



## Spain

by Cristian Berco

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Throughout its history, Spain has undergone a variety of transformations regarding the treatment of gay, lesbian, and transgendered people. From a particularly strong application of sodomy laws in the early modern period to a liberalization of sexual mores since the 1980s, Spanish society has displayed an ambivalent and complex relationship to sexual minorities. The recent accrual of rights by glbtq people in Spain signals a new and welcome development.

### Early Hostility

Spain's medieval Visigothic code was among the first in Europe to criminalize homosexual behavior between men. It decreed castration for those found guilty of the offense. Mired in a conception of sexual sin as crime, sodomy laws in Spain targeted any practices deemed unnatural.

Thus, not only male homosexual behavior, but also heterosexual anal sex and bestiality fell under the purview of sodomy laws. Lesbian sexuality was legally considered sodomy, and subject to prosecution, only when it involved the use of a phallic instrument.

By the sixteenth century, royal codes decreed death by burning for sodomites, a sentence considered fitting given the association of the crime with the fiery demise of Sodom and Gomorrah.

Because sodomy constituted a mixed crime, various jurisdictions punished it. We thus find municipal courts acting against it in Seville and Málaga, while the royal court serving the city of Madrid also prosecuted men for sodomy.

Chronicles of the time often attest to the severity and virulence with which authorities punished homosexual behavior, particularly between men. Seventy-one men were burned for sodomy in Seville between 1567 and 1616, according to a Jesuit chronicler. Travelers also reported public burnings for this crime in Madrid during the seventeenth century.

However, lest we construct the prosecution of sodomy as an unrelenting and virulent repression, some qualifying facts should be provided. In Aragon, where the Inquisition enjoyed special jurisdiction over sodomy, fewer than twelve percent of men tried suffered death at the stake. Moreover, no executions were conducted after the middle of the seventeenth century. Inquisitors did not wish to publicize the crime--and thus offend sensibilities--by creating a public spectacle.

By the eighteenth century, prosecution for sodomy thinned out, with only a few notorious cases meriting official attention. This decline in prosecutions for sodomy, seen throughout Europe, can be attributed to



**Top:** Spain and neighboring countries in 2004 (Canary Islands not shown).

**Above:** A sculpture of renowned writer Federico García Lorca in Madrid. The photograph of the sculpture of Lorca was created by Wikimedia Commons contributor Lourdes Cardenal and appears under the GNU Free Documentation License.

changing notions of civil society and the desire to prevent public knowledge of the sexual act.

### **The Nineteenth and Early Twentieth Centuries**

By the nineteenth century, Spanish criminal codes simply omitted sodomy as a specific crime between consenting persons, unless conducted with a minor or involving the use of force. This momentous legal change persisted even through numerous revisions of the criminal code into the twentieth century.

Despite this apparent laxity however, strong intolerance toward glbtq people persisted, particularly at the hands of ultra-catholic nationalist groups. During the Spanish Civil War (1936-1939), for example, the poet Federico García Lorca was executed by Nationalist forces for being gay, among other things.

With the advent of General Franco's dictatorship, sexual minorities suffered oppression at the hands of the state. Although sodomy was not re-criminalized, both the police and judges had at their disposal various legal tools by which they could concentrate their repression of glbtq people and their activities.

Laws forbidding the publication of information dangerous to the public good, the congregation of persons contrary to public morality, and actions that resulted in public scandal were used to intimidate, harass, and arrest gay men and lesbians, as well as transgendered persons.

Penal camps for homosexuals were established in Madrid in the 1960s. The "Law of Social Hazard" provided for a three-year prison sentence for those accused of homosexual activities.

### **The Advent of Democracy**

Only after the death of Franco and the advent of democracy did the situation for sexual minorities improve in Spain. In the 1980s Spain witnessed a sudden liberalization of sexual mores and the explosive growth of a gay and lesbian community, particularly in urban centers.

Today, cities such as Madrid, Barcelona, and Valencia have thriving gay communities, replete with the same opportunities and activities available in their North American counterparts. A number of gay and lesbian artists, writers, and filmmakers have flourished in Spain's new liberal climate.

Among the most prominent gay and lesbian organizations are Colectivo de Gays y Lesbianas de Madrid, Coordinadora Gay-Lesbiana, and Casal Lambda.

Gay pride marches and rallies are held annually in such cities as Madrid and Barcelona, and Barcelona hosts an international gay and lesbian film festival.

### **The Persistence of Mediterranean Homosexuality**

Spanish gay communities, however, have grown in the midst of sexual systems that privilege hyper-masculinity and penetrative sexuality. Thus, in the early 1980s, many gay men reflected the amorous behavior exhibited for centuries in Mediterranean societies. Mediterranean homosexuality is characterized by a sharp dichotomy between active and passive partners, with only the passive partner in sexual relations ascribed a homosexual identity and thus stigmatized.

Hence, there is a tradition in the Spanish gay communities of self-identified homosexuals exclusively taking the passive role in intercourse and exhibiting female mannerisms. Many of these men seek to engage virile straight-identified men as their sexual partners.

In the world of public washrooms, park sex, and public cruising, a system of sexuality devoid of identity

politics and responding to gendered behavior according to sexual roles flourished.

Over time, however, North American models of identity, which emphasize egalitarian relationships in which sexual roles are not rigidly polarized, have slowly replaced these patterns.

Not bound by the older system, lesbians have more readily developed communities based on sexual identity.

### **New Attitudes, New Laws**

Despite these conceptual differences with the North American model of sexuality, glbtq communities have thrived during the last twenty years. Given this rapid change in social attitudes, including a greater tolerance for homosexuality on the part of the general public, it is not surprising that the law soon followed suit.

A new criminal code enacted in 1995 introduced provisions against discrimination based on sexual orientation, while it also abolished older laws often utilized to persecute sexual minorities.

Moreover, hate crimes and violence against gay and lesbian individuals can now be punished with up to four years in prison.

Although a 1995 law acknowledged the rights of common law couples, regardless of sexual orientations, no comprehensive partnership law was then enacted at the federal level, mainly because of the opposition of the conservative party then in power. However, many localities, beginning with the Basque town of Vitoria in 1994, enacted laws that afforded gay and lesbian couples many of the same rights as married couples.

Catalonia passed such a law of partnership in 1998, granting the right of mutual custody, the protection of the household in case of death, and limited inheritance rights to the surviving partner. In 1999 the regional government of Aragon passed a similar law.

Although the gay community welcomed these legal advances, Spain lagged behind such European countries as the Netherlands and Belgium in recognizing and protecting gay and lesbian partnerships until the election of a reform-minded socialist government in March 2004.

In 2005, despite the bitter opposition of the Roman Catholic hierarchy, Spain became the third country to legalize same-sex marriage, when its Parliament passed a bill that also provided adoption rights and inheritance rights to same-sex couples.

During the Congress of Deputies' final debate on the bill, on June 30, 2005, Prime Minister José Luis Rodríguez Zapatero, in a speech in which he quoted gay poets Luis Cernuda and C. P. Cavafy, remarked that it was not the business of government to humiliate its citizens. He described the bill before the Congress as one that expanded "opportunities for the happiness of our neighbors, our work colleagues, our friends, our relatives." He added, "We were not the first [to legalize same-sex marriage], but I am sure we will not be the last. After us will come many other countries, driven, ladies and gentlemen, by two unstoppable forces: freedom and equality."

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