| Lebanon | still illegal | 1943 | | |
| Lesotho | 2012 | 1871 | | |
| Liberia | still illegal | 1978 | | |
| Libyan Arab Jamahiriya | still illegal | 1976 | 1953 | |
| Liechtenstein | 1989 | | | |
| Lithuania | 1993 | 1934 | 1920 | 1832 |
| Luxembourg | 1795 | | | |
| Madagascar | 1897 | | | |
| Malawi | still illegal | 1891 | | |
| Malaysia | still illegal | 1871 | | |
| Maldives | still illegal | 2014 | | |
| Mali | 1880 | | | |
| Malta | 1973 | 1875 | | |
| Marshall Islands | 2005 | | | |

| Territory | ← Chronological time ← | | | |
|--|------------------------|----------------------|-----------------------------|---------------------------|
| | Last decriminalization | Last criminalization | Former decriminalization(s) | Former criminalization(s) |
| Mauritania | still illegal | 1983 | 1903 | |
| Mauritius | still illegal | 1838 | | |
| Mexico | 1872 | 1680 | | |
| Micronesia, Federated States of | 1982 | | | |
| Moldova, Republic of | 1995 | 1934 | 1920 | 1832 |
| Monaco | 1793 | | | |
| Mongolia | 1961 | | | |
| Montenegro | 1977 | 1929 | | |
| Morocco | still illegal | 1913 | | |
| Mozambique | 2014 | 1886 | | |
| Myanmar | still illegal | 1886 | | |
| Namibia | still illegal | 1920 | | |
| Nauru | 2016 | 1921 | | |
| Nepal | 2007 | | | |
| Netherlands | 1811 | 1530 | | |
| New Zealand | 1986 | 1840 | | |
| Nicaragua | 2008 | 1680 | | |
| Niger | 1900 | | | |
| Nigeria | still illegal | 1904 | | |
| Niue | 2007 | | | |
| North Macedonia | 1996 | 1929 | | |
| Norway | 1972 | 1902 | | |
| Occupied Palestinian Territory, Gaza strip | still illegal | 1936 | 1858 | |
| Occupied Palestinian Territory, West Bank | 1960 | 1936 | 1858 | |
| Oman | still illegal | 1956 | | |
| Pakistan | still illegal | 1675 | | |
| Palau | 2014 | | | |
| Panama | 2008 | 1949 | | |
| Papua New Guinea | still illegal | 1888 | | |
| Paraguay | 1880 | 1680 | | |
| Peru | 1924 | 1863 | 1837 | 1680 |
| Philippines | 1822 | 1680 | | |
| Poland | 1932 | 1815 | | |
| Portugal | 1983 | 1886 | 1852 | 1533 |
| Qatar | still illegal | 1971 | | |
| Romania | 1996 | 1937 | 1864 | |
| Russian Federation | 1993 | 1934 | 1917 | 1832 |
| Rwanda | 1980 | | | |
| Saint Kitts and Nevis | still illegal | 1873 | | |
| Saint Lucia | still illegal | 2005 | | |
| Saint Vincent and the Grenadines | still illegal | 1988 | | |
| Samoa | still illegal | 2013 | | |
| San Marino | 2004 | 1975 | 1865 | |
| Sao Tome and Principe | 2012 | 1500 | | |
| Saudi Arabia | still illegal | 1928 | | |
| Senegal | still illegal | 1966 | 1877 | |
| Serbia | 1994 | 1860 | 1858 | 1459 |
| Seychelles | 2016 | 1955 | | |
| Sierra Leone | still illegal | 1861 | | |
| Singapore | still illegal | 1871 | | |
| Slovakia | 1962 | 1878 | | |
| Slovenia | 1977 | 1929 | | |
| Solomon Islands | still illegal | 1963 | | |
| Somalia | still illegal | 1925 | | |
| South Africa | 1998 | 1650 | | |
| South Sudan | still illegal | 1974 | 1899 | |
| Spain | 1979 | 1939 | 1822; 1932 | 1438; 1928 |
| Sri Lanka | still illegal | 1885 | | |
| Sudan | still illegal | 1974 | 1899 | |
| Suriname | 1869 | | | |
| Swaziland (Eswatini) | still illegal | 1907 | | |

| Territory | ← Chronological time ← | | | |
|--|------------------------|----------------------|-----------------------------|---------------------------|
| | Last decriminalization | Last criminalization | Former decriminalization(s) | Former criminalization(s) |
| Sweden | 1944 | 1866 | | |
| Switzerland | 1798-1942 | 1532 | | |
| Syrian Arab Republic | still illegal | 1949 | 1858 | |
| Taiwan | 1896 | 1740 | | |
| Tajikistan | 1998 | 1832 | | |
| Tanzania, United Republic of | still illegal | 1867 | | |
| Thailand | 1957 | 1908 | | |
| Timor-Leste | 1975 | | | |
| Togo | still illegal | 1884 | | |
| Tokelau | 2007 | | | |
| Tonga | still illegal | 1988 | | |
| Trinidad and Tobago | 2018 | 1861 | | |
| Tunisia | still illegal | 1913 | | |
| Turkey | 1858 | 1299 | | |
| Turkmenistan | still illegal | 1832 | | |
| Tuvalu | still illegal | 1978 | | |
| Uganda | still illegal | 1894 | | |
| Ukraine | 1991 | 1934 | 1917 | |
| United Arab Emirates | still illegal | 1956 | | |
| United Kingdom of Great Britain and Northern Ireland | 1967-1982 | 1533 | | |
| United States of America | 1962-2003 | 1610-1948 | | |
| Uruguay | 1934 | 1680 | | |
| Uzbekistan | still illegal | 1832 | | |
| Vanuatu | 1981 | | | |
| Venezuela, Bolivarian Republic of | 1836 | 1680 | | |
| Viet Nam | never was illegal | | | |
| Yemen | still illegal | 1937 | | |
| Zambia | still illegal | 1931 | | |
| Zimbabwe | still illegal | 1891 | | |

Sources: Carroll and Mendos, 2017; Mendos, 2019; complementary sources in

References.