

Criminally Queer

Homosexuality and
Criminal Law
in Scandinavia
1842–1999

Jens Rydström and Kati Mustola (eds.)



aksant

CRIMINALLY QUEER

“We no more create from nothing the political terms which come to represent our ‘freedom’ than we are responsible for the terms that carry the pain of social injury”

Judith Butler, “Critically Queer”

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Preface

“You’re a criminologist, but you don’t know it yet!” By means of a sneak attack over the phone some years ago, Kati convinced Jens to cooperate in setting up a research project on same-sex sexuality and criminal law over the past hundred and fifty years. The Scandinavian Council for Criminology (Nordisk Samarbejdsråd for Kriminologi, NSfK) granted us economic support, and Jens, Kati, Martin and Wilhelm met in Helsinki and drew up plans for the project. Since then we have had meetings in Stockholm, Bergen, and Copenhagen.

We soon decided that we should write the book in English. One reason was that we wanted to reach an international audience, and the other was that we wanted the book to be read throughout the Nordic area, and not only in Denmark, Norway, and Sweden. The languages in Finland and Iceland are so different from the other Nordic languages that understanding is not automatic. We decided that we wanted to do a thorough criminological survey based on legislation and court cases, but expanded to include a discussion of cultural and social history.

None of us is a trained criminologist, but we have all done historical research using court records and have a good knowledge of the legal history of our respective countries. It was when we began comparing our results that the problems began. Court statistics weren’t comparable, the penal codes of the different countries were differently constructed, and definitions of what counts as a crime varied over time and between jurisdictions. Also, we desperately lacked knowledge of the North Atlantic parts of the Nordic community: Iceland, Greenland, and the Faroe Islands. Only when Thorgerdur Thorvaldsdóttir joined the project did it become truly Nordic. Thorgerdur had specialized in history and gender studies, but she had not studied the history of same-sex sexuality and criminal law in Iceland – but then, neither had anybody else. Unlike the rest of us she had to undertake new primary research and dig up court cases in Icelandic archives. With the generous help of Thorvaldur Kristinsson, who had studied the country’s queer history, and by using other sources than the meager court records, Thorgerdur has been able to present a comprehensive history of same-sex sexuality in Iceland. The authors of each chapter will acknowledge those they

are indebted to individually, but collectively we want to thank Thorvaldur quite heartily for generously sharing his knowledge of Icelandic gay and lesbian history with our project.

Our lack of knowledge concerning Greenland and the Faroes was partly mended by two trips Jens made there in the summer of 2005. The main purpose of his visits was to investigate the history of the partnership law in the two autonomous areas, but he took the opportunity to do some archival work in the Greenlandic High Court and in the Faroese National Archives. He also made interviews to fill in the gaps in his knowledge and participated in the Faroes' first Pride parade. We all thank Lena Nolsøe of the Faroese National Archives and Søren Søndergaard Hansen of the High Court in Nuuk for the help they granted him, as well as the courageous queers of the Faroes who are making history happen even as we write it.

There are others whose help has been instrumental for making this book. First and foremost we thank the NSfK for their financial and moral support, and for letting us discuss the project at the annual NSfK research seminars. We are also indebted to the academic institutions that have provided us with office space and other facilities during the course of the project: the Centre for Gender Studies and the History Department at Stockholm University, the Danish National Archives, the Reykjavík Academy and the Centre for Women's and Gender Studies at the University of Iceland, and the Sociology Department at the University of Helsinki. Also, we thank the Swedish Research Foundation and the NSfK for generous grants for the publication of the book.

Virva Hepolampi, our able and assiduous language launderer and translator, herself a feminist scholar, has evened out our uneven English. Any errors or ugly language that may be found in the texts of this book are surely the result of last minute changes that she has had no chance to correct. We are thankful to her not only for sharing her competence and time with the project and for putting up with our constantly broken deadlines, but also for her enthusiasm and insightful comments to the contents of the book.

We extend our heartfelt thanks to archival and library staff in all Nordic countries for competent and generous help, and we thank Marti Huitink and the editors of *Aksant* for making the book a reality. We also want to thank Glenn Rounds and Robert Cumming for proof-reading large parts of the book.

Last but not least we want to thank ourselves. It has been an exciting and sometimes difficult task to mould our different temperaments and scholarly ambitions into one book. We are all at different stages of our lives and careers, and sometimes our meetings have been interrupted by quarrels over such various topics as *le Code Napoléon*, women in history, the meaning of fornication, and Finnish tobacco laws. But we also have had our magic moments, like the gay karaoke night in Helsinki, queer bicycle tours and lush dinners in Copenhagen, rainy walks through Bergen's gay and lesbian history, and the gay leather

bar in Stockholm. It has been an immensely informative process and we have all learned very much from it. With our different experiences, scholarly knowledge, and professional attitudes we are proud to have forged this book into a coherent document of modern history. Thank you Thorgerdur for fresh new angles, thank you Wilhelm for hospitality and erudite comments, thank you Martin for hard work and a keen eye for after-work entertainment, thank you Kati for initiating and organizing the whole project. Finally, the rest of us want to thank Jens especially for undertaking to be our editor-in-chief. In the last phases of the production of this anthology – editing our manuscripts, reading the proofs, finding a publisher, applying for money to have it printed and simply having the energy and will to keep the project alive – Jens' effort and consideration were invaluable.

Stockholm, Helsinki, Bergen, Copenhagen, and Linköping, November 2006
Jens Rydström, Kati Mustola, Martin Halsos,
Wilhelm von Rosen, Thorgerdur Thorvaldsdóttir

INTRODUCTION

Same-Sex Sexuality and the Law in Scandinavia 1842-1999

by Jens Rydström

Lesbians and gay men in search of their past generally walk up two different historical alleys.¹ While lesbians frequently find the richest sources to their history in a “female world of love and ritual,” so brilliantly explored by Carol Smith Rosenberg and others, historians of gay men invariably find themselves trapped in a male world of crime and violence.² This has contributed to rather different historiographies, caused not only by the higher visibility of men and the general marginalization of women in society, but also by the different ways the state and gendered mechanisms of social control have regulated male and female sexuality.³

In her seminal essay “Critically queer” (1993), Judith Butler has discussed the historicity of discourses and performative speech. Her main concern in the essay is to examine what it means to say that gender and sexuality are performed. She points out that, throughout the ages, the naming of queers has worked as a tool for exerting power over some people, and she asks in what ways an identity assigned by the powerful can be claimed by those designated by it. She uses the example of a judge, who by means of performative speech-acts establishes a new reality by declaring somebody guilty or handing out a sentence. But it is not solely the will or the authority of the judge that establishes the binding power of his words. It is rather the opposite, Butler claims. “[I]t is *through* the citation of the law that the figure of the judge’s ‘will’ is produced and that the ‘priority’ of textual authority is established” (17). In other words, the punishment or the naming of the criminal is an effect of discourse that precedes and facilitates the judge’s judgement. The judge’s creation of a new situation, or his reiteration of an old, depends on an ever-changing legal discourse that mainly has targeted men and left it to other means of social control to discipline women. Neither the judge – nor, of course, the gay or lesbian activist – owns the discourse, and their acts cannot indisputably determine its meaning and circulation. But the repeated use of words and concepts describing same-sex love contributes to the changing texture of the discourse. It is precisely such changes that this book examines. Inspired by queer theory, the chapters in this book trace the changes in the legal regulation of same-sex sexuality in Scandinavia, from the time when

the death penalty for sodomy was abolished, until the age of consent became the same for both homosexual and heterosexual intercourse.

We will explore the history of same-sex sexuality in Scandinavian criminal discourse and consequently will encounter a multitude of men, but we will also trace and highlight prosecutions of women for sodomy or homosexuality, which total less than 85 cases in Scandinavia⁴ during the whole period under study. We do this for two reasons. First, to make visible what has previously been invisible, in order to counteract the willful or unconscious marginalization of women in history books. Second, we find it necessary in order to achieve a more complete understanding of the regulation of same-sex desire in modern society.

The transformation of intimacy, to use Giddens' term, has led not only to the separation of love and lust, to what he calls "plastic sexuality," but also to more subtle forms of body and mind control, which Foucault has made us aware of. It happened with the establishment of more equal participation of women and men in public life and led to narrowing the gap between male and female sexuality. As a result, female same-sex sexuality has increasingly become included in the regulatory framework of the modern state. This development has been subject to regional variations, but the general trend is clear.⁵

Another aspect of modernity that we will consider is the place of same-sex sexuality in the modern welfare state. In Scandinavia, modern penal codes that punished sodomy with prison rather than with death were introduced in the nineteenth century, between 1842 (Norway) and 1894 (Finland). The abolition of these laws took place almost a century later, between 1930 (Denmark) and 1972 (Norway), and in all Scandinavian countries except Norway they were replaced by laws stipulating a higher age of consent for homosexual intercourse than for heterosexual sex. These regulations were in turn abolished only decades later, between 1976 (Denmark) and 1999 (Finland). The last two law reforms, the legalization of homosexuality and the establishment of an equal age of consent for homo- and heterosexual relations, coincided with the creation of the welfare state and the modernization of Scandinavian societies. An obvious question, then, is: How is the Scandinavian integration of homosexual citizens connected to the welfare state?

Third, these essays will analyze the reorganization of modern sexuality and the transition from the sodomy paradigm, whereby a variety of non-normative sexual activities were severely punished, to a homosexuality paradigm that problematized the perpetrator of the deed instead of the deed itself. Society eased up on punishing the perpetrators and approached them as requiring medical treatment or at least commitment to a mental institution. In this process, new aspects, such as the age of the persons involved in the act and the power relations between them, gained importance and new meaning. In the sodomy laws, the age of those involved was not an issue, but after the decriminalization of "unnatural fornication," the age factor became crucial for the legal evaluation of the

deed. The process of defining and delineating a particular variety of same-sex sexuality acceptable to modern society thus led to the creation of the modern homosexual. In this context, we will discuss the agency of the new “species,” as Foucault called it, and discuss the ways homosexual groups and individuals have influenced their own history.

Fourth, we will explore the urban-rural dynamic in Scandinavia. This dynamic is manifested on two levels: in the differences between town and country and in the hierarchical tensions between the larger and economically more powerful countries and the smaller and more sparsely populated ones. These differences continue to have consequences for the migration of sexually unorthodox people between center and periphery.

Men and women

The concept of homosexuality was created in the late nineteenth century, and in Scandinavia as elsewhere in the western world it gradually spread from a limited circle of medical experts to become part of the common knowledge of the educated. From the 1950s onward, a violent homophobic reaction made homosexuality a household word in all parts of western society, and from the 1990s globalization and the collapse of the closed communist block have contributed to its further dissemination. In the present-day world, demands for homosexual emancipation create tensions in countries as different as Spain, China, and Zimbabwe, and the issue of gay marriage has even influenced U.S. presidential elections.

As Eve Kosofsky Sedgwick has pointed out, two contradictory and mutually exclusive understandings of both gender and sexuality in relation to modern homosexuality have determined the usage of the concept, as well as the political conclusions drawn from it.⁶ Historically, the most common understanding has been the classic “third-sex” model of gender inversion, though at times a contrary model of dichotomous gender separatism has influenced the general understanding of homosexual identity.

The third-sex model as formulated by Magnus Hirschfeld has undoubtedly been the most influential one for most of modern homosexuality’s existence. According to this model, a homosexual man and a homosexual woman represent a third sex, an intermediary form of male and female genders. Occupying a common conceptual ground between the male and the female, they share many inherent qualities, and they have a common interest in the struggle for justice. This conceptual model has been the historical basis for the political claims of a unified gay and lesbian emancipation movement.⁷

The dichotomous or gender separatist model has been less prevalent but has nevertheless yielded significant contributions to the history of modern homosexuality. According to the dichotomous understanding of same-sex desire, ho-

homosexual men and homosexual women are polarized as extreme opposites on the male/female axis. The male homosexual, according to this model, is more masculine than the heterosexual man, since he in no way depends on women, but dwells in an all-male world of comradeship and bonding. The best-known organizational representative of this view was Adolf Brand's Community of the Special (*Bund der Eigene*) in Germany before World War Two. In Brand's fascist, anti-Semitic, and misogynistic universe, homosexual men were superior to heterosexual men, since they were not polluted by the presence of women. This group disappeared after the Nazis took over, but the understanding of gay men being conceptually the negation, as it were, of lesbian women still feeds the thoughts and political standpoints of many gay men.⁸

In the form of lesbian separatism the dichotomous model has also nourished a radical feminist strand in lesbian organizational history. During the 1970s and 1980s, the post-Stonewall generation of activists rejected the third-sex model together with medical explanations of homosexuality. Consequently, gender-transgressive behavior in both men and women was stigmatized, and there were increasing demands on gay men and lesbian women to conform to standard gender expression. The motivation and will to fight together against homophobia diminished, and as a reaction to male domination within the homophile movement a lesbian feminist separatist movement grew stronger.⁹

Although they are analytically exclusive, the different understandings of same-sex desire have coexisted, and the way queer people think of themselves most often has a pragmatic dimension. As we shall see, the homosexual emancipation movement has grown in the intersections of gender, age, and class hierarchies. Caught between the oppressive power of the state and the complex structures of gender, age, and class-based exploitation, it has been forced to develop its liberation strategies within a web of power relations. Nancy Fraser and Axel Honneth have demonstrated that the struggle for recognition is one of the most important prerequisites, if not the most important one, for societal change. Here we want to show, among other things, how this struggle has been waged under different conditions, in legal and socio-economic situations that have varied from one part of Scandinavia to another.¹⁰

Homosexuality's criminal history attests to the dominant role the third-sex model has played in modern criminological discourse, a fact that has had important consequences for the gendered understanding of homosexuality. When sodomy was a criminal act, vaguely defined but severely punished, many legislations prosecuted male perpetrators only. As homosexuality came to be constructed as a pathological condition according to the third-sex model, the medico-legal definition of the concept was extended to lesbianism. As we shall see, this was reflected in the gradual inclusion of women in the legal control of same-sex sexuality, which was at times intensively pursued.

The two historical models continue to influence our knowledge and understanding of modern same-sex sexuality, though both models have recently been challenged by queer theory, which rejects the homo/hetero binary and instead of identity emphasizes subject positions opposed to heteronormativity. Influenced by this radically new way of looking at same-sex sexuality, we shall see how the third-sex model was gradually superimposed on existing dichotomous understandings of male and female sexuality, and how lesbian desire gradually became included in criminal discourse.¹¹

The welfare state

Beginning in the 1870s, Scandinavian legislators made a concerted effort to harmonize their criminal and civil legislations, and since 1872 Nordic jurists' meetings have been held regularly, often resulting in concrete legislative measures.¹² According to the British jurist David Bradley, the secular tradition was strong in Nordic legislation at the beginning of the twentieth century, and the new marriage laws that were enacted then represented a progressive breakthrough in European legislation. What they had in common was a pronounced weakening of the role of church authorities. The new marriage laws in Norway, Sweden, and Denmark recognized divorce on the grounds of incompatibility between the spouses and gave women rights to deferred community property, something which, at that time, set Scandinavian marriage laws apart from those of most other West European countries. Indeed, the general trend away from church-regulated marriage was part of a larger development and, according to Bradley, "[s]tate intervention at the expense of religion signaled that a different basis for social order – the welfare state – was being established."¹³

While the welfare state is founded on a comprehensive social security system, it also functions as an important identity-forming force with its own dynamics, and as a national ideology it harks back to semi-mythological narratives, such as the egalitarian structure of Viking society, the strong position of the Scandinavian peasantry, or the simple ways of a non-urbanized society in the peripheries. These narratives, and the powerful metaphor of the People's Home, have long given legitimacy and momentum to a strong and normative interventionist state. Presently, however, dismantling of the state social-security system and a questioning of the moral foundations of the welfare state are steadily gaining ground in Scandinavian political life.¹⁴

For the purposes of this study, we define "welfare state" as a professionalized society characterized by a strong faith in the legitimacy of regulations and interventions, combined with a striving for equality and a political consensus in favor of solving social problems scientifically. Among the many problems that the welfare state would have to face, there was the question of how to deal with

different forms of “deviant” sexuality, the decisions depending on which explanations medicine and psychology would provide.¹⁵

Many changes in sexual habits and in the regulation of sexuality are perhaps best explained as effects of the process of modernization and should not be viewed as following directly from the political and economic project of the welfare state. Yet the development from state intervention and homophobic control to an early acceptance of homosexuality as a variant form of social and sexual life is best explained as an effect of Scandinavian political institutions and traditions. The normalizing discourse in Scandinavian sexual history depends to a large degree on the developments during the 1930s and after World War Two. The essays here will deal with these historical foundations of modern “pro-gay” Scandinavia.¹⁶

The construction of the modern homosexual

The historical definition and significance of modern homosexuality have been debated and fought over for the past two decades. Eve Kosofsky Sedgwick and David Halperin have stressed the point that oversimplified delineations of a “great paradigm shift” must be abandoned for a more nuanced analysis of how modern homosexuality is construed. Sedgwick has pointed out that taking “homosexuality as we know it today” as a point of reference tends to obscure the fact that same-sex sexual practices are manifold and contradictory and that different conceptions of these practices can be found also in contemporary societies. One model does not supersede another, she claims, but several models coexist. Halperin agrees with this premise and suggests that the idea of the modern homosexual did not, in fact, replace older ways of understanding same-sex sexuality, but that the modern conception is added to older understandings, as “the cumulative effect of a long process of historical overlay and accretion.”¹⁷

It is our belief that criminal discourse has been of paramount importance in shaping the modern homosexual. The first treatises pathologizing same-sex sexuality were written in the context of forensic medicine, and the need to describe and to define as unambiguously as possible “the homosexual” stems mainly from criminology. The process of modernization has brought with it, among other things, a need to redefine the boundaries of acceptable sexual behavior from a secular standpoint. Many historical agents have influenced this tortuous process, driven by different motives and with different interests to defend. Legal and medical professionals, social workers and politicians, have often pulled in different directions, and from early on “the new species” began to speak for itself with more than one voice. These heterogeneous voices, however, often joined together to resist the majority’s regulations. The first homosexual emancipation movement was founded to protest laws prohibiting same-sex sexuality, and the

homophile, gay, and – to a lesser extent – lesbian identities were forged with acute awareness that they were thought to represent a criminal kind of love.

The carving out of an incoherent but palpable and culturally situated image of “the homosexual” man and woman has occurred in parallel with a redefinition of sexual crimes. In nineteenth-century penal codes, the chapters dealing with sexual transgressions were titled “crimes against morality,” or variations thereof. These crimes were regarded as *delicta publica*, or crimes against moral order and decency. During the twentieth century, crimes against morality were increasingly redefined as sexual crimes directed against the physical integrity of another person. Consequently, the modern homosexual was constructed as a criminal-suspect person whose existence implied the presence of a victim. Hence the higher age of consent for homosexual relations, and the various campaigns to prevent the spreading of homosexuality through seduction. It was only in the 1970s that gay and lesbian advocates managed to create an image of socially acceptable homosexual practice and to begin the long-term work of communicating the image of an inoffensive gay or lesbian couple. That was the period when pedophilia for the first time became conceptually separated from homosexuality, resulting in the social acceptance of the one and the rejection of the other. To use Gayle Rubin’s imagery of sexual hierarchies, the wall separating the always acceptable sexual behavior from the contested area of practices accepted by some but not by others has eroded somewhat, but the wall securing our moral territory from the “sick, perverted, way-out” sexuality has grown higher.¹⁸

The essays in this book will show how the criminal construct of the homosexual has consequences not only for a limited number of gay and lesbian citizens, but for the majority culture and its attitudes to sexuality.

Urban-rural dynamics

Using criminal court records as historical sources has pitfalls and disadvantages, which have been amply discussed within gay and lesbian historical research.¹⁹ To begin with, the mere selective mechanisms of the judicial system carry with them a serious distortion of past reality. The crude methods of social control had the effect that most often problematic same-sex relationships were brought to court, and in the collected body of prosecutions for same-sex sexuality there is probably a huge over-representation of child abuse and of abusive relationships between adults. Furthermore, the narratives provided in court records are distorted through the use of power. Not only were men and women telling their sexual stories to the police or the court in a coercive and stressful situation, but also what they once said has been filtered through the minds of the policemen or court clerks who wrote it down.

Still, there are some things that court records can tell us that few other sources can. As a result of the explicitness of their sexual descriptions, surpassed only

by pornographic prose, they convey a more complete understanding of human sexuality, in particular of sexuality outside elite discourses. And, more importantly for the present purposes, court cases from rural areas are among the rare historical sources that deal with same-sex sexuality in the countryside. The urban-rural dynamics of homosexuality is thus the fourth area where criminological studies can yield valuable insights.

Most of the previous research on same-sex sexuality and homosexuality has concentrated on cities, and only a few studies have examined rural settings. John Howard's study of queer relationships in Mississippi, Peter Boag's analysis of male bonding in the U.S. Northwest, Judith Halberstam's exploration of transgender discourse in rural Nebraska, and Christoph Schlatter's account of sodomy and homosexuality in the Swiss canton of Schaffhausen are some of the very few studies of modern same-sex sexuality in rural areas. Svante Norrhem's gay and lesbian oral history from Swedish Västerbotten, and Tuula Juvonen's study of male and female homosexual space in a provincial town in Finland represent Scandinavian examples. Antu Sorainen's doctoral dissertation analyzes court cases concerning lesbian behavior in rural Finland, and Hans W. Kristiansen's study of the history of modern homosexuality in Norway will include an analysis of rural areas.²⁰

Within the Scandinavian cultural area, we can distinguish two aspects of center-periphery dynamics: the hierarchical relations between the countries within the Nordic community, and the urban-rural tensions within each country. The absolute center for gay and lesbian culture in Scandinavia is Copenhagen. For a very long time Copenhagen has been regarded as the hub of cultural – and subcultural – modernity in Scandinavia, as well as the gateway to continental Europe. Queer Scandinavians, but also young people and footloose people of all ages and sexual tastes, have thought Copenhagen the place to go to for hedonistic adventure, and have regularly traveled to Copenhagen in search of alcohol, drugs, art – and sex. It is no coincidence that the first homophile association in Scandinavia was founded in Denmark and that Denmark was the first country to introduce a law on registered partnership for homosexuals.

At the other end of the axis lie the outskirts of Scandinavia, understood both as the peripheral and sparsely populated countries in the Nordic community and as the rural areas of each country. The North of Sweden and Finland, the West of Norway, the Danish province of Jutland – all these areas are characterized by low population density, more austere forms of religion, and a tighter social control. Likewise, the small communities in the North Atlantic nations of Iceland, Greenland, and the Faroe Islands can be regarded as a Nordic periphery. From all these areas there has been a flux of sexual refugees, drawn to the larger urban centers in Oslo, Helsinki, Stockholm, and above all Copenhagen. However, even the urban centers in the periphery itself, as Tromsø, Umeå, or Oulu in Northern Scandinavia, or Reykjavík, Tórshavn, and Nuuk in the North

Figure 1. Dates for relevant legislation and for founding of homophile or gay/lesbian groups in the Nordic countries.

| | | | | | | |
|-------------------|--|--|--|---|------------------------------------|--------------------------------|
| Denmark | 1866 Prison for "intercourse against nature" | 1933 Homosexuality legal, higher age of consent | 1948 Association: Forbundet af 1948 | 1976 Equal age of consent | 1987 Anti-discrimination clause | 1989 Registered partnership |
| Norway | 1842 Prison for "intercourse against nature" | 1905 Prison for sex between men, when public interest so demands | 1950 Association: Det Norske Forbund av 1948 | 1972 Homosexuality legal, equal age of consent | 1981 Anti-discrimination clause | 1993 Registered partnership |
| Iceland | 1869 Prison for "intercourse against nature" | 1940 Homosexuality legal, higher age of consent | 1978 Association: Samtökin '78 | 1992 Equal age of consent | 1996 Anti-discrimination clause | 1996 Registered partnership |
| Greenland | 1866 Prison for "intercourse against nature" (for Danes in Greenland) | 1954 Joint Criminal Code for Danes and Greenlanders: Homosexuality not mentioned. | 1963 Higher age of consent | 1978 Equal age of consent | 1996 Registered partnership | 2002 Association: Qaamaneq |
| The Faroe Islands | 1866 Prison for "intercourse against nature" | 1933 Homosexuality legal, higher age of consent | 1988 Equal age of consent | 2003 Association: Friðarvogin | 2007 Anti-discrimination clause | |
| Sweden | 1864 Prison for "fornication against nature" | 1944 Homosexuality legal, higher age of consent | 1950 Association: Riksförbundet för Sexuellt Likabärättigande | 1978 Equal age of consent | 1987 Anti-discrimination clause | 1995 Registered partnership |
| Finland | 1894 Prison for "fornication with someone of the same sex" | 1967 Association: Toisen säteen ryhmä | 1971 Homosexuality legal, higher age of consent | 1995 Anti-discrimination clause | 1999 Equal age of consent | 2002 Registered partnership |

Note: Years refer to when the law came in force. The Finnish Penal Code of 1889 was put in force in 1894, the Norwegian Penal Code of 1902 was put in force in 1905, and the Danish Penal Code of 1930 was put in force in 1933.

Atlantic have developed rudimentary gay and lesbian subcultures. Perhaps it is no more than a circle of friends, a bookshop, or a café, but some space for same-sex encounters has been carved out even in remote areas. Though the drain of homosexuals from smaller communities has accentuated homosexuality's character as an urban phenomenon, and it is only recently that homosexual visibility reached the point where gay and lesbian presence is noticeable also in the countryside.

The modernization of sodomy

In this book, we want to investigate how the construction of homosexuality affected criminal law in the Scandinavian countries and vice versa, and we will examine how this development was connected to medical and legal developments. Modernized penal codes, influenced by new schools of criminal justice, and including prohibitions against same-sex sexual behavior, were introduced in Norway in 1842, in Sweden in 1864, in Denmark (including Greenland and the Faroes) in 1866, in Iceland in 1869, and in Finland in 1889. The Danish and Norwegian penal codes replaced older statutes stipulating the death penalty for "unnatural fornication," a concept which included both same-sex sexuality and bestiality. The new penal codes all retained the ban on such acts, but replaced capital punishment with imprisonment as the penalty (see figure 1).

The Faroe Islands were under Danish criminal law until 1948, but in Greenland the situation was more complicated. Until 1954, the tiny Danish minority in Greenland was subject to the Danish Penal Code, while the Inuit Greenlanders were judged according to local traditional law that did not penalize consensual same-sex acts.

In Sweden and Finland, the new penal codes of 1864 and 1889, respectively, replaced an earlier penal code of 1734, which had applied to both countries and which had not formally criminalized same-sex sexual acts but had stipulated the death penalty for bestiality. In all Scandinavian laws, bestiality was lumped together with "unnatural fornication," and in Sweden and Finland the modernized sodomy statute was applicable to both women and men.

With the Norwegian Penal Code of 1902 came a radical break with the old traditions. Its authors, Bernhard Getz and Francis Hagerup, were both representatives of a more modern school of criminal jurisprudence, which emphasized individual prevention and the possibility of rehabilitating the criminal. This approach, combined with a medicalized understanding of homosexuality, would logically lead to a decriminalization of same-sex sexuality. Getz actually advocated decriminalization but he did not succeed in getting parliamentary approval for such a radical step. Instead, the Norwegian Penal Code of 1902 came to contain a ban on male same-sex sexual acts and bestiality, but it was restricted with the provision that they were to be prosecuted only if public inter-

est demanded it. In general, this meant that same-sex acts were only prosecuted when minors were involved or when violence had been used, but there were some exceptions. The existence of the law nevertheless functioned as an efficient signal of disapproval, restraining homosexual expression.²¹

In court practice, what these laws described as “unnatural intercourse” or “fornication against nature” comprised same-sex sexual acts as well as bestiality and certain sexual practices between man and woman. This vague category was split up into more distinct types of behavior by the end of the nineteenth century. Homosexuality was medically described as the driving force behind same-sex sexual acts, a diagnosis that had consequences for the criminal status of the perpetrators. The crime of “fornication against nature” was redefined and further narrowed down in the Scandinavian penal codes, so that it covered only same-sex sexual acts. In another sense, however, the definition was expanded, as a wider range of same-sex intimacy was included in the sphere of punishable acts. Traditionally, penetration and ejaculation were the exclusive criteria of the crime of sodomy, but with time all kinds of genital contact, and even kissing and caressing, were seen as symptoms of homosexuality. At the same time, the age of the partners involved became more charged with meaning, and to have sex with minors gradually became more stigmatizing.

The pathologization of same-sex sexuality created legal and moral dilemmas. Already in medieval Scandinavian laws, as well as in the Roman law, the principle that insane persons were not accountable for their deeds was clearly expressed, and this principle was even stronger in a modern, medicalized society.²² Thus, if same-sex sexual acts were caused by a mental disorder, the perpetrators should not be sent to jail. On the other hand, few people were willing to accept the idea of not regulating same-sex sexuality. A common attitude was: If they were not to be jailed, then homosexuals belonged in mental institutions. Psychiatric practice, however, showed the futility of locking up all persons guilty of same-sex sexual intercourse, both because they were too many and because there was no cure to offer. This insight, coupled with a concerted effort by influential jurists and social reformers, led to the conviction that same-sex sexuality between adults should be decriminalized.

In Norway, where the statute criminalizing homosexuality was retained longest, the gay and lesbian movement played an important role as a lobbying group, but in the other Nordic countries, decriminalization took place without any pressure being exerted by organized homosexual groups.²³ Instead, liberal jurists and medical professionals were instrumental in promoting legal reforms. Many times the discreet presence of closeted homosexuals helped to influence the opinion of decision-makers, but before 1950 there were no organized movements of homosexuals in the Nordic countries.

The legal emancipation of same-sex sexual acts in most countries took place in two stages. First, the general ban on such acts was lifted, but the legal age

Table 1. Convictions for “unnatural fornication” and same-sex sexuality in Scandinavia, 1879–1999. Five-year intervals.

| Year | Denmark | | Norway | | Iceland | | Sweden | | Finland | | | | |
|---------|-------------|----------------|-------------|----------------|-------------|-------|----------------|-------|----------------|-------|----------------|----------------|----------------|
| | (1897–1976) | | (1879–1971) | | (1885–1992) | | (1880–1977) | | (1901–1999) | | | | |
| | Men | Women | Men | Men | Men | Women | Men | Women | Men | Women | | | |
| | Tot. | Partner ≥15 | Tot. | Partner ≥15 | Tot. | Tot. | Partner ≥16 | Tot. | Partner ≥15 | Tot. | Partner ≥15 | Partner ≥18 | Partner ≥18 |
| 1879 | | | | | 10 | | | | | | | | |
| 1880–84 | | | | | 32 | | | 2 | 2 | | | | |
| 1885–89 | | | | | 62 | | | 6 | 0 | | | | |
| 1890–94 | | | | | 43 | | | 9 | 4 | | | | |
| 1895–99 | 69 | .. | 1 | .. | 26 | | | 10 | 7 | | | | |
| 1900–04 | 80 | .. | | | 21 | | | 16 | 10 | 1 | 0 | 1 | |
| 1905–09 | 85 | .. | | | 8 | | | 32 | 15 | | | | 5 |
| 1910–14 | 76 | .. | | | 7 | | | 48 | 29 | | | | 7 |
| 1915–19 | 42 | .. | | | 9 | | | 33 | 16 | | | | 4 |
| 1920–24 | 44 | .. | | | 7 | 1 | 1 | 43 | 22 | | | | 4 |
| 1925–29 | 64 | .. | | | 16 | 1 | | 85 | 50 | 2 | 2 | | 11 |
| 1930–34 | 109 | 41 | | | 10 | | | 137 | 70 | | | | 30 |
| 1935–39 | 328 | 145 | 1 | | 45 | | | 296 | 237 | | | | 53 |
| 1940–44 | 373 | 180 | 1 | 1 | 6 | 2 | | 457 | 326 | 6 | 4 | | 41 |
| 1945–49 | 455 | 187 | 2 | | 11 | | | 126 | .. | 2 | .. | | 128 |
| 1950–54 | 571 | 157 | 1 | 1 | 12 | 3 | | 418 | .. | 1 | .. | | 288 |
| 1955–59 | 1127 | 483 | 5 | 5 | 3 | 2 | | 384 | .. | 2 | .. | | 221 |
| 1960–64 | 885 | 432 | 5 | 3 | 14 | .. | | 276 | .. | 1 | .. | | 137 |
| 1965–69 | 272 | 90 | 1 | | 27 | 2 | | 154 | 55 | | | | 93 |
| 1970–74 | 130 | 42 | 2 | | 4 | 1 | | 133 | 22 | | | | 5 |
| 1975–79 | 56 | 24 | 1 | 1 | | .. | | 75 | 14 | | | | 2 |
| 1980–84 | | | | | | 2 | | | | | | | 0 |
| 1985–89 | | | | | | 1 | | | | | | | 0 |
| 1990–94 | | | | | | 1 | | | | | | | 6 |
| 1995–99 | | | | | | | | | | | | | 0 |

Sources: Denmark, Danmarks kriminelle Retspleje 1897–1932; Danmarks statistik 1933–76; Norway, Norges offisielle statistikk 1879–1971; Iceland, Landhagsskýrslur fyrir Ísland 1885–1912; Dómsmálaskýrslur. Justice Statistics 1913–25, 1946–52, 1966–74; Haestaréttadómar 1920–90; Thorgerdsdóttir in this volume; Sweden, Court records 1880–1944; Sveriges officiella statistik 1945–73; Rättsstatistisk årsbok 1975–78; Finland, Finlands officiella statistik, XII Fångvården 1901–24, XIII Rättsväsendet 1925–58; Statistics cards 1959; Bidrag till Finlands officiella statistik 1960–70; Suomen virallinen tilasto 1971–99.

Notes: Denmark: 1897–1932 section 177, including bestiality; 1933–76 section 225, subsections 1 (sexual crime with a person of the same sex), 2 (sexual intercourse with a person of the same sex between 15 and 17), 3 (seduction to intercourse with a person of the same sex between 18 and 21), and 4 (purchase of sexual favors from a person of the same sex); section 225 in combination with section 222 (sexual intercourse with a person under 15); and section 230 (homosexual prostitution). In the right column section 225, subsections 1, 2, 3, and 4 only. The figures include convictions for primary and secondary crime. Norway: 1879–1904, chapter 18, section 21, including bestiality; 1905–56 section 213, including bestiality; 1957–71 “other sexual crimes” (including intercourse against nature, bestiality, fornication with feeble-minded and some other unusual crimes). Iceland: 1885–1939 section 178 (unnatural intercourse); 1940–92 section 203, subsection 1, 2, and 3 (intercourse with persons of the same sex between 15 and 21), and section 207 (homosexual prostitution). Figures are approximate: see Thorgerdsdóttir in this volume. Sweden: 1880–1944 chapter 18, section 10, first part, fornication against nature with persons under 15 and persons 15 and older (excluding bestiality); 1945–64, chapter 18, section 10 and 10a, homosexual fornication with persons under 15 and with persons between 15 and 21; 1965–69, homosexual fornication with persons under 15 and with persons between 15 and 21; 1969–77 homosexual fornication with persons under 15 and with persons between 15 and 20. In the right column convictions for sexual intercourse with a person of the same sex 15 and older. Official statistics 1880–1964 give the total number of convictions regardless of the age of those involved. A closer survey based on material collected by Rydström (2003) has made it possible to distinguish the number of cases involving persons over 15 for the period 1880–1944. From 1965 official statistics distinguish between “homosexual fornication with persons under 15” and “homosexual fornication with persons 15 and older.” In 1969 the age of majority was lowered from 21 to 20. Finland: 1901–1970 chapter 20, section 12, subsection 1 (fornication with a person of the same sex 18 years or older). Before 1924, data are collected in prison statistics which give slightly lower numbers, since only prisoners sentenced to prison, and not those sentenced to hard labor, are accounted for (cf. Löfström 1994, appendix C). 1971–99 chapter 20, section 5, subsection 2 (fornication with a person of the same sex between 16 and 21).

of consent was set higher for homosexual than for heterosexual acts, for the purpose of protecting the young from being seduced by older homosexuals. Next, the age of consent was equalized, most often by abolishing the law which discriminated against same-sex sexuality. In general, the second step followed some thirty to forty years after the first. In Iceland and the Faroe Islands it took considerably longer to equalize the age of consent (52 and 53 years, respectively), whereas in Greenland the higher age of consent was in force only for 15 years, between 1963 and 1978. The only radical exception to this pattern is again Norway, where both reforms were carried out in one step in 1972.

Courtroom practice

The Norwegian Penal Code of 1902 was to become a model for other Scandinavian countries. Since it contained the provision that “immoral intercourse” would only be prosecuted when public interest so demanded, it can be argued that Norway was actually the first country in Scandinavia to lift the general ban on same-sex sexuality. With the new law, the number of convictions fell from an average of 7.5 per year (0.22 per 100,000 inhabitants) during the period from 1879 to 1904 to just 2.2 per year in the period 1905-37 (0.08/100,000). Martin Halsos has shown that the cases brought to court under the new law almost invariably involved sex with minors or violence, and therefore the Norwegian law can be seen as a precursor of laws in the neighboring countries that were later explicitly constructed in order to protect minors for homosexual advances.²⁴ However, since the Norwegian law did not explicitly include any age limit it could be used also in other ways. In 1938 Bergen Town Court convicted 24 men for sex between adults in connection with a large homosexual affair, but after that the average again went down to 2.1 cases per year (0.06/100,000) until 1956, when criminal statistics stopped distinguishing between unnatural intercourse and “other sexual crimes” (see table 1).

In Denmark, the number of court cases until the decriminalization was considerably higher, with a yearly average of 13.5 convictions in 1897-1932 (0.45/100,000). The Danish Penal Code that was put in force in 1933 had a number of provisions regulating same-sex sexual behavior. Section 225 of the new code stated that the laws against incest, rape, sex with minors, and sex with persons in a dependent situation also applied in cases of same-sex sexual acts. Subsection 2 of section 225 (in force until 1976) prohibited same-sex intercourse with persons under eighteen, and subsection 3 (in force until 1967) penalized homosexual seduction of youths between eighteen and twenty-one. In 1961, a fourth subsection was added, prohibiting the buying of sexual services from persons of the same sex, but after severe criticism it was repealed in 1964. Finally, section 230 (in force until 1967) of the new Penal Code prohibited the selling of sexual favors to persons of the same sex. Section 225 could thus be used in com-

bination with a number of other sections and Danish criminal statistics distinguish between convictions for same-sex sexual intercourse with persons under fifteen and same-sex sexuality with persons between fifteen and twenty-one.

In accordance with Foucault's theory that modern societies evolve toward more lenient punishment but also more extensive control, the number of convictions for violation of the new set of regulations in Denmark was much higher than the number of convictions under the cruder sodomy law that preceded them. From 1933 to 1954 the yearly average of convictions for same-sex sexual acts with persons over fifteen was 32.4 (0.81 per 100,000 inhabitants). In the middle of the 1950s the number of convictions rose sharply, and from 1955 to 1964 the average was 92.3 convictions per year (2.01/100,000). From 1965, however, when the law prohibiting the buying of sexual services from persons of the same sex (section 225, subsection 4) had been repealed, until 1976, when the higher age of consent was abolished, the yearly average of convictions sank again, to 13.1 convictions yearly (0.27/100,000 inhabitants).

The Icelandic criminal legislation was similar to the Danish. There was a general ban on "intercourse against nature" until 1940, when it was replaced by a similar set of regulations as those adopted in Denmark in 1933. However, the number of convictions has been so low that it is impossible to draw any statistical conclusions from it. Between 1885 and 1925, there were 71 convictions for sexual crimes altogether, which gives a yearly average of 1.7 convictions, or 2.2 per 100,000 inhabitants. Out of these 71 cases, only one case (in 1924) is known to have been charges for same-sex sexuality (see table 8 on page 121). There are no statistics for sexual crimes from 1926 to 1940, when same-sex sexuality between consenting adults was legalized in Iceland, but Thorgerdur Thorvaldsdottir's research has revealed two cases from 1928, one of them involving sex with minors and the other attempted bestiality.²⁵ Her investigation in this book also indicates that between 1940 and 1992, when the higher age of consent was repealed, there were at least 14 convictions for "immoral acts between persons of the same sex," which would correspond to 0.26 cases yearly (0.14/100,000). But statistics are missing between 1953 and 1965, and there are no statistics on sexual crimes after 1974. More research is necessary before we can know the exact number of court cases concerning same-sex sexuality in Iceland.

In the Faroe Islands there are only two known prosecutions for same-sex sexuality between 1866 and 1932, when all such acts were forbidden, but between 1933 and 1985 no less than 28 prosecutions are reported. All of them concerned sex with minors and 21 of them occurred between 1979 and 1985. In the whole period this would result in a yearly average of 0.52 prosecutions and in view of the small population in the Faroes (around 43,000) it would amount to a yearly average of no less than 1.22 cases per 100,000 inhabitants. By contrast, Greenland, which has about the same size of the population, displays only two court cases concerning same-sex sexuality, one from 1938 and one from 1971.

In Eastern Scandinavia, in both Sweden and Finland, women were included in the total ban on same-sex sexuality that stayed in the law books until 1944 in Sweden and until 1971 in Finland.²⁶ Criminal statistics of these countries are not immediately comparable, since the Swedish sodomy law until 1944 covered all

Table 2. Frequency of convictions for same-sex sexuality regardless of the age of the persons involved in the five Nordic sovereign states, 1879–1992. Yearly averages per 100,000 inhabitants in ten-year intervals.

| | Denmark | Norway | Iceland | Sweden | Finland |
|-----------|-----------|-----------|-----------|-----------|-----------|
| | 1897–1976 | 1879–1971 | 1885–1992 | 1880–1977 | 1901–1999 |
| 1875–1884 | | 0,37 | | 0,00 | .. |
| 1885–1894 | | 0,53 | | 0,03 | .. |
| 1895–1904 | 0,81 | 0,21 | | 0,05 | .. |
| 1905–1914 | 0,59 | 0,06 | | 0,15 | .. |
| 1915–1924 | 0,27 | 0,06 | 0,11 | 0,13 | .. |
| 1925–1934 | 0,49 | 0,09 | 0,09 | 0,36 | .. |
| 1935–1944 | 1,83 | 0,17 | 0,17 | 1,19 | .. |
| 1945–1954 | 2,42 | 0,07 | 0,21 | 0,78 | .. |
| 1955–1964 | 4,41 | 0,07 | 0,11 | 0,89 | .. |
| 1965–1974 | 0,83 | 0,12 | 0,15 | 0,36 | .. |
| 1975–1984 | 0,22 | | 0,04 | 0,30 | .. |
| 1985–1994 | | | 0,12 | | .. |

Sources: Criminal statistics and court records (see note to table 1).

Note: The values from Finland are excluded, since the total number of same-sex sexual acts tried by the courts cannot be calculated. The figures from Iceland are approximate.

same-sex offences, regardless of the age of those involved, while in Finland only same-sex acts between persons eighteen years or older were judged under the sodomy law.²⁷

All in all, there were rather few convictions for same-sex sexuality in Sweden until the middle of the 1930s, with 7.6 as a yearly average in 1880–1934 (0.14/100,000). However, the number of cases skyrocketed during the last decade before decriminalization, with 75.3 convictions per year in 1934–44 (1.18/100,000). Of these, 8.1 convictions per year concerned sexual contacts with persons between 15 and 17, and 51.1 were convictions for sex with persons aged 18 and older, thus a very high share of sex between adults, which is explained by the Swedish police targeting urinals and cruising parks in the cities during this period. After decriminalization, from 1944 to 1964, there were 60.2 cases yearly of convictions for same-sex sexuality with people under twenty-one (0.83/100,000). Among them, there were certainly many cases of sex with minors under fifteen, but it is impossible to determine the proportions, since criminal statistics do not make that distinction and no closer study has been made on court practice during this period. From 1965, when criminal statistics separate cases of fornication with persons under fifteen from cases of same-sex sexual acts with persons fifteen and older, there were totally 27.8 cases per year (0.34/100,000), but only 4.5 cases

per year of same-sex sexual acts with persons between fifteen and twenty-one, corresponding to 0.06 cases per year per 100,000 inhabitants.²⁸

The Finnish semi-modern sodomy law from 1889 was different from the older legislation in the other Nordic countries. Like the traditional sodomy laws, it prohibited both bestiality and same-sex sexual acts, but unlike the older laws it explicitly limited its scope to “fornication between persons of the same sex,” and not the more general “fornication against nature.” Moreover, it was combined with a law against fornication with minors (chapter 20, section 7), leaving only cases of same-sex sexual acts between persons over 18 (and bestiality) to be judged under section 12. Two Supreme Court verdicts, from 1933 and 1944, made it clear that section 7 had precedence in case of same-sex fornication with minors, and that section 12 was only to be used for cases of fornication with persons of the same sex 18 years or older.²⁹ Considering that the convictions according to this law exclusively concerned sex between adults, their numbers are surprisingly high, and in the 1950s a period of homophobia led to an even higher frequency of prosecutions for same-sex sexuality. From 1901 to 1923, there was an average of only one conviction per year for same-sex sexuality (0.03/100,000).³⁰ The number of convictions steadily rose, and in 1924–48, an average of 8.9 persons were convicted for same-sex sexuality each year (0.24/100,000). From 1949 to 1958, the frequency of convictions rose sharply and as many as 54.4 persons (1.31/100,000) were convicted yearly for same-sex sexuality between adults. During the last decade before decriminalization, 1960–70, there were still 22.3 convictions (0.49/100,000) per year. After decriminalization in Finland, however, the law on higher age of consent was very rarely used. From 1972 to 1999, only 10 people were convicted for having had sex with persons of their own sex between 16 and 21, which makes a yearly average of 0.3 cases (0.01/100,000).

If we try to compare the frequency of convictions for same-sex sexuality between the countries, we see that there are important differences between the different jurisdictions, but also that they have some trends and tendencies in common. To begin with, we can look at the number of convictions per capita concerning the totality of cases, i.e. convictions for same-sex sexuality regardless of the age of those involved (table 2). Since the Finnish law of 1889 concerned only sex between adults, we leave their column blank to begin with.

Before decriminalization, Denmark had the highest instance of convictions for sodomy, followed by Norway, whereas Sweden had a very low number of convictions for same-sex sexual acts. Perhaps this is explained by the fact that convictions for bestiality are not accounted for in the Swedish figures. As can be seen in figure 4 in the chapter on Sweden, the number of convictions for bestiality was much higher than the number of convictions for same-sex sexuality during this time. After decriminalization and the introduction of higher ages of consent for homosexual intercourse, Denmark is still in the lead when

Table 3. Frequency of convictions for same-sex sexuality with persons over the age corresponding to the heterosexual age of consent in the five Nordic sovereign states 1880–1999. Yearly averages per 100,000 inhabitants in ten-year intervals.

| | Denmark 1897–1976 | Norway 1879–1956 | Iceland 1885–1992 | Sweden 1880–1977 | Finland 1901–1999 |
|-----------|----------------------|---------------------|----------------------|---------------------|----------------------|
| | ≥ 15 years | | ≥ 16 years | ≥ 15 years | ≥ 18 years |
| 1875–1884 | | .. | | 0,00 | |
| 1885–1894 | | .. | | 0,01 | |
| 1895–1904 | .. | .. | | 0,03 | 0,01 |
| 1905–1914 | .. | .. | | 0,08 | 0,04 |
| 1915–1924 | .. | .. | 0,11 | 0,06 | 0,03 |
| 1925–1934 | 0,12 | .. | | 0,20 | 0,12 |
| 1935–1944 | 0,85 | .. | | 0,89 | 0,27 |
| 1945–1954 | 0,81 | .. | | .. | 1,09 |
| 1955–1964 | 2,01 | .. | | .. | 0,85 |
| 1965–1974 | 0,27 | .. | | 0,10 | 0,21 |
| 1975–1984 | 0,10 | | | 0,06 | 0,00 |
| 1985–1994 | | | | | 0,01 |
| 1995–1999 | | | | | 0,00 |

Sources: Criminal statistics and court records (see note to table 1).

Note: The values from Norway are excluded since no separate age limit for same-sex sexuality was ever imposed there. The figures from Iceland are approximate.

it comes to the total number of convictions for same-sex sexual acts. No other Nordic country comes even close to the Danish figures in the 1940s and 1950s, whereas Norway on the other hand had extremely few convictions after the new law with its provision about “public interest” was put in force in 1905. The Norwegian anti-sodomy statute is not even used to any higher extent in the 1950s, when both Denmark and Sweden display a sharp increase in the number of convictions. Iceland has a very low number of convictions, but because of its small population, the number per capita is only slightly lower than in Sweden, and even higher than in Norway.

If we then turn to the figures showing the frequency of convictions for same-sex sexual acts with persons above the heterosexual age of consent (15 in Denmark and Sweden, 16 in Iceland, and 18 in Finland), we see that Denmark is still in the lead, but that the difference between the Danish and the Swedish figures becomes less accentuated (see table 3). And now that we can compare the Finnish statistics with that of the other countries, we see that Finland’s figures are only slightly lower than the Danish in the 1950s. The only Icelandic case concerning sex with persons over 16 was from 1924 and judged according to the older sodomy law.

Thus we see that even if the frequency of prosecutions differed between the countries, the general trend was that the number of convictions for same-sex sexuality increased during the 1940s and 1950s. Norway is an exception in this regard, since the wording of the law made it impossible to use it on a larger scale.

In Sweden and Denmark that had by then decriminalized “unnatural fornication,” the number of convictions for same-sex sexual acts with persons under twenty-one increased sharply during the 1950s. In Finland with its total ban on same-sex sexuality there was a steep increase in convictions for same-sex sexuality between adults during that time.

In this context, the scarcity of prosecutions for same-sex sexuality in the very small communities is noteworthy. There were hardly any such prosecutions in Greenland and only very few in the Faroe Islands (before 1979) and Iceland. Moreover, these prosecutions almost exclusively concerned fornication with minors, a pattern which is accentuated by the wave of prosecutions for child abuse in the Faroes in the early 1980s. The explanation may well be a lower frequency of same-sex sexual acts between adults in small communities. It is to be assumed that there was a scarcity of sexual partners in smaller places where social control was stronger. Especially after the notion of a homosexual identity became more established, it was harder to engage in same-sex sexuality without assuming that identity. The migration of sexual minorities to larger cities also increased, thus further reducing the number of potential sexual partners in the villages.³¹ Finally, there may have been a reluctance to use the law in smaller communities, because of the social stigma that would fall upon the persons involved.

Scandals and justice

The decisions to abolish the absolute ban on same-sex sexuality were made under the influence of the ongoing construction of homosexuality and the categorization of homosexuals as victims of a disease they could not be held responsible for. This coincided with dramatically increased public visibility of homosexual subcultures. The first Scandinavian country formally to lift the general ban on same-sex sexual acts was Denmark, where homosexual subcultures developed earlier and on a larger scale than elsewhere. A homosexual scandal that caused a sensation in Copenhagen in 1906-7 and contributed to public awareness of the issue tilted professional opinion in favor of abolishing the criminalization of homosexuality, and the first proposal to that effect was prepared already in 1912. Another homosexual scandal, the Santeson affair, occurred in Stockholm in 1907, and also increased the visibility of homosexuality, but the conclusions drawn in Sweden were not the same. Some voices were raised for decriminalization, but to no effect. An affair in Norway in 1886, when Ebbe Hertzberg, a high-ranking jurist, had to leave his office, was not publicized as extensively, but it did stir some debate among intellectuals and may have influenced the fathers of the new Penal Code of 1902. Finland did not have its own public scandal in the beginning of the century but was obviously informed about scandals elsewhere, as is indicated by the 1907 play *In the Cellar*, where a fictitious homosexual scandal

shakes the Government's Department of Education, with explicit references to the Eulenburg affair in Germany. In Iceland extensive press coverage followed the prosecution of a famous sportsman for homosexual relations in 1924, and in 1925, the future Nobel laureate Halldór Laxness commented upon the presence of homosexuality in Reykjavík. Thus it is reasonable to conclude that the general public in Scandinavia became aware of the concept of male homosexuality during the first two decades of the twentieth century. After that, journalists did not have to explain the word "homosexuality" every time they used it, and the discussion of same-sex sexuality among men came out in the open.³²

The war

World War Two split the Scandinavian community. All four independent countries declared themselves neutral at the outset of the war, but as Denmark and Norway were occupied by Germany, Iceland, the Faroes, and Greenland controlled by British and American troops, and Finland attacked by the Soviet Union and later fighting on Germany's side, the Nordic countries and territories ended up on different sides in the conflict. Sweden remained neutral and avoided being invaded, at the cost of far-reaching concessions to Nazi Germany. A wave of critical research has questioned the wartime policies of all these countries and new approaches in studying the history of the war have been put forward. Thus, the role of the Danish resistance movement has been re-evaluated and its significance is now seen in the larger context of national and international politics. In Sweden the pro-Nazi sentiment, the export of iron to Germany, and its unnecessarily restrictive refugee policies at the beginning of the war have all come under criticism. In Norway, the rash settling of accounts after the war and the treatment of women who had relations with German soldiers have been subject to critical study. In Finland, critical research has focused on the extradition of prisoners to Germany and the high mortality among Soviet prisoners of war. A recent Finnish anthology has emphasized the cultural history of war, the role of gender, memory and myth, and the history of everyday life instead of traditional political or military history. In all four countries, anti-Semitism was rampant and democracy bracketed during the war years. The Danish dependencies in the North Atlantic were perhaps those who came out of the war with best experiences. Their connections with Denmark were cut off during the German occupation, which strengthened demands for self-government after the war, and their economies gained from foreign investments. Iceland declared itself independent from Denmark in 1944, and both Greenland and the Faroes gained a more far-reaching autonomy after the war.³³

The German occupying forces apparently made no attempt to impose German anti-homosexual laws on the occupied Nordic countries or to increase persecutions of homosexuals in those territories. In Denmark, sex between con-

senting adults of the same sex remained legal, but the number of prosecutions for homosexual prostitution and for homosexual relations with persons under 18 increased in 1942 and 1943. From September 1944 until the end of the war, however, the Danish police force was dissolved by the Germans, and the rate of prosecutions for homosexual activities immediately sank. During this period, the occupational authorities concentrated on combating the resistance.³⁴

In Norway, where the German troops had met more resistance from the beginning, and where the occupation was less lenient, there is no indication that the German occupation forces targeted homosexuals. On the contrary, there are testimonies to the effect that some Norwegian men had sexual relations with German soldiers without being prosecuted. After the war, many women who had been together with German soldiers, the so-called "German Girls" (*tysketøser*), were attacked by violent mobs, but their gay counterparts were spared public exposure. In Sweden, the heightened levels of police control continued during the war, and prosecutions for same-sex sexuality reached peak levels. In Finland, on the contrary, the number of prosecutions fell during the war. The war brought no warfare to Iceland, but plenty of British and American servicemen, who enriched the local gay subculture considerably.³⁵

In all five Nordic countries, as in other European countries, the blackout in the cities created safer circumstances for sexual encounters, and there are many tales about the electric sexual atmosphere in a dark city where men could seek sexual encounters unbothered by the police. All over Scandinavia there was probably an increase of same-sex activity among men, due to the blackout in cities and the long periods men served in the armed forces, in the close confines of the barracks, dugouts, tents, and trenches. Since women too joined the war effort in ammunition factories and military volunteer organizations, female same-sex sexuality also became more feasible through increased opportunities to expand friendships and form attachments.³⁶

Law reform and homophobia

The construction of the homosexual in the field of medicine together with developments within criminal justice brought about the first wave of decriminalization of same-sex sexuality in Scandinavia, between 1933 and 1944. Decriminalization in Denmark (1933) had been prepared since the beginning of the century, and in Iceland the new law followed as part and parcel of the new Penal Code of 1940, largely a translation of the Danish code of 1930. In Sweden, an amendment to the law met with more resistance, and the Minister of Justice managed to block the law reform from 1936 to 1944.

The new laws stipulated a higher age of consent for homosexual relationships, and they explicitly included women as possible perpetrators of unlawful sexual acts. These regulations corresponded to the new approach to homosexu-

ality as an inherent characteristic in individual men and women, but they also reflected a growing anxiety over homosexuality and age.

Many had thought that the new laws would usher in a new era of a more relaxed attitude to homosexuality and a greater openness among homosexuals, but it turned out to be not so. The 1950s were a decade of vehement homophobia, and the countries where homosexual acts among consenting adults had been legalized were no exception. In Sweden, a series of homosexual scandals involving the highest social circles, and even implicating the recently deceased king, erupted in 1951-53, and in Denmark, the so-called pornography affair in 1955 almost crushed the fledgling homophile movement. In Norway in 1953, a law commission recommended the prohibition of homophile gatherings, and in Finland the scandals in neighboring Sweden were widely publicized and helped to establish the popular belief in Finland that homosexuality was rife among Swedish men.

During the 1950s prosecutions for crimes concerning homosexual contacts intensified, while homophobic reporting was keenly pursued by the press. It was in this hostile atmosphere that the Scandinavian homophile movement first emerged. The founding and the growth of the homophile movement was very much a joint Scandinavian venture, which in turn was part of a larger European movement. When Axel Lundahl-Madsen (later Axel Axgil) in Denmark contemplated organizing a homophile group, he wrote to the recently founded COC in the Netherlands and *Der Kreis/Le Cercle* in Switzerland asking for advice.³⁶ Two traits were to be typical of the Scandinavian movements: a high level of organization outside the capital areas and good international contacts. In the larger Nordic countries, tensions between the capital area and other towns have been a constant feature throughout the history of homosexual organizations, and many an annual convention has been dominated by efforts to rewrite an organization's constitution so as to give the provinces more say on the national level.

In Denmark, the Federation of 1948 (*Forbundet af 1948*) chose a discreet name that signified the year it was founded. It was not founded in Copenhagen, but in the provincial town of Ålborg, perhaps as a response to needs that the commercial scene in the capital could not satisfy. Two years later, the Norwegian and Swedish branches of the association became independent organizations. The Norwegian activists kept the same name as their Danish mother group, calling their organization simply The Norwegian Federation of 1948 (*Det Norske Forbundet av 1948*, or DNF '48), but in Sweden the new group changed their name to the National Federation for Sexual Equality (*Riksförbundet för Sexuellt Likaberättigande*, or RFSL), thus alluding to the name of the highly successful Swedish sex reform movement, the National Federation for Sexual Education (*Riksförbundet för Sexuell Upplysning*, or RFSU). The three Scandinavian homophile organizations maintained close connections, and members and

leaders frequently visited each other. In Sweden the new group soon expanded through a new chapter in Göteborg, and the first openly gay person in the country came from a provincial town, which he had to leave after being completely ostracized when his homosexuality became known. A correspondence group, *Albatross*, was set up to cater to the needs of those members living outside the urban centers.³⁸

Sex liberalism in the 1960s and 1970s

The 1960s sexual liberation in no way prioritized the emancipation of homosexuals – instead, it was the liberation of heterosexual sex that was focused on – but in the long run the new climate of openness did contribute to a more permissive attitude toward homosexuality, and in Finland heterosexual intellectuals demanded the decriminalization of homosexuality. In the early 1970s new radical groups emerged: the Gay Liberation Front (*Bøssernes Befrielses Front*) in Denmark, the Red Faggots (*Röda Bögar*) and the Homosexual Socialists (*Homosexuella Socialister*) in Sweden. In Norway the gay movement split in two in 1976. A new umbrella organization, the Joint Council for Homosexual Organizations (*Fellesrådet for Homofile Organisasjoner*, or FHO), was influenced by revolutionary socialists, who saw the struggle for gay rights as part of a more comprehensive social revolution, while DNF-48 chose a more reformist path and expelled the radical elements.³⁹

Not only were existing gay movements radicalized and new socialist groups created in the 1970s, but countries where no previous movements had existed now saw their first gay and lesbian activist groups emerge (see figure 1). When the first Finnish gay rights group was set up in 1967, the 1889 law forbidding “fornication with a person of the same sex” was still in use, and sexual refugees along with economic refugees emigrated in great numbers to neighboring Sweden each year. The Group of the Second Ray (*Toisen säteen ryhmä*) was a short-lived, politically radical group whose manifesto anticipated many of the thoughts of the 1990s queer movement. Its work was continued in 1968 by Psyche (*Psyke*), and in 1974 the Finnish association Sexual Equality (*Seksuaalinen Tasavertaisuus*, or SETA) split off from Psyche, which had become more community-centered. SETA was more political and began to work for abolishing the legal and social discrimination of sexual minorities.⁴⁰ In Iceland there was hardly any legal persecution, but homosexuality was invisible and socially stigmatized, and the stream of sexual refugees to other countries was perhaps proportionally greater than from Finland. The Icelandic gay and lesbian movement was founded in 1978 and immediately began lobbying to increase gay and lesbian visibility and respect for homosexuals in Icelandic society. Faithful to the Danish tradition, it chose the name Association of ’78 (*Samtökin ’78*), referring to the year when it was founded. In the beginning its main concern was visibil-

ity and social support rather than legal reform. Not until 1992 were the ages of consent equalized in Iceland, whereas Denmark and Sweden had already taken this step during the late 1970s.⁴¹

A third wave of gay and lesbian organizations recently led to the founding of gay and lesbian groups in the smallest Scandinavian countries. The Light (*Qaamaneg*) in Greenland was founded in 2002, and its Faroese counterpart The Peace Bow (*Friðarbogin*) in 2003. These two groups show that the call for gay and lesbian rights is now less than ever solely an urban phenomenon, but something that reverberates throughout the Nordic countries. Still, some members prefer to remain anonymous, revealing the difficulties faced by lesbians and gay men in smaller communities.

Final abolition of discriminatory laws

Finland and Norway were the last two countries in Scandinavia to lift the general ban on homosexuality, but they did so from very different starting points and with very different results. Norway had a law that criminalized only male same-sex sexuality and was seldom used. The Finnish law criminalized both male and female same-sex sexuality and was used fairly often. In both countries, however, there were strong Christian and conservative groupings opposed to decriminalization, and in both countries the main effect of the law was to intimidate homosexuals and prevent them from living openly. When Finland legalized consensual same-sex sexuality between adults in 1971, a higher age limit was set for homosexual contacts as a concession to decriminalization's opponents. In addition, the so-called "Encouragement Act" (*kebotuskielto/uppmaningsförbudet*), an amendment to the clause on indecent behavior that made it illegal to encourage others to homosexual behavior, was adopted. The law was hardly ever enforced, in spite of repeated attempts by Finnish gay activists to be prosecuted for violation of it in order to make a case against it, but it nevertheless helped create an atmosphere of self-censorship.⁴² As opposed to the reservations resorted to in Finland, Norway went all the way in 1972 by decriminalizing homosexuality altogether and fixing the age of consent at 16 years for both heterosexual and homosexual intercourse.⁴³

In the 1970s, amending the unequal age-of-consent laws was for long the highest priority of many of the Scandinavian gay and lesbian groups. These laws were the ultimate proof for homosexuals that they were seen as second-class citizens and a menace to society, and the struggle against such laws became an important matter of principle.⁴⁴ As already mentioned, Norway was in practice the first country to lift the absolute ban on same-sex sexuality in Scandinavia by specifying the law's enforcement conditional on "public interest." Formally, it was the last country to abolish the obsolete law on "unnatural intercourse" and bestiality, in 1972, but at the same time a forerunner in abolishing all criminal

legislation discriminating against homosexuality. No higher age limits were imposed, and homosexual intercourse was in no way treated differently from heterosexual intercourse in criminal law.

It was during the 1970s that homosexuals became openly visible in Scandinavian societies, and mainstream politicians began discussing the social situation of homosexuals. After intense lobbying by the Federation of 1948, the Danish Parliament lowered the age of consent and made it equal for homosexual and heterosexual contact in 1976. The Swedish Parliament followed suit in 1978 and at the same time appointed a commission to study the situation of homosexuals and to present suggestions for improving it. In the same year, the higher age of consent that had been in force only fifteen years in the new Greenlandic Penal Code, was abolished, but the Faroe Islands waited until 1988 before adopting the Danish law amendment.

As in Sweden fourteen years earlier, the Icelandic Parliament in 1992 abolished the discriminatory age-of-consent law and at the same time appointed a commission to further the social equality of gay and lesbian citizens. In Finland, repealing the higher age limit and the prohibition of encouragement to homosexuality had to wait until a penal code reform involving all sexual crimes was completed and passed by the Parliament. It was thus not until 1999 that the last Scandinavian criminal laws discriminating against homosexuals were abolished.

Conclusions

The particular Scandinavian models of allowing, controlling, and endorsing homosexuality emerged within and through a climate of modernism. There are important differences between the five countries in the area, and the Scandinavian type of welfare state has been called “a model, with five exceptions.”⁴⁵ As an example, we can cite the different approaches to the AIDS crisis adopted in Denmark and in Sweden during the 1980s. Whereas Sweden introduced a law banning sauna clubs and strengthened its law on venereal diseases, Denmark abolished the law on venereal diseases and concentrated on information about safe sex in the sauna clubs.⁴⁶ Significant differences exist even between various parts of the Danish kingdom, as the contrast between a homophobic discourse in the Faroe Islands and a more permissive climate in continental Denmark illustrates. Also, there are inconsistent national policies like, on the one hand, the protracted legislative battle in Finland for lowering the age of consent or for adopting a law on registered partnerships, and on the other, a long period of unregulated assisted insemination, which made Finland a safe haven for lesbians wanting to become mothers.⁴⁷

But on the whole, the historical development regarding same-sex sexuality and criminal law has been remarkably uniform in the Scandinavian coun-

tries. Even if taking the legislative steps has varied temporally a decade or more between individual countries, the overall development shows strong parallels, and the contents of the laws adopted and repealed are also very similar. In this respect, Scandinavia is linked to a wider Northern European development. The adoption of laws on higher ages of consent for homosexual relations was the result of a prevalent fear that perverted adults could corrupt young people through seduction. And the inclusion of women in legal discourse was the effect of a medicalized understanding of homosexuality and the endorsement of the “third-sex” model in legislative reforms.

What stands out as specifically Scandinavian in this context is the comparatively early decriminalization of same-sex acts, and the shared belief in scientific methods to solve social problems, coupled with a strong egalitarian ideology. These important characteristics also laid the basis for more recent developments in contemporary Scandinavian societies, such as the introduction of laws on registered partnership for same-sex couples in all five sovereign countries, and to the general recognition of gay and lesbian rights high up within the political establishment.

Notes

1 Large parts of this chapter were written in the house and company of Barbro Lötberg, whom I wish to thank quite heartily for her friendship and hospitality. For insightful comments and remarks, without which the essay would have looked quite different, I thank Virva Hepolampi, Kati Mustola, and Thorgerdur Thorvaldsdóttir.

2 Works exploring lesbian companionship as well as romantic friendships include Rosenberg 1975; Vicinus 2004; Lützen 1986; 1990; Juvonen 1995; 2002; Faderman 1981; Eman 1993. For gay male history based on court cases, see for example van der Meer 1995; Lever 1985; Katz 2001; Pretzel and Roßbach 2000; Schlatter 2002; Rydström 2003.

3 An overview of gay male history is given by Chauncey 1994; Halperin 2002. In Scandinavia the most important works are Rosen 1993, and Silverstolpe et al. 1999. The few works on lesbian history using court cases include: Hirvonen and Sorainen 1994; Sorainen 1998; 2005; 2006. Swedish ethnologist Pia Lundahl has used prison archives to analyze the “abominable prisoners’ friendship” among women in Swedish women’s prisons in the late nineteenth century. Lundahl 2001.

4 “The Nordic countries” (or *Norden* in Danish, Norwegian and Swedish, *Norðurlandið* in Icelandic, and *Pohjoismaat* in Finnish), is the most commonly used expression among Scandinavians to designate the members of the Nordic Council, i.e. the five independent countries Denmark, Finland, Iceland, Norway, and Sweden, and three autonomous areas, the Faroe Islands and Greenland in the North Atlantic (which depend on Denmark, but which have a rather far-reaching autonomy) and Åland in the Baltic Sea (which belongs to Finland and has a more restricted autonomy). In its narrower geographical meaning “Scandinavia” is sometimes held to include only the countries on and immediately south of the Scandinavian Peninsula: Denmark, Norway, and Sweden. Here we will, however, use Scandinavia, a concept more familiar to non-Scandinavians, to cover the whole area of the

countries members of the Nordic Council. For an overview of Scandinavian history, see Nordstrom 2000.

5 Giddens 1992, 2, 26-28; Foucault 1975.

6 Sedgwick 1990, 36-39.

7 Hirschfeld 1904/1991; 1914, 125-147, 348-369; 2000; Ellis 1904; Oosterhuis 2000, 43-55, esp. 48; Terry 1999, 43-45.

8 On Brand and The Community of the Special, see Herzer 1997.

9 Female and male separatism are radically different in their underlying reasons and political effects. If subordinate and oppressed groups seek to escape the pervasive presence of their oppressors, it is of course not the same thing as aligning themselves with their oppressors in order to attack what they believe to be a common enemy. Magnusson 2000; Stein 2000; Lindeqvist 2003; Rydström 2004.

10 Fraser 1997; Honneth 1995; Fraser and Honneth 2001.

11 Sedgwick 1990, 1-63, esp. 36-39; Butler 1990. For an overview of queer theory, see Jagose 1996; Turner 2000.

12 Häthén 1990, 139-47; Strahl 1959.

13 Bradley 1996, 13, 26. See also Melby et al. 1999; 2000; 2006.

14 The by now classical study of Scandinavian welfare states is Esping-Andersen 1990. See also Olsson 1990. For a critical evaluation of the crisis of the welfare state, see Pierson 1994; Kitschelt 1994. See also Åmark 2001; Lundberg 2002.

15 The first to critically evaluate the negative effects of the Swedish welfare state was Hirdman 1989. See also Runcis 1998 and Broberg and Tydén 1996 on sterilizations.

16 For a discussion on gay and lesbian rights and sexuality in modern Scandinavia, see Bech 1997; Rydström 2004; Kulick 2005; Lennerhed 1994; 2002.

17 Sedgwick 1990, 44-48; Halperin 2002, 12.

18 Rubin 1984/1993. See also Gerodetti 2005.

19 van der Meer 1995, 65-72; Muir and Ruggiero 1994, vii-xviii; Rydström 2003, 18-20.

20 Howard 1999; Boag 2003; Halberstam 2001; Schlatter 2002; Norrhem 2001; Juvonen 2002; Sorainen 1998; 2005; 2006. Rydström 2003; 2005; Kristiansen forthcoming.

21 Sweden: Strafflag 1864; Denmark: Almindelig Borgerlig Straffelov 1866; Finland: Suomen Suuriruhtinaanmaan Rikoslaki 1889/Strafflag för Storfurstendömet Finland 1889 (in force 1894); Norway: Kriminallov 1842, modernized 1889. Hagerup 1901; Hauge 1996, 207-20; Häthén 1990, 102-6, 110-14. On the effects of the “dormant” § 213 in Norway, see Friele 1970; 1990; Halsos 2001.

22 Lidberg and Freese 1985; Qvarsell 1993.

23 This is said with the reservation that no detailed investigation has been made of the earliest lesbian and gay movement in Finland. The first organization, The Group of the Second Ray, dates back to 1967. It was followed by Psyche in 1968, and the general ban on same-sex sexuality was lifted in 1971. These new groups probably had limited influence on legal reform, though a representative of Psyche had a discussion with the Minister of Justice and was invited as an expert to the Parliament’s Law Commission when it prepared the new law in 1970.

24 Halsos 2001. See also Halsos’ contribution in this volume.

25 There was a third case in 1928, the nature of which remains unclear.

26 In Sweden until 1944, “fornication which is against nature” and “fornication with animals” were punished according to chapter 18, section 10 of the Penal Code of 1864. From 1944 to 1978, the age of consent for heterosexual sex was 15, and for homosexual relations 18. In cases of dependency it was 18 for heterosexual relations (from 1937), and 21 for same-sex

relations (from 1944). In Finland until 1971, “fornication between two persons of the same sex” and “bestiality” were punished according to chapter 20, section 12 of the Penal Code of 1889 (abolished by Law no. 16, January 15, 1971). From 1971 to 1999, the lowest age of consent for heterosexual relations was 16, and for homosexual relations 18. In cases of dependency, the ages of consent were 18 for heterosexual and 21 for homosexual intercourse.

27 In Finland, sexual acts with persons under 18 were tried until 1971 under chapter 20, section 7, subsections 1, 2, and 3. This paragraph did not differentiate victims according to gender, so it is not possible to know how many cases concerned homosexual contacts with underage persons. From 1971, fornication with a person of the same sex under 18 (or 21 in cases of dependency) was regulated by chapter 20, section 5, subsection 2 of the 1889 Penal Code.

28 From 1944 to 1964, same-sex sexuality in Sweden was legally regulated by chapter 18, sections 10 and 10a of the Penal Code of 1864, which prohibited “fornication with another person of the same sex” younger than fifteen, or in cases of dependency, younger than twenty-one. From 1965 to 1978 the Penal Code of 1962 penalized same-sex intercourse with youth according to chapter 6, section 4, subsection 2. (In 1969 the general law of majority was lowered from twenty-one to twenty years, and the law was amended accordingly. Law 1969:162, in force July 1, 1969.) The higher age of consent was finally abolished in 1978 (Law 1978:103, in force April 1, 1978). The cases accounted for in Swedish criminal statistics until 1944 include all same-sex sexual crimes, regardless of the age of those involved, and from 1944 to 1964 all convictions for same-sex sexual acts with persons under twenty-one. In table 1, however, data from 1880 to 1944 are collected directly from court records, using a survey made for my book *Sinners and Citizens* (2003). That material has made it possible to separate convictions for same-sex sexual acts with persons over fifteen from those concerning sex with minors. From 1965 onward, Swedish criminal statistics distinguish between “homosexual fornication with persons under fifteen” and “homosexual fornication with persons who have reached fifteen but not twenty-one.”

29 Supreme Court of Finland, 1933 R 18; 1944 R 15.

30 This figure is based on prison statistics, and is probably somewhat lower than the real number of convictions per year, but there were certainly much fewer cases of same-sex sexual acts than of bestiality during this period (see figure 5, page 221).

31 For a discussion of homosexual identity in rural settings, see Rydström 2005a.

32 The Eulenburg affair in Germany in 1907, in which a close friend of the emperor was implicated, has been thoroughly discussed by Steakley 1989. For the homosexual scandals in Scandinavia, see Rosen 1993, 719-60 (Denmark); Silverstolpe et al. 1999, 156-62 (Sweden); Rian 2001, 44-46 (Norway); Willman-Elloranta 1907 (Finland); and Kristinsson 2000 (Iceland). See also the contributions in this volume.

33 Examples of research critical to the dominating discourse on Nordic countries during World War Two are for Sweden Boëthius 1999; Almqvist and Glans 2004; for Norway Fure 1999; Eriksen 1995; Johansen 2006; for Iceland Bernhardsson 1996; for Denmark Bryld and Warring 1998; Lidegaard 2005; and for Finland Laine 1982; Sana 2003; West-erlund 2005; Kinnunen and Kivimäki 2006. On Swedish anti-Semitism see Andersson 2000.

34 The total number of convictions rose from 45 in 1941 to 68 in 1942 and 94 in 1943. Then it sank to slightly above 60 in 1944-47. These fluctuations are not visible in the five-year interval statistics. *Danmarks statistik*. Statistiske meddelelser. Kriminalstatistik 1933-78.

35 For accounts of sexuality during World War Two in Norway, see Ringdal 1987; for Finland, Mustola 2006; for Iceland, Bernhardsson 1996.

- 36 For the effects of World War Two on gay and lesbian identity, see Bérubé 1991.
- 37 Axgil and Fogedgaard 1985, 137. On the history of COC, see Warmerdam and Koenders 1987. For the history of the Swiss homophile journal *Der Kreis/Le Cercle*, see Steinle 1999.
- 38 Axgil and Fogedgaard 1985; Magnusson 2000; Petersson 2000; Heli 2006.
- 39 Friele 2000; Kristiansen forthcoming.
- 40 Nissinen and Stålström 2000; Saarinen 1991.
- 41 Kristinsson 2000.
- 42 Finnish Penal Code, chapter 20, sections 5.2 and 9.2.
- 43 Halsos 2001, 50-53.
- 44 Interview with Per Kleis Bønnelykke.
- 45 Christiansen and Petersen 2001, 26. Cf. Åmark 2001.
- 46 Lag (1987:375) om förbud mot s.k. bastuklubbar och andra liknande verksamheter. Denmark has since amended its law on transmission of contagious diseases (Straffeloven § 252). Signild Vallgård has discussed the different politics in Denmark and Sweden. She contends that Denmark defined AIDS much more as a gay disease, and therefore used liberal methods, since attitudes to homosexuality were liberal. In Sweden, on the other hand, the new epidemic was defined as concerning a number of risk groups, notably drug users. There was a long tradition of coercion used in Swedish drug politics, and that tradition determined the way in which AIDS was dealt with. Vallgård 2003, 252-58.
- 47 The reason that Finland, besides Denmark, became a place where female couples and single women from the rest of Scandinavia went to have access to assisted reproduction was not any benevolent attitude from the Finnish government. On the contrary, conservative forces blocked legislation by wanting to introduce very strict regulations that the majority could not accept. Finally, after fierce discussions, a law on assisted fertilization was adopted in November 2006. The new law gives access to reproductive technology to female couples and single women on the same conditions as to women who live together with a man. Also, in the other Nordic countries there have recently been law changes granting these rights to female couples and single women. At present (March 2007) it is only in Norway, Greenland and the Faroe Islands where this is not the case

Women and the Laws on Same-Sex Sexuality

by Kati Mustola and Jens Rydström

This chapter will explore the place of female same-sex sexuality within Scandinavian criminal discourse and look at its history from a wider European perspective. Ever since the earliest written laws in Europe, erotic intimacy between women has appeared in criminal legislation and been subjected to judicial disciplinary action. Yet these instances have been subtle and scattered, and criminal prosecutions against women for same-sex sexual acts appear as mere drops in the ocean when compared to the bulk of male cases on the same charges. Women with lesbian desires have been vulnerable to the physical and structural violence suffered by all women throughout history, but they have largely been spared the state-induced judicial violence faced by homosexually-inclined men. Indeed, in many circumstances, close companionship with other women could be an opportunity for independence from men. Entering sex-segregated establishments like convents, nursing schools, or the Salvation Army, or setting up a private household or a business with another woman saved many women from domestic violence, reproductive labor, and male domination.¹

Here, we will trace the histories of some of those women who were charged with same-sex crimes in the Nordic countries and we will discuss the place of female-female sexuality in criminal discourse. First, the legal status of lesbianism within sodomy statutes and the possible reasons for inclusion or exclusion of women in these regulations will be considered. Second, the process of including women in the modern homosexuality paradigm is examined and its consequences for twentieth-century criminal law are explored.

Origins

Throughout Western history same-sex sexual behavior between women has mostly *not* been legally regulated. Western, Judeo-Christian views on sexuality were closely connected to procreation. The Mosaic Law of the Old Testament denounced sexual acts which did not lead to procreation, and procreation was to take place only within marriage. The major concern with prohibited sex acts was the waste of male semen, and, following this logic, male masturbation, dif-

ferent-sex anal intercourse, sex between men, and bestiality were all forbidden forms of sexual activity. Sexual acts between women were unthinkable. Yet, in the medieval and early modern period women were not considered any less lustful than men. On the contrary, they were believed to have an immoderate erotic desire, and women's sexuality was definitely an area that both religious and secular authorities strove to control. Women were often brought to trial for sexual misconduct, though almost invariably in connection with heterosexual contact. According to historian Judith Brown, the phallogocentric hierarchic framework underlying European discourse made it difficult to imagine that women could be drawn to other women, even if it was generally acknowledged that men could be sexually attracted to each other. Unsurprisingly, women made up only a tiny minority among those accused of illicit same-sex behavior in Europe during the medieval and early modern period. There were several prosecutions in Spain, four cases are known from France, two from Germany, a single case from both Switzerland and Italy, and twelve from the Netherlands.²

The handful of court cases involving women show, however, that there was another, although much weaker strand running through Western history, a strand which included the unthinkable. In his letter to the Romans, Saint Paul referred to pagans who rejected the one true God, and stated: "God gave them up unto vile affections: for even their women did change the natural use into that which is against nature."³ Some church authorities, following Paul, have included female same-sex acts in their list of sins. The most influential of them was Saint Thomas Aquinas (1225-1274), who in his *Summa theologiae* listed under the rubric of lust four categories of vice against nature: masturbation, bestiality, coitus in an unnatural position (meaning different-sex anal and oral intercourse), and "copulation with an improper sex, male with male and female with female."⁴

Occasionally, secular laws included references to female-female sexuality. One of these token mentions of sexual acts between women can be found in the Law of the Holy Roman Empire, *Constitutio Criminalis Carolina*, promulgated by the German Emperor Charles V in 1532: "If anyone commits impurity with a beast, or a man with a man, or a woman with a woman, they have forfeited their lives and shall, after the common custom, be sentenced to death by burning."⁵ It has been suggested that Scandinavian legislation was influenced by the Carolina, and that the criminalization of female homosexual acts in Sweden and in Finland in the nineteenth century can be traced back to the legacy of Carolina.⁶ This applies also to Austria, which was one of the rare European countries where female same-sex acts constituted a criminal offence.⁷ On the other hand, many Central European countries which were under the direct rule or within the more immediate sphere of influence of the Habsburg Dynasty during the sixteenth century did not follow the example set by Carolina of criminalizing female same-sex acts.



"Vi to"

Many women could obtain freedom from the dominance of men by becoming business associates. Greta Rydström (1898–1991), to the left, and Elsa Niklasson (1898–1976) met at a horticultural school in southern Sweden and stayed together for the rest of their lives. They ran a market garden outside Stockholm and were respected as a couple by their families of origin. Here on an excursion to Norway ca 1920. The text under the picture is Norwegian for “We Two.” Photo: Elsa Niklasson. In Jens Rydström’s possession.

Denmark, Norway, and Iceland

In early modern Scandinavia, there was a clear difference in legal attitudes to female same-sex behavior between its western parts, under the rule of the double monarchy Denmark-Norway, and its eastern parts, consisting of Sweden-Finland. The Danish Law of 1683 put the terms succinctly: “Intercourse which is against nature is punished by fire and flames.” In commentaries on the law and in later court practice it was stressed, however, that for a crime to have been committed, the law required *res in re et effusio seminis* (the thing in the thing and effusion of semen), in other words, penetration and ejaculation.⁸ Such wording made it unlikely that women would be prosecuted for same-sex sexuality, even if they had engaged in sexual acts involving genital contact with other women.

Four years after the Danish law had been introduced, King Christian V promulgated a law for the Norwegian kingdom, the Norwegian Law of 1687, which was modeled closely after its Danish counterpart. Its sodomy statute carried the same number and exactly the same wording as the Danish Law.⁹ As a result of the Napoleonic wars, Norway in 1814 became an autonomous kingdom and

joined with Sweden in a union that lasted until 1905. In 1842, some twenty years before Denmark, a new Norwegian Criminal Law was introduced (*Kriminalloven* 1842), with its chapter 18, section 21 retaining the wording of the old statute on intercourse against nature but reducing the punishment from death penalty to hard labor. Despite its gender-neutral wording, it was almost exclusively applied to men.¹⁰

However, in 1845 three women were prosecuted for “intercourse against nature” in Northern Norway. The 68-year-old matron Simonette Vold had for years engaged in various sexual activities with two younger women employed in her household. Since most of it had taken place before the new law was introduced, their crime was to be judged under King Christian V’s Norwegian Law of 1687. The District Court of Helgeland sentenced Ms. Vold to eighteen months’ hard labor and the two other women to fifteen days’ seclusion on water and bread, but the verdict was appealed, and in 1847 the case was tried by the Supreme Court of Norway. The crucial question the court had to grapple with was whether the women’s actions were punishable under the law. Simonette Vold only confessed to having indulged in an activity she called “slapping flat-cheek” (*daske Flad-kind*), which was described in the court to mean that she lay on top of the other woman and “behaved just like a man during such an affair.” But according to the other two women, she had on many occasions used an artificial penis, which she had made of velvet and which the women referred to as a “loose fellow” (*løsfyr*). A witness testified to having heard one of the servants yell at her employer during an argument, “You are never more satisfied than when you can ride on the girls with both the loose one and the fastened,” referring to the loose dildo (the loose fellow) and another one that could be strapped on. The court considered it likely that this had occurred, “especially since Ms. Vold, according to the declarations of the other defendants and of the physician, did not have an extraordinarily large clitoris, which, as some examples show, can serve to satisfy the sexual drive between women.” The absence of a large clitoris seems to have been read as an indication that she had had to resort to the use of a manufactured device. This line of argument reflected the influence of early modern continental discourse on clitoral hypertrophy, tribadism and hermaphroditism as mutually implicated sexual aberrations, but the court was still at a loss to decide whether the use of a dildo would constitute a criminal act, according to the law.¹¹

The first justice to cast his vote was of the opinion that since the acts in question had happened so long ago, the women should be sentenced to death under the old law, which prescribed burning at the stake, but then “naturally” they were to be pardoned and punished with hard labor instead. The second voter, Ulrik Anton Motzfeld, contended that the acts committed by the women would hardly count as “intercourse against nature,” asserting that “it is highly improbable that Christian V would have wanted such sensual and voluptuous frictions, in no way analogous with an actual concubitus, to be punished by fire at the

stake. With such an interpretation of section 6-13-15 of His Norwegian Law, too many sensual young women would probably have been burnt." He did not argue for acquittal, however, but said that such a crime as the women in question had made themselves guilty of should be punished by hard labor in analogy with the older statute. The court's majority voted with Motzfeld and the women were sentenced, Ms. Vold to one year's hard labor and her two younger servants to fifteen days' seclusion on water and bread.¹²

Only seven years later, in 1854, another case involving same-sex sexual relations between women came before the Supreme Court of Norway. Anne Marie Johannesdatter and Karen Dorthea Oladatter both lived in Christiania, as Oslo was then called. They had engaged in penetrative sex with each other, using their underpants, which they had twisted together into a bundle, as a penetrative device. Christiania Town Court had sentenced them to six and eight months' hard labor, respectively, and required them to pay the cost of the trial. Anne Marie accepted the verdict, but Karen Dorthea appealed the sentence, mainly because of the money involved. The Supreme Court was once more split on the decision, but the final verdict was to acquit the defendant. Several justices referred explicitly to the verdict of 1847, but the majority of them rejected the idea that it would be a binding precedent, since it in principle had been based on an interpretation of the Norwegian Law of 1687, and not of the Criminal Code of 1842. As a result, the new verdict established the practice in Norway of women not being judged under the anti-sodomy statute.¹³ When the Norwegian law was modernized in 1889, the section's ambiguous wording was clarified, and the new law stated that the crime to be punished was "fornication between persons of the same sex."¹⁴

In Denmark the new Penal Code of 1866 retained in section 177 both the wording of the crime's description and the recommendations concerning its application as they had been formulated in King Christian's Law of 1683, but substituted hard labor (*forbedringshusarbejde*) for capital punishment. According to Danish criminal statistics, one woman was convicted for violation of section 177 of the new law in 1897. From the official statistics we learn that she was married and between 30 and 40 years old, and that she was tried by a rural court, but the exact nature of her crime is not clear. She might well have been accused of same-sex sexuality, but just as likely of bestiality or "unnatural" sex with a man.¹⁵

In Iceland the Penal Code of 1869 was patterned on the Danish Penal Code of 1866. In keeping with its model, the section proscribing unnatural intercourse was overtly gender-neutral. However, the particular word used for "intercourse" (*samræði*) implied penetration and ejaculation, so the situation was in effect much the same as in Denmark and Norway. There are no known cases of prosecution of women under this section.

Sweden and Finland

On the eastern side of Scandinavia, the situation was quite different. In Sweden-Finland, Finland being part of the Swedish realm until 1809, written laws from the thirteenth century contained no provisions against same-sex sexuality although they stipulated that perpetrators of bestiality were to be buried alive. To the 1608 edition of King Christopher's Land Law of 1442, an appendix was added with several rules quoted from Leviticus, among them a ban on sexual contact between men. Following the gender-specific definition used in Leviticus 20:13, the Swedish Law also came to exclude women from the scope of sodomitic crimes: "Thou shalt not lie with a man as with a woman, for that is an abomination; they shall both be put to death, their blood is upon them."¹⁶

But in a legislative proposal prepared in 1609, which never became law, both men and women were viewed as possible culprits:

Any person who through the devil's instigation and one's own evil lust commits bestiality and indulges in fornication with some bovine or any other dumb animal, or else a man with a man, a woman with a woman, commits such unnatural unchastity; if anyone is caught in the act or bound to it by good witnesses, so that the district jury can try the case and find him or her guilty of such an evil deed, then the district judge shall convict that person to be buried alive or to be burned at the stake with the same animal with which the act was committed, for they are not worthy to live on this earth.¹⁷

Even in this proposed law, bestiality still remains the focal point of interest, and other forms of sodomy are presented in a subordinate clause. "Or else a man with a man, a woman with a woman" may be interpreted as introducing a number of possible deeds that are to be judged in analogy to the main crime. Otherwise, its wording is similar to that of the *Carolina*, the main difference being that the proposed Swedish law from 1609 includes being buried alive as an alternative punishment, probably a legacy from the medieval regulations concerning bestiality.

In the eighteenth century a new comprehensive law for Sweden and Finland was introduced, the Law of the Swedish Realm of 1734 (*Sveriges Rikes Lag*), which contained no regulations on other kinds of sodomitic sin than bestiality. But this was to avoid spreading word about the other two abominable sins of Sodom, as explained in the preparatory works on the law: "It does not seem desirable to include them, and it is better not to mention them at all, as if in ignorance, because a punishment will certainly present itself in the unfortunate case that someone is found guilty of such acts." Analogical interpretations like this were fully recognized in the legal practice of the time.¹⁸

As before, the law prohibiting bestiality was gender-neutral. Though not explicitly penalized in law, some people were tried and executed for same-sex offences, since the courts could refer to the Law of God in Leviticus or argue that such crimes were analogous to bestiality. Twenty such cases have been

found, but all of them deal with sex between men. However, a number of women were prosecuted in the seventeenth and eighteenth centuries for wearing men's clothes, committing marriage frauds, and undertaking other profane or fraudulent deeds when they, in male disguise, had married other women and appropriated social roles defined as a male preserve, including sexual relations with women.¹⁹

Nineteenth-century European legislation

On the European mainland, female same-sex sexual acts were defined as a criminal offence in Prussian law until 1847, when a gender-neutral definition of unnatural behavior suddenly and without any discussion disappeared from a bill during the revision of the Penal Code. The bill was passed and came into force in 1851. Gisela Bleibtreu-Ehrenberg believes that this decriminalization of acts between women in Prussia was an omission due to a mistranslation from Latin, and not a deliberate decision. In an earlier proposal of 1843 the penal offence was described as “unnatural gratification of the sexual instinct through sodomy.”²⁰ In the next proposal, drafted in 1846, the passage was condensed simply to “sodomy.” When this was translated back into German in the final version, it came to read “unnatural fornication between persons of the male sex or by humans with animals.”²¹ The loanword “sodomite” (*Sodomit*) was understood in everyday German to mean “boy-molester” (*Knabenschänder*). Bleibtreu-Ehrenberg suggests that there had been so few trials for female sodomy that the legislators forgot that the former law had actually included both sexes. The last one of the two known German cases of female sodomy had taken place more than a hundred years earlier, in 1721.²² If decriminalization of sexual acts between women had been intentional, she claims, there would exist some evidence of a discussion of whether or not women ought to be excluded from the scope of the law, but instead of any such record there is just silence.²³

This explanation has been criticized by Jörg Hutter, who finds it improbable that the jurists would have made such a mistake, given their knowledge of Latin and ancient jurisprudence. He claims that it was a new definition of sexuality that led to the omission of women from the new legislation. In the early nineteenth century it was the external resemblance to the God-given act of procreation that defined sexuality, not the satisfaction of sexual desire. That paradigmatic understanding of sexuality made it easy to define and condemn penetrative sex between men, but in order to understand female same-sex sexuality, various theories had to be invented about large clitorises that would allow tribades to take a penetrative role in the sex act. In 1819 a German forensic specialist referred to fornication between women as “just a kind of masturbation.” According to Hutter, it was not until the end of the nineteenth century that the

new science of sexology made it possible to include women in the criminal discourse.²⁴

Section 143 of the Prussian Penal Code of 1851, which prohibited male same-sex sexuality only, was reinstated in unchanged form as section 175 in the Penal Code of 1870 of the unified German Empire. It may have served as the model for a corresponding prohibition incorporated in the original 1884 proposal for the Penal Code of the Grand Duchy of Finland, as the similarity in wording indicates: “if a person of the male sex fornicates with another person of the same sex.”²⁵

Magnus Hirschfeld reported in 1914 in his monumental *Homosexuality in men and women* that there were six European countries where criminalization of sexual acts between women was either newly established or retained in contemporary criminal codes adopted since the mid-nineteenth century: Greece (1834), Austria (1852), Sweden (1864), the majority of the Swiss cantons (1844-99), Finland (1889), and the Netherlands (1911).²⁶ In all countries where women were included, the number of prosecutions against women was considerably lower than those against men. In Finland the proportion of women of all convicted persons between the years 1894 and 1971, while the law was in force, was less than 5 percent. In Sweden the proportion of women was 0.8 percent between 1880 and 1944.²⁷

Modern criminal discourse

The inclusion of women in European sodomy laws has thus been the exception rather than the rule. On the one hand, placing major emphasis on penetration and ejaculation, as was the case in Denmark and in Norway, resulted in legislation that all but exempted women from punishment for same-sex sexuality, although they could be severely punished for a number of other sexual crimes. On the other hand, women were dropped from the Prussian Penal Code of 1851, which served as a model for many nineteenth-century penal codes. So, whereas countries that had been influenced by the Napoleonic *Code Pénal* did not penalize same-sex sexuality at all, those following the German tradition from *Carolina* onward penalized most often only acts between men.

But during the twentieth century the development of other discourses led to the inclusion of women in the modern statutes that prescribed a higher age of consent for homosexual than for heterosexual relations. The rapid progress of medical science in general and of sexology in particular in the course of the nineteenth century brought about changes also in the forensic and criminological discourses on sexual offences. The old criterion of sex offences requiring penetration and ejaculation was gradually replaced by new ways of conceptualizing sexual transgressions. They were no longer seen as isolated acts of wickedness, but as the result of innate or acquired proclivities. All intimacy between persons

of the same sex became symptomatic of the recently constructed sexual inversion, later to be called a homosexual orientation. This radically new interpretation called for setting up new priorities in the legal domain. It was no longer the fear of blasphemy or defiling the sacred order of creation, but the fear of the corruption of youth along with the desire to combat "moral degeneration" that lay behind the regulation of sexuality. The new method of responding to the threats was to restrict contacts by means of a higher age of consent, and this new construct included women.

In the Netherlands, where sodomy had been decriminalized during the Napoleonic era, same-sex sexuality was once more included in the criminal law in 1911 in the form of a higher age of consent for homosexual relations, applicable also to women.²⁸ The Dutch legislation was followed by similar laws in other countries, which often continued to couch "the unspeakable crime" in a veiled language and to restrict the law's application to men.

In Germany, when section 175 of the German Penal Code was modernized and its scope was extended in 1935, there was discussion about whether to include women in the new wording. The German Penal Code Commission concluded that it should continue to punish men only. Whereas homosexual men wasted their procreative potential completely, the Commission argued, this seemed to be less the case with homosexual women, and since the vice was less widespread among women, they thought, the danger of seduction of young women was less imminent. Furthermore, since women's ways of expressing friendship were generally more intimate than those of men, a criminalization of lesbian sexuality would lead to difficulties in verifying criminal activity, as well as to too many denunciations of innocent relationships. Finally, the Commission argued, the greatest danger in male homosexuality was that it corrupted public life, which was not the case with lesbianism, because of the modest role women played in public life.²⁹

According to the new wording of the German law, same-sex sexual acts between adult men were punishable with imprisonment, but if the offender was under 21 he could be exempted from punishment. In section 175a, harsher punishment was stipulated if violence had been used, if one party was in a position of dependency on the other, if one was over and the other under 21 years of age, or if money was involved. These provisions corresponded closely to those stipulated in other countries, where homosexuality had been legalized and instead a higher age of consent was introduced that also applied to female-female acts. In some ways, then, the Nazi revision of section 175 in the Penal Code of 1935 had notable similarities to revisions made in other European countries where homosexuality was decriminalized. Apart from the crucial difference that the German statute also kept the general ban on male same-sex sexuality, many of its new provisions equaled those enacted in Denmark, Iceland, and Sweden at about the same time. In effect, the question of including or excluding of women

in the new legislation seemed to depend on whether the general ban was to be lifted or not. In some countries, the old statute remained unchallenged, but in some Scandinavian countries, revisions of penal codes involved a modernization of the anti-sodomy clause.³⁰

Modern Scandinavia

In 1933 the new Danish Penal Code decriminalized same-sex sexuality between consenting adults but imposed an age of consent of 18 years on same-sex sex partners (as opposed to 15 for heterosexual relations), and included sex between women in the new law. The age limit was extended to 21 years if the advantage of age and experience was misused to seduce a same-sex partner. Similar provisions against homosexual seduction of young adults in dependent positions were later adopted in Iceland, Sweden, and Finland. When Iceland introduced its new penal code in 1940, it was basically a translation of the new Danish code. As a result, lesbian sexuality was formally subject to a higher age of consent, though it does not seem that any women were ever prosecuted under that law in Iceland. Similarly, when the ban on unnatural fornication was lifted in Sweden in 1944, women were included in the new law, which stipulated an age limit of 18 years for homosexual relations (compared to 15 years for heterosexual ones).

The Danish Penal Code was introduced simultaneously in the Faroe Islands, but in Greenland the circumstances were different and somewhat more complicated. Until 1954, Danes in Greenland were subject to the Danish law, while the indigenous population was generally judged by local courts according to custom law. A comprehensive Criminal Code for Greenland (*Kriminallov for Grønland*) was introduced in 1954, but it was not until 1963 that a law on a higher age of consent for homosexual relations was enacted. It included women, and remained in force until 1978, but no conclusive investigation has been carried out to determine whether any women were actually prosecuted for violating it.³¹

Thus the laws prohibiting “unnatural fornication” were replaced by laws regulating “homosexual fornication,” a concept in which women were generally included. In this context, the fear of homosexual seduction led to laws imposing a higher age of consent on homosexual relations, both male and female. In Norway the general ban on “unnatural fornication” between men was not repealed until 1972, despite proposals made in 1925 and 1953 to replace it with a higher age of consent that would also have applied to women. The old law was seldom used, however, so the Norwegian gay and lesbian organization DNF-48 lobbied only cautiously for its abolition because a law reform was likely to extend legal regulation to female homosexuality. When the ban was finally abolished in 1972, it was not replaced by any other law constraining homosexual behavior. The reform brought about an equal age of consent for homo- and heterosexual relations, 16 years in both cases.³² Thus Norway skipped one of the phases of legal

control that characterize most of the other Northern European countries: the period with a higher age of consent for homosexual acts including women.

Since the total prohibition of same-sex sexuality in Finland had already included women, it was only to be expected that female homosexuality would also be included in the new anti-homosexual legislation – a higher age of consent and a prohibition of encouragement to homosexuality – that replaced the old law in 1971. Very few people, and probably no women, were prosecuted for violation of the higher age-of-consent law.

Thus, the typical legislative remedies for the twentieth-century fear of homosexual seduction of youth were a higher age of consent for both male and female homosexuality, and laws against male homosexual prostitution. In practice, however, the new laws on higher ages of consent were rarely employed against women.

Legal practice

As mentioned before, Norway never had any legislation explicitly prohibiting female same-sex sexuality, and after 1854 no women were ever brought to court for such crimes. Following the example of the Danish law, Iceland introduced a higher age of consent for both gay and lesbian relations in 1940, which remained in force until 1992, but according to available statistics, no women were ever prosecuted under this law. But in Denmark a higher age limit replaced the general ban on homosexual sex in 1933, and until the ages of consent were made equal in 1976, a total of 19 women were convicted for violations of that law. Of these, nine were convicted for having had sex with girls aged between 15 and 18, one was convicted for having used violence, one for seducing a woman under 21, and eight for having had sex with girls under 15.³³

In one instance from 1942, a married couple had brought home from a restaurant a 19-year-old girl and both spouses had had sex with her. The wife was sentenced to four months in prison on the charge of using the advantage of age and experience to seduce a person under 21 of the same sex, on the basis of section 225, subsection 3. Her husband received the same punishment for complicity according to section 23 of the same law.³⁴ In 1956, no less than four women were convicted for same-sex offences in that single year, coinciding with a peak in the number of prosecutions of men, as a result of the so-called “pornography affair.” One of the women’s cases involved a 21-year-old woman who had had sex with a 16-year-old girl, sometimes using a homemade dildo. They had had sex over 20 times in the course of a month, and the defendant said it all started on her initiative, but that the girl “was keen on continuing the relationship.” The defendant had thought it was legal as long as the girl was over 15, and the girl had told her that she had already “slept with her sister” and that she had also had relations to men.³⁵

Very few women, when compared to men, were thus convicted for “sexual immorality with a person of the same sex” (*kønslig usædelighed med en Person af samme Køn*) in Denmark during this period, and almost half of them were brought to court on charges that involved other unlawful sexual practices. In another case, from 1972, a heterosexual couple was accused of raping a 19-year-old girl whom they had invited to their home after a night in a restaurant, and of forcing her by violence to have sex with both of them. The husband was sentenced to eighteen months in prison for rape and complicity in same-sex rape, and his wife to six months in prison with suspended sentence.³⁶ Thus, the legal control of same-sex sexuality resulted in numerous prosecutions against men, but also sporadically affected women. One significant difference between male and female cases is that all known cases with women involved are connected to the private sphere of the home. For the obvious reason that women did not have full access to the public sphere, their sexual encounters took place in different surroundings than men’s.

In both Sweden and Finland, women were included in the general ban on “unnatural fornication” that was in force until 1944 in Sweden and until 1971 in Finland. After that, there was a higher age of consent until 1978 in Sweden and 1999 in Finland. Before 1935 only a handful of cases are known from either country where women were prosecuted, three in Sweden and four in Finland (see table 1).³⁷ But from the late 1930s onward the figures begin to grow. In Sweden seven women were prosecuted for same-sex fornication in 1941–44 (and six convicted), and in 1946–49 two women were convicted for same-sex fornication with women under 18 years. In Finland, between 1937 and 1949, ten cases of same-sex fornication between adult women were brought to trial, and eight of them were found guilty.³⁸ In both countries the statistics show a sharp rise in the overall number of prosecutions for homosexual offences during the 1950s, in Finland affecting also the number of trials of women. In Finland, 30 women were prosecuted and 27 convicted for consensual sex between adult women in the course of the decade, while in Sweden only three women were accused of sexual contact with girls or women under 18 years during the same period. In the 1960s the numbers declined, totaling in Finland thirteen prosecutions and twelve convictions before the law was repealed in 1971. In Sweden two women were tried for sexual intimacy with female partners under the age of 18 in approximately the same period (1960–73) but only one of them was convicted. After 1973, Swedish statistics no longer distinguish between male and female perpetrators. In Finland, after the decriminalization of homosexuality between adults in 1970, a higher age of consent remained in force until 1999. Twelve persons, probably all of them men, were prosecuted under that law and ten convicted.³⁹

The overall pattern in Sweden is that the few cases tried prior to 1940 all concerned abuse of little girls. In 1900 a 44-year-old woman, living in the poor-

house of Västerås, was prosecuted for having touched the sexual parts of two girls, seven and nine years old. In police interrogations she admitted to having had sex also with a 15-year-old daughter of a factory worker, but she was not prosecuted for that, neither was the factory girl prosecuted, even though she was old enough to be held legally responsible. In that case, the court obviously was interested in the crime only insofar as it involved abuse of children.⁴⁰ After 1940, there was a growing number of cases that concerned consensual sex between adults, the most famous of them involving a lesbian circle in Stockholm in 1944. A woman had called the police, complaining that she could not return to her apartment because she felt threatened. When the police arrived at the apartment they found two women sleeping on a couch, "which gave the constables the impression that they were perverted." In the ensuing investigation, two more women were mentioned, and in the end altogether five women were prosecuted in Stockholm's Town Court. Except for the woman who had called the police, they all had a working-class background, and they had met each other at their places of work, in restaurants and in a munitions factory. The woman who called the police was married, lived in a middle-class area in Stockholm, and was described as being nervously disposed. She was the only middle-class member of the ring and called the police when things got rough. She died of tuberculosis before the verdict was pronounced, but the other four women got sentences varying between four and six months' hard labor, all sentences suspended.⁴¹

Two of the six cases from the period after 1944, when homosexual practices between adults were legalized in Sweden, have been available for study. They both concern sexual relations with 17-year-old girls, and both took place in Stockholm. One involved a 23-year-old office girl who had met her 17-year-old lover in the Salvation Army. The office girl had a defiant attitude and refused to repent. She had boasted to her partner's mother that she had taken her daughter's virginity, and when the mother expressed her disbelief, the girl retorted: "Well, I've got two healthy hands, haven't I!" She was declared insane and committed to a mental hospital. The other case dealt with a 36-year-old physical education teacher who had a passionate relationship with one of her pupils, tragically culminating in the young girl's suicide. The teacher had a nervous breakdown, and attempted to commit suicide herself, when she heard the news of her young lover's death. She got a comparatively lenient sentence, one year in prison, which was suspended. These two cases are representative of the significance attached to the defendant's attitude. Repentance generally resulted in a less severe punishment, whereas defiance led to a mental hospital.⁴² It appears, then, that from the 1940s onward the criminal discourse in Sweden shifted toward a genderwise more inclusive view of homosexual offences. However, so few women were brought to court for such crimes in Sweden that it can be argued that their inclusion was more theoretical than practical.

The majority of the prosecutions for lesbian sex in Finland took place in the countryside, where most people lived until the middle of the 1970s. Antu Sorainen and Eve Hirvonen have studied eleven court cases from 1950 to 1960 that involved as many as 32 prosecuted and 27 convicted women. Among those convicted was a woman who had had several sexual relationships in various parts of the country during the postwar years. This particular woman, a mother of four, was given a comparatively harsh sentence, four years in prison.⁴³ The woman's arrest in 1951 led to the exposure of another case, concerning an orphanage run by a religious group of women, whose members were encouraged to kiss, caress, and embrace each other in sisterly love. Eight women connected to the orphanage were eventually convicted for "fornication with another person of the same sex" and given sentences ranging from six months to two years, though most of those were suspended. All in all, twelve women were convicted for same-sex intimacy in 1951.⁴⁴ Four years later, two more cases came up where four women were implicated. A 29-year-old estate-owner from the province of Savo and her 49-year-old housekeeper were accused of having a sexual affair. They confessed and were sentenced to eight months in prison, with sentences suspended. In 1957 the estate-owner's sister was prosecuted for having sexual relations with a sixteen-year-old dairy-farming trainee. In the police interrogations both of the accused confessed, but later they retracted. The trainee was discharged because of her youth, but the older party was sentenced to seven months in prison for "fornication with a person of 15 but not 17 years of age, and for fornication with a person of the same sex, committed with a single act." After appeals against the decision, the Supreme Court of Finland eventually upheld the original length of her punishment, which had already been suspended by a court of appeal. The Supreme Court changed the charges, however, because in the judicial hierarchy of criminal offences sexual offences against minors were to be given priority. Consequently the defendant was convicted for only fornication with an under-age person.⁴⁵

These Finnish cases from rural areas all involved erotic intimacy between people who had a professional relationship, a pattern that was considerably more common among female than male defendants. In some cases, it may have involved sexual exploitation, but it also served as a respectable façade for concealing a sincere relationship in a hostile environment.

Sorainen and Hirvonen have convincingly shown how the image constructed in police interrogations of the homosexual contacts between these women was based on male preconceptions modeled on the heterosexual act. The police asked whether money was involved, if any devices were used, who had been "on top" and who "underneath," who was the "active" and who the "passive" party.⁴⁶ The most striking questions that these rural police officers, all of them men, came up with, were those involving "the fluid." They wanted to know if "her liquid had run" (*oliko vuoto tullut*) and whether "her sexual desire had been sat-

ified.”⁴⁷ Are these questions suggestive of a phallic conceptual framework, or rather of accurate knowledge of female ejaculation – a knowledge that modern nineteenth-century sexology had lost before it was “rediscovered” in the 1980s?⁴⁸

Conclusions

The very scarcity of women in the history of legal regulation of same-sex desire invites reflection. As many studies on lesbian history have shown, lesbians share the fate of all women in being rendered invisible in a male-dominated construct of history. The taboos surrounding sexuality in general and same-sex sexuality in particular further emphasize this trend. However, as some scholars have been keen to point out, those willing to make the effort to fill in the blank spaces in female same-sex history through diligent and innovative research will find worthwhile archival sources to explore.⁴⁹

What conclusions can be drawn from studying those traces of lesbian sexuality that can be recovered from legislative and judicial sources in Scandinavian countries? To begin with, the actual diversity of forms of sexual expression in circumstances geared toward restraining such variations tells us something about the force of human sexuality. Fascinating facts can be learned about sexual identities and practices that women have worked out, often with little or no knowledge of the experiences of others, of role models or of subcultural discourses, due to the politics of silence. We can see how women managed to find female sexual partners, to form friendship circles, to make dildos out of whatever material was at hand, and how they coped with the social and legal sanctions on deviant sexuality. By forming couples outside male hegemony, some women created alternatives to the prescribed patterns of bonding and thereby radically challenged the phallogentric power structures. Moreover, a comparison of female and male same-sex sexualities allows us to see clearly the different spatial circumstances of the two sexes. Women typically bonded in their homes or at work, in the intimacy of rural female spheres or in the growing industries in the cities. Since men dominated public spaces, men desiring men had much more opportunities for sexual encounters, but they were also more vulnerable and easier targets for outright persecution.

A comparison between the attitudes to lesbianism in Nazi Germany and the democratic societies in Scandinavia is also revealing. Whereas Germany chose to let women remain outside the scope of the law, they were incorporated in the modernized anti-homosexual legislation in Denmark, and were increasingly being prosecuted in Sweden and Finland. The Nazi Penal Code Commission pointed out in the 1930s that women had very limited access to the public sphere and therefore their immoral behavior could not constitute a similar danger of corruption to the wider society. They could have added that women, being sub-

ject to male power, were only indirectly disciplined by society. Fathers, husbands, and brothers were traditionally the agents in disciplining women, and not the state – with the exception of the so-called “public women,” who were policed directly by public authorities.⁵⁰

But this way of thinking was already outdated when formulated by the German Penal Code Commission. In reality, modern society had by that time begun to incorporate lesbian sexuality in its world of thought and women were increasingly demanding access to the public sphere, a fact that the Nazi regime with its deeply reactionary gender philosophy failed to acknowledge. Ironically, German National Socialism had fully embraced the medical explanations of homosexuality, and it shared many of its eugenic concerns with Scandinavian societies.⁵¹ But whereas National Socialism in Germany chose a route that would lead to its utter destruction, the Scandinavian societies developed in a democratic direction.

With some regional variations, lesbian sexuality was incorporated into modern Scandinavian legal discourse from the 1930s onward, and while the individual cases were dealt with as personal tragedies or as a danger to their immediate surroundings, they were never thought of as a threat to the social order. When lesbians were portrayed in the arts, they were as a rule described as tragic but not threatening. Radclyffe Hall's *The well of loneliness* (1928) is the very epitome of this tradition, and in the 1930s a number of novels with lesbian themes appeared in Scandinavia.⁵²

A key aspect differentiating constructions of male and female homosexuality is their consideration as a threat. Male homosexuality challenged male power hierarchies by its disturbing presence, threatening their rules of operation from the inside through a penetrative and/or emotional encroachment. Lesbian women, on the other hand, threatened social order through their withdrawal, and challenged male power structures from the outside. Hence the different methods for meeting those challenges: overt repression for males and stubborn denial for women.

Notes

1 The Salvation Army is not a gender segregated organization as such, but unmarried Salvationists often live in same-sex settings and often work as a pair in the field. Working-class women did not have access to education at the end of the nineteenth and the beginning of the twentieth century, but the Salvation Army gave them some of the few opportunities to live and independent life. Even if the Salvation Army even today is openly homophobic in its recruitment policy, it has been a secret safe haven for many women-loving women during its 132 years of existence. For a brief history of the Salvation Army, see http://en.wikipedia.org/wiki/The_Salvation_Army (viewed November 11, 2006); Eason 2003. For a history of female same-sex sexuality, see Faderman 1981; 1992; Lützen 1986; 1990; Bonnet 1998; Vicinus 2004. For a description of the professional and emotional re-

lationship between Swedish Nobel laureate Selma Lagerlöf and her two intimate friends Sophie Elkan and Valborg Ohlander, see Ulvros 2001, 79-125.

2 Brown 1990, 67-68; Crompton 1980; van der Meer 1992.

3 Brown 1990, 68; Romans 1:26.

4 St. Thomas Aquinas *Summa theologiae* II. ii. 154:11-12, ref. Brown 1990, 68, 496.

5 Crompton 1980, 18; Brown 1990, 69; Bleibtreu-Ehrenberg 1978, 297-98; Greenberg 1988, 303, 485. "So ein Mensch mit einem Viehe, Mann mit Mann, Weib mit Weib vn-keusch treibet, die haben das Leben verwircket, vnd man soll sie, der gemeinen Gewohnheit nach, mit dem Feuer von Leben zum Todte richten." Träskman 1990, 256.

6 Forsman 1899, 652, ref. Månsson 1983, 3; Träskman 1990, 256; Rydström 2003, 32-37. Cf. Mustola 2000b.

7 Bleibtreu-Ehrenberg 1978, 307-10; Mayer 2002.

8 "Omgængelse, som er imod Naturen, straffis med Baal og Brand." *Den Danske Lov* 1683, book 6, chapter 13, section 15; Rosen 1993, 73.

9 Its section 6-13-15 stated that "Intercourse against nature is punished with fire at the stake" (Omgjængelse, som er imod Naturen straffis med Baal og Brand). *Den Norske Lov* 1687; Halsos 2001, 24.

10 "Omgjængelse, som er imod Naturen, belægges med Strafarbeide i femte grad." Kriminalloven kapitel 18, paragraf 21.

11 "gebørrede sig aldeles som et Mandfolk under en saadan Forretning . . . Du er aldrig mer fornøyet, end naar du kan faae ligge og ride paa Jenterne baade med den løse og den faste . . . især da No 1 [Simonette Vold] efter de Medtaltals og Lægens Forklaring /Afr 6 og, Bfr 6/ ikke havde nogen usædvanlig stor Klitoris, som man i enkelte Tilfælde skal have Exempel paa, kan tjene til gjensidig Tilfrædstillelse af Kjønsdriften mellem Fruentimmer." Halvorsen 2000, 157-58. The notion of clitoral penetration can be traced back to ancient times (see Brooten 1996, 162-71); for early modern discourses in Europe on this topic see Traub 2002, esp. ch. 5 (The psychomorphology of the clitoris).

12 The court proceedings were in writing, and consisted of the votes and their motivations cast by the justices one by one. The previously given votes were sent on to the next justice in line, who could refer back to them. "det har en stor indre usandsynlighed at Christian 5. te skulde have villet saadanne kaade og vellystige Friktioner, der dog ikke have nogen Analogie med at [sic] virkeligt Concubitus, Straffede med Baal og Brand. Der være nok altfor mange kaade unge Fruentimmer, der efter denne Fortolkning af L. 6-13-15 skulde været brændte." Halvorsen 2000, 75, 163. A transcript of the verdict is printed in Halvorsen 2000, 157-65.

13 Halvorsen 2000, 79-82. A transcript of the verdict is in Halvorsen 2000, 165-67.

14 "Finder legemlig Omgjængelse sted mellem Personer af Mandkjøn." Kriminalloven kap. 18, paragraf 2.1 (1869-1904). Halsos 2001, 29, 33; Halvorsen 2000, 72-78.

15 "Omgængelse imod Naturen straffes med Forbedringshusarbejde." § 177, Almindelig Borgerlig Straffelov 1866. Cf. Rosen 1993, 396. The information about the prosecution in 1897 is to be found in *Danmarks kriminelle Retspleje*.

16 "Tu kalt icke liggia när Drängar såsom när enne qwinno, Ty thet är een styggelse. Och the skola bådhen dödhen döo, theas blodh ware öfwer them." *Kristoffers Landslag*. Karl IX: s addendum. Quoted from Almquist 1940, 30. Cf. Liliequist 1991a.

17 "Hwilken menniska som igenom diefwulens tillskyndan och sina onda begärelse haffwer tjdhelag och bedrifwer sin otucht med något fää eller annor oskäligh diur, eller och man medh man, eller qwinna med qwinna bedrifwer sådana onaturlig okyskheet; warder någor med färska gerning wedertagen eller med skäligen wittnen tillbunden, så at Häradz-

näpmd kunne pröffwa och befinna at han eller hon uti sådana missgerning skylligh är, tå skall Häradszhöfdingen döma then qwick i jordh eller i båle brännas medh samma diur som gerningen giord är, ty the äre icke wärde på iordene leffwa.” Nordström 1864, 485.

18 “At införa om de flere sodomitiske synder, synes ingalunda rådeligt, utan bättre at förtijga som okunnige, och finna de wäl sitt straff, om det händer så illa, at de begås.” Sjögren 1900, 160; Månsson 1984, 15; Liliequist 1998, 17–18; Träskman 1990, 257.

19 *Sveriges Rikes Lag* 1734, Missgärningsbalk X. A small number of women were prosecuted for bestiality in Sweden during the seventeenth and eighteenth centuries, but no such cases are known from Finland, where no systematic research on sodomy in early modern times has been undertaken. Rydström 2003, 34, 36, 341 n17; Liliequist 1991a, 196–221. For a discussion of the “politics of silence” in Swedish legislation concerning bestiality and same-sex sexuality, see Träskman 1990; Liliequist 1995, 1998; Österberg 1996. Some cases of cross-dressing women are discussed in Silverstolpe 1989; Österberg 1997; Liliequist 2002.

20 “widernatürliche Befriedigung des Geschlechtstriebes durch Sodomie.” Bleibtreu-Ehrenberg 1978, 313.

21 “Die widernatürliche Unzucht, welche zwischen Personen männlichen Geschlechts oder von Menschen mit Thieren verübt wird, ist mit Gefängnis von sechs Monaten bis zu vier Jahren, sowie mit zeitiger Untersagung der Ausübung der bürgerlichen Ehrenrechte zu bestrafen.” § 143 des preussischen Strafgesetzbuches von 1851. Bleibtreu-Ehrenberg 1978, 312.

22 Crompton 1980, 21–22. The first German case was tried in 1477. Brown 1990, 495.

23 Bleibtreu-Ehrenberg 1978, 312–314.

24 “nur eine Art von Onanie.” Mende 1819, quoted from Hutter 1992.

25 “Öfvar någon af manligt kön otukt med annan af samma kön.” *Komiteanmietintö / Kommittébetänkande* 1884:12.

26 Hirschfeld 1914, 841–54. Hirschfeld 2000, 953–70. The year when the Greek Penal Code was introduced is not mentioned by Hirschfeld but is taken from *Entwurf eines griechischen Strafgesetzbuches*, 11.

27 *Sveriges officiella statistik* (SOS). Serie Brottsligheten 1913–66; SOS. Serie Kriminalstatistik 1967–72; *Bidrag till Finlands officiella statistik* 1891–1970. In Austria the number of women indicted was considerably higher: 152 women were convicted for “same-sex fornication” during the fifteen-year period from 1922 to 1937. Mayer 2002, 86. In the Netherlands women constituted one percent of those prosecuted between 1911 and 1971, when the law penalizing homosexual acts with persons under 21 was in effect. The law applied equally to women, but only the adult party was subject to punishment. Consensual homosexual acts between adults were not illegal in the Netherlands. Schuyf 1994, 105–11, 117.

28 Hirschfeld 1914, 844; Schuyf 1994, 105–11.

29 Schoppmann 2002, 73.

30 In the commentaries to the new German law, it was pointed out that the word “unnatural” had been deleted, and what was now outlawed was merely “fornication” between men. This meant that penetration was no longer required for an act to be criminal, and mutual masturbation, or even milder forms of intimacy, could be punished. Grau 1993, 93–115; Schoppmann 2002, 72–3.

31 “1. A person shall be convicted of sexual relations with children who has intercourse or other sexual relations with any child under 15 years of age, when he knows the age of the child or acts negligently in this respect. 2. The same shall apply to any person who has sexual relations with a person of the same sex under 18 years of age.” *Kriminallov for Grønland*, § 53. Quoted from *Greenland Criminal Code*, 28.

- 32 Isaksson 1994, 44, III.
- 33 *Danmarks statistik*. Statistiske meddelelser Kriminalstatistik 1933-78.
- 34 The parties involved gave conflicting accounts of the events. According to the wife, the girl had been willing to undress and lie beside her, and they had both voluntarily engaged in oral sex. The husband had lain next to the girl and started caressing her, but then he went to sleep. According to the girl's testimony, the couple had persuaded her to do something she did not want to do. Case no. 076-1942. Københavns Byret (KB). Landsarkivet for Sjælland, Lolland-Falster og Bornholm, Copenhagen (LAS).
- 35 "var ivrig efter at fortsætte forholdet . . . ligget sammen med sin søster" Copenhagen Criminal Court sentenced her to four months in prison, suspended sentence. Case no. 036-1956. KB. LAS.
- 36 *Ugeskrift for retsvæsen*. Afdeling A (1976), 960-61.
- 37 One woman was prosecuted (but not convicted) for violation of chapter 20, section 12, of the Finnish Penal Code in 1904. The statistics at that time did not specify whether she was prosecuted for bestiality or some other kind of "unnatural fornication." *Suomen Virallinen Tilasto XXIII*, Oikeustilasto, rikollisuus.
- 38 According to prison statistics, one woman served a sentence for "pederasty" (haureus saman sukup. kanssa / pederasti) in Hämeenlinna provincial prison in 1912, and one woman was imprisoned in Vaasa for the same crime in 1923. Neither of these two female cases appear in the courts' statistics. *Suomen Virallinen Tilasto*, XII Vankeinhoito / *Finlands Officiella Statistik*, XII Fångvården.
- 39 In Finland two women were convicted for same-sex sexual acts in 1931, and another two in 1937, all four judged by rural courts. From 1937 onward, Finnish courts regularly tried cases of female same-sex sexuality. The last woman to be brought to court for same-sex sexual acts between adults in Finland was convicted in 1968. Very few women were prosecuted for bestiality. After 1924, when criminal statistics began to record the two crimes separately, five women were prosecuted for bestiality between 1937 and 1967, and only three of them were found guilty. *Bidrag till Finlands Officiella Statistik*, 1891-1970.
- 40 Case no. 240, March 19, 1900. Västerås Rådhusrätt. Uppsala Landsarkiv.
- 41 "varför konstaplarna fingo den uppfattningen, att de voro perversa." Case no. 334, hemliga mål, Stockholms Rådhusrätt (SRR), 4th div., 1943, appendix 3. Stockholms Stadsarkiv (SSA). This case has been discussed in Silverstolpe 1999 and Rydström 2003, 309-11.
- 42 Case no. 719, SRR, 5th div., 1945. SSA; Case no. B 129, Dombok för brottmål, SRR, 7th div., December 6, 1948. SSA.
- 43 The prison term was longer than usual, but it also covered other crimes, and the verdict does not specify the penalty for each crime. The maximum sentence for "fornication with a person of the same sex" in Finland was two years' imprisonment. Most of the convicted were given sentences shorter than one year, and the majority was granted a suspended sentence when no previous criminal record existed.
- 44 Sorainen 1998, 122-24. Hirvonen and Sorainen 1994.
- 45 Sorainen 1998, 121, 124-25.
- 46 Sorainen 1998.
- 47 Sorainen 1998, 133; Sorainen 2005.
- 48 See for instance Ladas et al. 1983.
- 49 For examples of the possibility to write extensively on lesbian history, and of innovative ways of using other sources than court records, see Brown 1986; 1990; Vicinus 2004; Faderman 1981, 1992; Lützen 1986; 1990; Juvonen 2002.
- 50 For an analysis of Swedish regulation of prostitution, see Svanström 2000.

51 These reflections also apply in a broad sense to the Netherlands, where same-sex sexuality between consenting adults was decriminalized in 1911 and women were included in a higher age-of-consent law. For eugenics in Scandinavia, see Broberg and Tydén 1996.

52 The inclusion of lesbians in the criminal discourse in Sweden has been discussed by Rydström 2005a. *The well of loneliness* was translated into Danish (1929), Swedish (1932), and Norwegian (1949), but this “Lesbian Bible” has never been translated into Finnish or Icelandic. Examples of novels by Nordic authors with lesbian themes treated in a tragic vein are: Boye 1934; Suber 1932; Holk 1941; Valtiala 1973. Swedish film director Hasse Ekman made *Girl with hyacinths* (*Flicka och hyacinter*) in 1950, a tragic film that opens with a suicide. For a discussion of lesbian themes in Swedish novels, see Fjelkestam 2002, 92–130, and Fjelkestam 2005.

Denmark 1866-1976: From Sodomy to Modernity

by Wilhelm von Rosen

Homosexuality was unknown when the Penal Code of 1866 was promulgated in Denmark. The bill had been prepared by two consecutive Royal Commissions, and it contained an anti-sodomy statute that referred to the crime in exactly the same words as used in the previous set of laws, in the Sixth Book of the Danish Law of 1683: "Intercourse against nature is punished with [...]"¹ Following a long-established practice of commuting the prescribed death penalty at the stake by means of a royal pardon, the new law reduced capital punishment to hard labor (*forbedringshusarbejde*) for the duration of eight months to six years, which was further reduced with about one third if the penalty was served in solitude.² In Parliament there was virtually no debate on the new statute – section 177 – which was to remain in force until 1933.³

The crime of intercourse against nature that the section 177 referred to covered both pederasty and bestiality, and was defined as 'the thing inside the thing and effusion of semen' (*res in re et effusio seminis*). Under the Penal Code of 1866, sodomitic crimes committed with animals, adult men, or – in a few cases – with women, were typically punished with a sentence of hard labor ranging from eight months to one year. Engaging in sodomy with boys carried a more severe penalty: from two to four years of hard labor, depending on the number of acts and the age of the boys. If emission of semen could not be proved, the act was regarded as attempted sodomy which was usually punished with eight months of hard labor when both parties were adults. The maximum penalty prescribed by the Penal Code, six years of hard labor, was never even approximated. A ruling of the Copenhagen Criminal Court in 1911 replaced emission of semen with "copulatory motion" as a precondition for consummated sodomy. The case concerned sodomy with a mare.⁴

Oral sex does not seem to have been a matter of concern for the courts, until it was established in two rulings by the Danish Supreme Court, in 1870 and 1882, that oral sex between a man and a woman was a form of sodomy. Consequently, the Copenhagen Criminal Court in 1883 convicted a 43-year-old man to one year of hard labor for having had the member of a fifteen-year-old youth in his mouth. This changed when the Supreme Court in 1904 decided that oral

sex should be regarded as indecent conduct in violation of modesty (section 185, cf. below) and that it should be punishable only when a minor was involved. In the words of justice G. A. Jensen, "Adults, men and women, should be left to do with each other what they want to." This opinion on oral sex, however, was not included in the published motives of the verdict, and it was subsequently interpreted by commentators to refer to "playfulness" devoid of carnal intent as an extenuating circumstance. Thus, in the highly publicized homosexuality trials of 1907, known as the Great Morality Scandal, the Criminal Court of Copenhagen convicted several homosexual men for sodomy on account of oral sex. Not until 1912 did the same court rule that oral sex was to be treated under section 185.⁵

The influence of German medical and scientific writing on contrary sexual instinct, later best known as homosexuality, in Denmark from the 1880s on was instrumental in bringing about a conceptual shift from the godless and immoral act of sodomy (or pederasty) to an activity which society could ignore unless underage partners were involved.⁶ This new concept involved much more than a specific genital act. It implied that congenital degeneration of the central nervous system was the underlying cause of inverted psychosexual development, observable in certain individuals who manifested features of the other sex and were emotionally and sexually attracted to persons of their own sex. Many people who habitually engaged in pederastic sexual relations, the pederasts, actively collaborated in creating this body of knowledge by relating their life stories to the authors of medical works and thereby contributed to the growing body of case studies that documented the existence of 'the third sex.' This would then be deployed as an argument to further law reform. In Denmark, a homosexual civil servant and the son of a former prime minister, Poul Andræ, published in 1892 a long and very learned article in a medical journal in which he argued, on the basis of Richard von Krafft-Ebing's *Psychopathia sexualis* (1886), that genuine homosexuals were absolutely never attracted to sexually immature persons, nor did they – for the most part – practice sodomy (anal intercourse). Instances of such behavior did not stem from congenital reversal of sexual feelings, but should rather be understood as perversities committed by otherwise heterosexual men.⁷

The urbanization of Northern Europe laid the groundwork for the emergence of large and diversified homosexual subcultures. In the course of the nineteenth century, Berlin grew to a metropolis, which by 1910 had a population of 2.1 million. The first homosexual organization operating on a formal footing, The Scientific Humanitarian Committee (*Wissenschaftlich Humanitäres Komitee*) was founded in Germany in 1897 under the leadership of Magnus Hirschfeld (a.k.a die Tante Magnesia), in whose person homosexuality, medical science, and homosexual emancipation came together.

The homosexual subculture in Copenhagen can be traced back to a small pederastic community in the 1850s and 1860s with rudimentary social patterns of its own. By 1911 Copenhagen had a population of half a million inhabitants

and a growing homosexual subculture, the existence of which was first brought to public awareness when the Great Morality Scandal in 1906-7 spawned a series of sensational arrests of prominent people. Copenhagen's proximity to Berlin, with its larger and better-developed homosexual subculture, boosted the growth of Copenhagen's subculture; Danish homosexuals were frequent visitors to Berlin and numerous personal contacts were formed. By 1907 the existence of a minor homosexual segment within the Danish population was a definitively established fact, although a much-deplored one. The conservatives and traditionalists, most vigorously and vociferously represented by the so-called Inner Mission (*Indre Mission*), an influential Christian fundamentalist movement, saw this development as a result of pervasive seduction of young people and as an unwelcome and dangerous "cultural wave from Berlin." The progressive and more modern opinion accepted the hypotheses of the medical profession that congenital homosexuality had always existed and should be seen as a recently discovered manifestation of natural variation, a mysterious riddle which science had undertaken to investigate, control, and – hopefully – to prevent.

In 1866 the only sexual act between two men that was taken into account by the legislators was anal penetration (sodomy). During the following decades the advent (understood as a 'discovery') of homosexuality changed the understanding of male same-sex behavior, and entailed a gradual development of behavior connecting homosexual practice to particular urban spaces such as ramparts, parks, squares and urinals. This probably also meant that homosexuality became more widespread. Surveillance and control of this conduct was significantly enhanced by the reorganization and modernization of the Copenhagen police in 1863. The number of policemen was more than doubled and the patrolling of streets and other public areas was systematized.⁸ These changes in the urban environment presented a problem for the courts of law because there was no statute in the Penal Code restricting intimate touching, caressing and mutual masturbation between men; the existing statutes referred expressly to acts performed by men on women.

The solution to the problem was section 185, which forbade "indecent conduct in violation of modesty or causing public offence."⁹ Violation of modesty, however, was not applicable to consenting adults. The age of consent for indecent conduct with boys as well as girls was set at fifteen years through a Supreme Court ruling in 1893, and raised to eighteen years in 1911. The typical punishment would be 40 days' imprisonment. The justices of the Supreme Court stated in 1893 that section 185 was not formally applicable, since only women and girls could be claimed to have "modesty," yet they agreed that indecent conduct with a boy, even with his full consent, was "a natural crime which a civilized state can hardly leave unpunished," as Justice J. N. P. Poulsen put it. The age of consent for homosexual acts remained eighteen years until 1976.¹⁰

Table 4. Convictions for violation of section 177 of the Danish Penal Code of 1866 (intercourse against nature), 1897–1932

| Year | Number of convictions | Average per year |
|-----------|-----------------------|------------------|
| 1897–1900 | 84 | 21.0 |
| 1901–1905 | 84 | 16.8 |
| 1906–1910 | 76 | 15.2 |
| 1911–1915 | 78 | 15.6 |
| 1916–1920 | 37 | 7.4 |
| 1921–1925 | 54 | 10.8 |
| 1926–1930 | 60 | 12.0 |
| 1931–1932 | 13 | 6.5 |

Source: Danmarks kriminelle Retspleje 1897–1932.

Note: The numbers include convictions for primary and secondary crime.

It is impossible to calculate from the criminal statistics the precise number of persons convicted for homosexual behavior under the Penal Code of 1866. Section 185 covered a large number of other offences besides indecency with boys under the age of consent, and convictions under section 177 were subsumed until 1897 within the category “Other crimes against morality.” The figures from 1897 to 1932 are shown in table 4, but since section 177 was applied to cases of bestiality as well as pederasty, the statistic can only be taken as an approximate indicator of the number of convictions for pederasty.

The Interim Penal Statute: Homosexual prostitution, 1905–32

In 1901, half a century of conservative rule came to an end, and the Liberal Party (*Venstre*) that had broad support in the rural areas came into power. At the time Copenhagen had a population of almost half a million inhabitants including a large class of underprivileged wage earners living in slums. Driven mainly by a desire to alleviate prevalent anxieties about antisocial behavior among the urban proletariat, the new government proposed a partial revision of the Penal Code, notably to reintroduce corporal punishment. While the bill was under consideration in Parliament a member of the *Venstre* Party introduced an amendment to penalize homosexual prostitution, which, to his astonishment, he had discovered was taking place in Copenhagen. The Minister of Justice was equally astonished and agreed that homosexual prostitution should be made a criminal offence. A section was added to the proposed Interim Penal Statute, which prescribed up to two years’ imprisonment for those found guilty of committing an indecent act with another person of the same sex for payment. Corporal punishment did not apply to this crime.¹¹ The fact that only the male prostitute was penalized while his customer was excluded from culpability was probably a corollary of the politics underlying the Interim Penal Statute of 1905, the disciplining of the growing proletariat of Copenhagen. The prohibition on homosexual

Table 5. Convictions for violation of section 5 of the Danish Interim Penal Statute (homosexual prostitution), 1911–32.

| Year | Number of cases | Average per year |
|---------|-----------------|------------------|
| 1911–15 | 16 | 3.2 |
| 1916–20 | 1 | 0.2 |
| 1921–25 | 7 | 1.4 |
| 1926–30 | 21 | 4.2 |
| 1931–32 | 11 | 5.5 |

Source: Danmarks kriminelle Retspleje 1906–32.

Note: The numbers include convictions for primary and secondary crime.

prostitution was retained in the Interim Penal Statute of 1911, passed again as section 230 of the Penal Code of 1930, and repealed in 1967.¹²

In May 1905, a month after the passing of the Interim Penal Statute, the Minister of Justice appointed Julius Wilcke, a 30-year-old junior official at the Department of Agriculture and one of the most strident adherents of the minister's policy of law and order to the post of an investigating judge in the Criminal Court of Copenhagen. In 1906 several cases of male prostitution were referred to his court. The interrogation of a large number of the prostitutes' customers as witnesses led to an extensive investigation of sodomy and indecent conduct with minors within the homosexual subculture. Under Wilcke's direction, and applauded by the tabloids, a large-scale homosexual scandal blew up, the Great Morality Scandal. After thirteen months of investigation, six male prostitutes were sentenced to a few months of forced labor, and eight homosexual men of the bourgeoisie were given sentences ranging from eight months to two years of solitary hard labor for sodomy or indecent conduct with minors, or both.

Homosexuality as a mitigating factor, 1888-1907

The convictions in 1907 spurred the medical establishment, with the support by the professors of law, to confront the traditionalist view of homosexuality as an immorality. Already during the investigations, a campaign was launched to decriminalize sodomy and to repeal section 177 in accordance with a scientific understanding of the nature of homosexuality. Thus, a process began where medical science exerted strong and active influence on legislation concerning homosexuality. While medical science and especially psychiatry in many ways influenced the concept of crime during the twentieth century – by weighing in factors like premeditation and the mental condition of the perpetrator, or the rationality of punishment – homosexuality is undoubtedly one of the most illustrative examples of scientific arguments being the paramount agent of legal change. As we shall see, the view that science ought to be the final arbiter of judicial right and wrong was, however, not undisputed.

In 1906-7, during the trial of the Great Morality Scandal, five of the defendants were transferred to the psychiatric ward at the Copenhagen Municipal Hospital in order to be examined for congenital sexual inversion, as distinguished from perversity acquired through heterosexual debauchery. Detailed medical statements verified that all of them were indeed degenerate individuals, of feminine disposition, and homosexuals *ab origine*. These diagnostic statements were prepared by Denmark's leading psychiatrist, Alexander Friedenreich, professor of psychiatry at the University of Copenhagen. The court, however, dismissed the medical evidence of congenital homosexuality as a mitigating factor. Friedenreich's medical conclusion as well as its repudiation by the court was reported in the press.

Congenital homosexuality, 1907-32

Two weeks after the verdict, the influential Danish Criminological Association held its annual seminar. For three days leading jurists and physicians debated the subject "Homosexuality and Criminal Law." The directors of the Criminological Association appointed two of its members, Professor Friedenreich and Carl Torp, professor of criminal law, to deliver keynote lectures to introduce the topic.

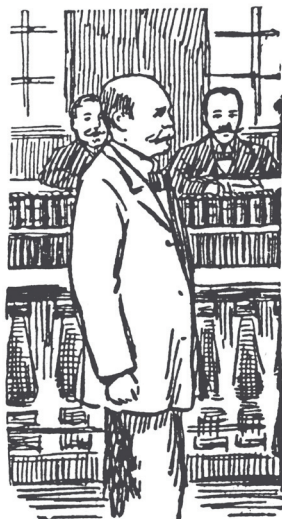
On the basis of his survey of the medical and psychiatric literature, and his clinical experience from less than ten homosexuals, Friedenreich in his lecture concluded that, "almost all homosexuals became such because of a congenital predisposition."¹³ He found that the arguments for the existence of acquired homosexuality carried little conviction. Except for their same-sex inclination, homosexuals were normal. Just as among heterosexuals, all moral and intellectual variations could be found, though certain specific traits could sometimes be observed among them: homosexuals were prone to emotional fragility, were impressionable, often sentimental, imaginative, artistic, jealous, and vain. From childhood they showed unmistakably effeminate tendencies, such as an impulsion to decorate their homes as boudoirs. The heterosexual, excessively debauched libertines who abused young boys and young men were, according to Friedenreich, a myth, although he would not, on the other hand, deny their existence altogether. But if such men actually existed outside the pages of literary works, it would have to be in Constantinople or in Zanzibar. Although homosexual men often were attracted to normal men, this carried no risk of dissemination of homosexuality, and therefore homosexual relations between consenting adults did not violate anyone's rights. If morality was rejected as a basis for criminal law, homosexual acts ought not to be punished, and the section on sodomy ought to be abolished. Minors, of course, should be protected by the penal code. Professor Torp in his lecture came to the same conclusion.

There was nothing accidental about this seminar. According to Friedenreich, it was triggered by the Great Morality Scandal and the new turn in judicial

practice whereby sodomy was being actively investigated and punished. He began his lecture by stating that he wished to contribute to the immediate repeal of section 177. In the course of his lecture Friedenreich acknowledged that his assertion that homosexuality was almost always a congenital predisposition was just as hypothetical as the assertion that homosexuality was always acquired. "In reality," he said, "no compelling evidence has been presented either by the adherents or the opponents of the congenital theory."¹⁴ Nonetheless, he drew the politically correct conclusion by adjusting his hypothesis regarding the cause of homosexuality to the politics he and his colleagues considered just in criminal law. At the same time, Friedenreich's conclusion and his choice of hypothesis gave psychiatrists and criminologists the power to be the professional arbiters on the etiology and ontology of homosexuality.

In 1908, Wilcke, the investigating judge in cases connected to the Great Morality Scandal, wrote an article to a specialist journal on jurisprudence in which he maintained, on the basis of his professional knowledge, that homosexuality could not be congenital since it only in recent years had increased and spread in Copenhagen. Medical appraisal of the matter could not be trusted, he wrote, because it was based on information given by the defendants themselves. They, of course, had every reason to attribute their depravity to an innate compulsion in order to be exonerated. Wilcke's article was reviewed very briefly by a prominent jurist, Professor Hans Munch-Petersen, who questioned Wilcke's authority as a representative of legal expertise by declaring that the article was markedly beneath the level of quality usually maintained in the journal. Furthermore, Wilcke's conduct as an investigating judge in the Great Morality Scandal did not substantiate his claim to be an authority on homosexuality.¹⁵ By 1908 Wilcke had fallen from political grace, and his backer, Minister of Justice Peter Adler Alberti, sat in prison for corruption and huge embezzlements. Wilcke's career as a judge was over, and he returned to the Department of Agriculture. At the same time, the Venstre Party was facing a serious comedown.¹⁶

Friedenreich and his colleagues in medicine and law had followed the uproar caused by the Great Morality Scandal, and seen how a judge could make the life of otherwise honest and respectable citizens a misery. They also had sufficient professional clout to influence, if not dominate the three Royal Commissions that from 1905 to 1923 prepared a new Penal Code. The reports of the Royal Commissions, issued in 1912, 1917, and 1923, all recommended the abolition of the sodomy statute and proposed to set the age of consent for sexual acts between members of the same sex set at twenty-one years (1912, 1917), and later at fifteen years (1923). The question of decriminalization of homosexual acts between consenting adults had, in effect, already been resolved at the 1907 seminar of the Danish Criminological Association, although it was not enacted until 1930 when a new Penal Code was passed by Parliament.

Besonderlige Vidner.**For Skranken i 2det Kammer.**

"Queer Witnesses." The publicly known police superintendent Carl Hansen was arrested on sodomy charges in 1907. Here he appears in Copenhagen Criminal Court before the zealous investigating judge Julius Wilcke, who is seated to the right in the picture. The heading alludes to Wilcke's tactic of letting one of the partners in a same-sex sexual encounter appear as a witness while the other one was prosecuted. Illustration in *Aftenbladet*, June 25, 1907.

The proposal for a new penal code: Homosexual prostitution, 1923–30

Very soon after the penalization of homosexual prostitution in 1905, and more distinctly during the Great Morality Scandal 1906–7, the focus of public discourse turned from the prostitute to the older, wealthy homosexual seducer who paid underprivileged boys and healthy soldiers for immoral acts. The reports and drafts for a new Penal Code prepared by the three Royal Commissions recommended that homosexual prostitution should be made punishable for both parties involved in the act.¹⁷ The topic received a great deal of attention in a debate among jurists from the publication of the last report in 1923 until a bill was introduced in Parliament in December 1924. One lawyer in particular, Jens Hartvig Jacobsen, argued that homosexual prostitution should not be considered a crime, and that criminal law ought not to interfere with the sexual aberrations of people who are not dangerous to others.¹⁸ He was supported by two influential High Court justices who agreed that the paying party, at least, ought not to be punished, since this would collide with efforts to suppress this kind of trade and open it up for blackmail.¹⁹

The following year, the prominent psychiatrist Sophus Thalbitzer published an article, in which he pointed out that the proposed clause in the draft of 1923 that would make both parties in homosexual prostitution liable to punishment, was linked to his field, psychiatry, and that in disagreeing with it he shared the view of "all Danish psychiatrists and [...] all who are well informed on the current view of homosexuality within the field of sexual psychology." He proclaimed Magnus Hirschfeld the leading authority on homosexuality and claimed that

his point of view had been generally accepted. Referring to Hirschfeld's studies, Thalbitzer contended that "genuine" homosexuality was always congenital. It was neither a vice, nor a crime, nor an illness, but part of the order of nature, a sexual variant which had always been found "among civilized as well as uncivilized nations." He also reported that this variance apparently had a constant frequency of about 2.2 percent of the population.²⁰

When the social-democratic government in December 1924 introduced the Penal Code bill in Parliament, the provision on homosexual prostitution proposed by the Royal Commission had been changed: only the prostitute was to be punished, but not the customer.²¹ The spokesman in Parliament for the Social Democratic Party, J. P. Sundbo, had his political background as an organizer of rural workers and small landholders, and making a gesture toward their sentiments he stated that knowledge of "this transgression" (homosexual prostitution) alone caused offence, at least in the countryside. In spite of these misgivings he upheld the party line by referring to "the most recent words from science," as expressed by, "a well known physician, Dr. Thalbitzer." It was a question, "of a subspecies, a particular element of nature," which was quite widespread; as Sundbo put it: "no less than 2 percent are afflicted, so to speak."²² The author of the bill, the Minister of Justice, K. K. Steincke had undoubtedly put pressure on Sundbo and the social democrats in Parliament to agree. It must be seen as a political conjuring trick that Steincke, in introducing the bill in Parliament, proclaimed that it contained nothing that would support "the dissipated sexual morals of a degenerate bourgeoisie, nor pander to radical piquancy, or to mistaken communist adoration of Malthus."²³ In his comments on homosexual prostitution Steincke said, "I believe that it would run counter to the findings of medical science to punish these people." Those, on the other hand, who engaged in such relationships for payment, "without seeking to satisfy their own nature," were much more culpable, "than the sick or the abnormal." He also referred to the advice of police officers, who had warned against the risk of blackmail.²⁴

The public debate in 1926-28 mirrored the debate in Parliament where the agrarian Venstre Party and the Conservative Party (*Konservative Folkeparti*) argued that it should be a punishable act to pay for the sexual services of a person of the same sex. The bill had not passed the committee stage in 1926 when the social-democratic government was replaced by a Venstre government. In 1928 the Venstre Minister of Justice, Svenning Rytter, introduced a new Penal Code bill, which, unsurprisingly, prescribed prison for a maximum period of two years for both parties of homosexual prostitution.²⁵ In 1929 the Venstre government was succeeded by a coalition government formed by the Social-Democratic Party and the Social Liberal Party (*Det Radikale Venstre*), the latter being a small but influential party in the center of the political spectrum. Again, a new bill was introduced, with the paying party once more left out. A motion by the Venstre Party and the Conservative Party to reintroduce the criminalization of

payment was defeated in January 1930, so the end result was that until 1961 homosexual prostitution was punishable only for the prostitute.²⁶

On the face of it, one would expect the Social-Democratic Party with its working-class supporters to be sympathetic to the argument that the provision on homosexual prostitution unjustly protected the wealthier man who paid for sex and punished the poor young man who sold his body out of need. One reason that the Social-Democratic Party saw it differently, was that the male prostitute was perceived as an idler and a convicted lawbreaker who pandered to homosexual men on the streets, and thus a type of person that a respectable working class party cared little for. It was, however, of more significance that the minister responsible for the first bill, Steincke, was modern in outlook. In an article in the social-democratic daily paper discussing an American book, *The revolt of modern youth* by Ben Lindsey, he advised parents to answer their children's questions about sex directly and in a natural way. From his own experience as a father he related that he had been rather shocked when his fourteen-year-old son asked him what a homosexualist was. But he had taken the boy for a walk and told him about sex and procreation, "masturbation, sexually transmitted diseases, and various sexual perversities." All of it very satisfactory to the boy, "and combined with the study of automobiles and other things of interest for modern youth."²⁷ Steincke also followed the contemporary field of genetics, and in 1924 he appointed a Royal Commission on racial improvement and castration. The fact that he and other academics in the Social-Democratic Party saw sexual morals as "purely a question of science,"²⁸ made them an obvious target for Thalbitzer's scientific activism. On the other hand, one should not underestimate the willingness of politicians like Steincke to engage in a discussion of Thalbitzer's scientific arguments without taking them at face value.

The proposal for new penal code: The age of consent, 1923-30

In its law proposal of 1923, the Royal Commission set the age of consent to sexual acts with a person of the same sex at fifteen, and in cases of seduction at eighteen years, the same as for women in heterosexual relations. There were no arguments or comments to justify this dramatic reduction from the 21-year age limit in the draft of the previous Royal Commission. The members of the third commission, however, had been appointed in 1917 by a social liberal government and reflected its liberal outlook.

In the bill, introduced by the social-democratic government in December 1924, the homosexual age of consent was set at eighteen years. Also, a new provision was added, which aimed at protecting the young from abuse by older people: A person over the age of 25 years who committed immoral acts with a person of the same sex who was under the age of 21 years was to be punished with imprisonment for a period of up to three years.²⁹

There was no debate on this in Parliament, but once more Dr. Thalbitzer intervened with an article arguing for homosexual emancipation, on the basis of information derived from Hirschfeld's Scientific Humanitarian Committee.³⁰ On the whole, he wrote, the bill corresponded to the views presently held by science but it was not altogether consistent, since the age of consent had been set at 21 years – considerably higher than the age of consent of eighteen years that had been established by the current court practice.

Other participants in the debate agreed that the double age of consent at 18 and at 21 was “puzzling and arbitrary.”³¹ A High Court justice, P. Skadhauge, explicitly expressed his agreement with Thalbitzer. There was no justification for as high an age limit as 21 years for those who were born homosexual, he contended. In his opinion, a limit of 18 years was preferable. Skadhauge too sent an offprint of his article to the Minister of Justice.³²

The bill of 1928 laid down eighteen years as the general age of consent. Protection of the young between 18 and 21 years of age was limited to seduction by means of “improper use of the advantage of age and experience,” a law that was later to be called the Seduction Clause. These provisions were repeated in the bill of 1929 and became law in 1930 as sections 225.2 and 225.3.³³

After the fall of the Venstre government in March 1929, the Venstre Party and a few members of Parliament from the Conservative Party moved to make immoral acts between persons of the same sex punishable, regardless of age. The motion was defeated with 87 votes against 30.³⁴ With this in mind it may seem surprising that the Venstre government in 1928 had proposed an age of consent lower than the age of consent in the previous, social-democratic bill. Undoubtedly there was dissension within the Venstre Party on the question of homosexuality. Several factors probably affected the decision of the author of the 1928 bill, the Venstre Minister of Justice, Svenning Rytter: he did not belong to the traditionalist-agrarian section of the Venstre Party – he was not a farmer but a High Court justice; he wanted his bill to be carried on a broad parliamentary basis which included the votes of the opposition; and he was influenced by Thalbitzer. In 1930 Rytter had moved to the Upper House of Parliament (*Landstinget*) where he commented on the now defeated motion to make all immoral acts between persons of the same sex punishable. There were many, he said, who wanted to uphold the old prohibition on sodomy, but he preferred to adhere to “the statements of physicians.”³⁵ There can be little doubt that Rytter was susceptible to Thalbitzer's arguments.

Unlike Hirschfeld and the Scientific Humanitarian Committee in Germany, Thalbitzer did not need to argue against a general prohibition on sodomy or ‘immoral acts.’ After the meeting in 1907 of the Criminological Association and the report of 1912 of the first Royal Commission it was as good as certain that sodomy would be abolished as a crime, because the experts of both medicine and law recommended it. That it was not made criminal to pay a male prostitute

and that the age of consent was set at 18, and not 21 years, must largely be attributed to Thalbitzer's two articles in which the words, "science" and "scientists," were deployed with impressive frequency. Nobody, apparently, wanted to draw attention to the fact that Hirschfeld's theory of the ontology of homosexuality – on which Thalbitzer based his arguments – was far from generally accepted in medicine and psychiatry.³⁶ While scientific findings were not directly the cause of changes in the law, nor their only cause, they were, nevertheless, certainly useful as scientific legitimation.

The legalization of homosexuality between consenting adults in 1933 was barely noticed at the time. Mainly, it was seen as an obvious adjustment of criminal law. The debate in Parliament was restrained, disinterested, and not emotional, when compared with the vehement rhetoric in the reform discussion in the early 1960s. Furthermore, the provisions of the law on the regulation of homosexuality was a minor issue which had a tendency to drown in the debate on the numerous other items contained in the bill for a new penal code. This corresponds with the overall framework prevailing during the inter-war decades. The general discourse on sexuality focused on aspects of heterosexuality: abortion, prevention of pregnancy, unmarried mothers, sexual intercourse between unmarried couples, sex education, and sexual reform in general. Homosexuality had only a minor role in this discourse during the 1920s and the 1930s.

Compared with other Northern European countries, legalization of homosexuality took place fairly early in Denmark. This, however, must largely be ascribed to coincidence. The ambitious long-term project, begun in 1905, of creating a new penal code was brought to fruition in 1930. Professor Friedenreich's presumably hurt feelings at being snubbed by the Criminal Court of Copenhagen and the subsequent mobilization of the Criminological Association in 1907 meant that after the publication in 1912 of the report of the first Royal Commission, the outcome was never seriously in doubt. Thus, in spite of its modest homosexual subculture, Copenhagen in the 1950s and 1960s gained the reputation of being a minor gay heaven – mainly, it seems, in the eyes of foreigners.

The postwar years, 1945-55

The period after World War Two was characterized by an upsurge of the values of traditional agrarian society. This was partly at least a reaction to widespread expectations of comprehensive social emancipation and democratization generated by the Resistance Movement during the war and the German occupation. After the war the Resistance Movement became a diffuse socio-political counter movement which took generational difference as its point of reference, scorned the so-called "old politicians," whose policy during the war was seen as a moral failure, and advertised "the demands of youth." The term 'Youth' referred not only to age, but also to members of the Resistance Movement and

to communists. In the first general election after the war, in November 1945, the Communist Party won a large number of seats in Parliament. More importantly, the agrarian Venstre Party, one of the "old" political parties, also considerably strengthened its position and subsequently formed a government. This was probably enhanced by the emigration from rural areas to towns and cities that gave rise to angst-provoking encounters with the dangers, possibilities, and pleasures of life in a large city.

In 1948, a group of homosexuals, inspired by the United Nations' Declaration of Human Rights, founded the first, and still existing, formal organization for homosexuals in Denmark, the Federation of 1948 (*Forbundet af 1948*), which the following year began publication of the journal "The Friend" (*Vennen*).³⁷ The association was investigated by the police, in Copenhagen as well as in the major provincial towns where local chapters had been established. The Director of Public Prosecutions (*Rigsadvokaten*), however, concluded that an attempt to eliminate the association through having it declared an illegal organization by the Supreme Court, as required by the constitution, was not likely to succeed. The Department of Justice concurred.

The Third Inspectorate of the Copenhagen Police, which had dealt with female prostitution, veterinary affairs, and sanitation, was reorganized in 1950-51. The Royal Commission on Administration had strongly recommended in January 1950 that the Third Inspectorate should be dissolved, on account of reduced tasks.³⁸ The Commissioner of Police J. Herfelt and the Department of Justice, however, considered it important to retain the position of police superintendent and head of the Third Inspectorate as a position of advancement. In January 1951 police supervision of indecent public conduct, i.e. cottaging, of male prostitution, and of clubs and other homosexual localities was reorganized into a new unit, Section D. Most of the male prostitutes who came into contact with Section D were under the age of eighteen, and consequently the investigations of male prostitution often led to charges of sexual conduct with minors under section 225.2. By October 1952 Section D had a staff of twelve police officers. The appointment of Police Superintendent Jens Jersild who had been heading the Third Inspectorate since January 1950, was made permanent on January 1, 1953.³⁹

The centralization and expansion of police control of homosexuality in Copenhagen meant that during the 1950s and 1960s, increasing numbers of homosexually active men and youngsters came into contact with the police. They were questioned about their sexual conduct, and warned or prosecuted. In 1960, Jersild reported that the files of Section D contained information on around 10,000 homosexuals.⁴⁰ In most cases, this was probably an effect of Section D's patrolling of the streets of central Copenhagen, of urinals, parks and other areas where homosexuals cruised. Bars frequented by homosexuals and the social gatherings of the Federation of 1948 do not seem to have been raided, as hap-

pened in Britain and in the U.S., yet they were held under surveillance in order to keep homosexual prostitution in check.

Within Denmark's homosexual subculture, Jens Jersild is remembered as the villain incarnate. He was, however, above all a vigorous civil servant who was conscious about public relations, and faithfully gave voice to the attitudes and responded to the anxieties of the general population to whom homosexuality had become "the homosexual problem." This referred to at least two vaguely interconnected problems: the unknown cause of homosexuality and the conspicuous growth of homosexual prostitution. In October 1953 Jersild published a book on homosexual prostitution. The book, *Male prostitution: Causes, extent, consequences*, was published by the "Danish Scientific Publishing Company," and its style, use of language, and determined objectivity was that of a scientific treatise. In a preface he wrote: "Owing to the grave subject matter of this book I urgently request that all sensationalistic mention and advertisement except in professional journals is omitted." On the basis of interviews with 145 juveniles who had been charged with homosexual prostitution between 1951 and 1953, he showed that 22 percent were under eighteen years of age, in other words minors, when they first became prostitutes, and that 48 percent were between 18 and 21 years.⁴¹ Jersild was a member of the Royal Commission on Prostitution, and lengthy extracts from his book were reprinted as an appendix to its report of 1955. The fact that more than two thirds of the male prostitutes began their career before they were 21, was seen as a corollary of "the homosexual demand" for boys and youngsters. Male prostitution, Jersild wrote, was inextricably linked to "the homosexual problem."⁴²

The report expanded the theory of seduction with a sociological reasoning advanced by the Norwegian psychiatrist, Professor Ørnulf Ødegaard: "There is in the nature of homosexuality a certain urge to expand." Most homosexuals derived a sense of gratification from knowing that there were numerous fellow homosexuals. A homosexual would therefore have an urge to propagandize the view that this type of sexuality was biologically, psychologically, and socially of equal value and deserving of equal rights. These were dangerous tendencies, because a significant part of the young had latent homosexual tendencies, often also a certain fear of the opposite sex, combined with inclinations toward male bonding.⁴³

Jersild, who by now was regarded as a leading authority on homosexuality, elaborated the theory of seduction in his book *The child and the homosexual problem* (1957). Supported by Kinsey's findings and Ødegaard's arguments, he held that the number of homosexuals was growing. He rejected the theories of congenital or innate homosexuality that were presented by endocrinology and psychoanalysis. Instead, he listed a number of other causes: 1) negative reaction to physical stimulation of the body by either oneself, or a person of the opposite sex; 2) accidental sexual experience at an early age with an individual of the same sex; 3) fixation of such experiences when they became habitual; 4) the influ-

ence of others' opinions and of customs regarding sexual conduct. "My extensive treatment of the seduction and abuse of boys owes to the opinion that this is a very important cause of homosexuality."⁴⁴ The child and the homosexual problem was reviewed by a prominent psychiatrist, Einar Geert-Jørgensen, who dismissed the claim that the number of homosexuals was growing, since this was something that could not be measured. On the other hand Geert-Jørgensen was convinced that "manifest homosexuality" was increasing and he found that Jersild's warning against "homosexual seduction" and homosexual prostitution was definitely well founded.⁴⁵

Jersild followed up with more books, lectures, and appearances on radio and television broadcasts. In 1959 he acted as a specialist adviser for a feature film on homosexual prostitution, "Dregs" (*Bundfald*). The press generally accepted Jersild's opinions and his scary appraisal of the continuous growth of homosexual prostitution and the increasing seduction of boys and young men. The climax was probably reached in 1960 when he commented on the murder of a middle-aged homosexual man by two teenage male prostitutes, "Nice grown men are often dangerous. Every hour of the day a boy is led astray [...], all over Copenhagen, in backyards, on staircases, in parks, and at cemeteries." Jersild's comment was widely reported as a warning to parents.⁴⁶

Homosexual prostitution, 1955-67

In December 1955, the Royal Commission on Prostitution presented a detailed plan for the creation of a specialized social welfare system that included detention of prostitutes.⁴⁷ As for homosexual prostitution, and in order to counter the homosexual demand for boys and young men, the majority of the commission recommended that since almost all male prostitutes, according to Jersild's research, were under 21 years, the age of consent should be raised from 18 to 21 or 22 years. This proposal, however, was not met with approval either in the press or in the political parties and the government. A minority of the commission's members, including Jersild, found the proposed raise of the age of consent an unjust measure that would be impossible to enforce. Instead, they recommended a more vigorous enforcement of the existing sections 225.2 (age of consent) and 225.3 (seduction of a person of the same sex under 21 years through improper use of the advantage of age and experience).⁴⁸ The minority's statement was a veiled criticism aimed at the Copenhagen Police Prosecutor in charge of prosecutions of homosexual offences since 1928, Aage Lotinga. He perceived male prostitutes as unscrupulous criminals who victimized their pitiable deviant customers through extortion, theft, assault and murder.⁴⁹

When the report of the Royal Commission was published, the main obstacle to an intensified enforcement of the age of consent had already been removed. Lotinga had retired in October 1954 and was succeeded by Andreas M. Hei-

berg. He shared Jersild's view that male prostitutes were victims of homosexual seduction and abuse: "Homosexual seduction of boys and very young men lead them into crime, first homosexual prostitution, later crimes committed for gain, possibly combined with violence."⁵⁰

On March 30, 1955, the police raided the premises of the earliest commercial homophile publishing company, International Model Service, and seized its lists of customers and models. The models were mostly young prostitutes, and vigorous police investigation led to a large-scale and widely publicized homosexual scandal in which about 250 homosexual men were convicted for having had sex with minors, mostly prostitutes, under eighteen years and/or under fifteen years (section 222). It is likely that many hundred more homosexuals and their relatives were interrogated, had their homes searched, and were called as witnesses. The so-called "pornography affair" was a disaster for the homosexual subculture. The Federation of 1948 whose leadership became involved in the affair, almost collapsed and did not regain its former position, financially and politically, or socially, until the mid-1960s. As a result of the pornography affair, Denmark's homophile subculture became pervaded by fear and a lasting sense of betrayal.⁵¹

The preparation of legislation on homosexual prostitution that followed the recommendations of the Royal Commission on Prostitution took five years, partly because the opinion of the Penal Code Commission (*Straffelovskommisjonen*, from 1960 the Penal Code Council, *Straffelovsrådet*), was delayed due to heavy workload, partly because it was decided by the Department of Justice that the planned bill should wait until it could be presented to the Parliament as part of a comprehensive package of changes of the Penal Code which involved technically complicated legislation. The delay turned out to be crucial. When the bill was introduced in Parliament in February 1961, public opinion had begun to change and was now less harsh in its view of homosexuality.

The bill, which made it a criminal offence to obtain sex for payment or for promise of payment, from a person of the same sex under 21 years, and imposed on it a penalty of up to one year in prison, was criticized in some press reports and met ardent opposition from sections of all political parties, all of which were internally divided over the issue. Those who supported the bill accepted Jersild's analysis and used arguments such as: "it must be taken into consideration that the sexual orientation of male prostitutes may undergo a detrimental alteration."⁵² The opponents of the bill voiced the opinion that "homophile orientation" was caused by "an infinite number of factors," and ridiculed the Minister of Justice and the supporters of the bill as adherents of Lysenko.⁵³ The issue was decided outside party lines, and – as most of the speakers in Parliament conceded – on the basis of a personal and emotional evaluation of the relative moral quality of homosexual and heterosexual relations. There were only few

and vague references to science. The bill was carried with 92 against 62 votes and became section 225.4 of the Penal Code.⁵⁴

Only four years later the section, which had been dubbed the 'Ugly Law' (*den grimme lov*) by the press, was repealed by a unanimous Parliament. According to the police, the statute had had no discernible effect on homosexual prostitution. More importantly, public opinion had increasingly turned against it. The Ugly Law was seen as discriminatory, and its enforcement by the police as grossly overzealous.⁵⁵ Furthermore, the well-known psychiatrist Thorkil Vanggaard published an article in 1962 in which he argued that the theory of seduction was erroneous. According to Vanggaard, Jersild in his exposition of the theory had failed to make a distinction between "normal homosexuality" and "homosexual inversion," and therefore, "he does not realize that while it is easy to seduce a boy or a young man to homosexual activity, nothing indicates that they can be made homosexual inverts by such a seduction." The belief that this was possible was, according to Vanggaard, a misconception of the same order as the belief that masturbation caused damage to the brain. An editorial in the *Medical Weekly* (*Ugeskrift for Læger*) supported Vanggaard's "lucid survey of the problem of homosexuality," and added that insignificant deviations from acceptable sexual conduct ought not to be penalized more stringently than what was strictly necessary from the point of view of orderliness.⁵⁶

There were 79 convictions according to section 225.4 during the four years in which the clause was in force,⁵⁷ but undoubtedly the most important effect of the clause was that it became a symbol of society's repression of homosexuals. As such it became a rallying point for that increasingly influential section within the media and public opinion which during the early 1960s called for a sexually more permissive society.

The age of consent, 1971-76

In the 1970s the Federation of 1948/National Union of Homophiles, as the organization's full name now read (*Forbundet af 1948/Landsforening for Homofile*), actively lobbied for lowering the age of consent from eighteen to, preferably, fourteen years.⁵⁸ In 1971, during the Parliament's Question Time, the most dedicated parliamentary ally of the association, Else-Merete Ross, urged the conservative Minister of Justice to prepare a bill that would make the age of consent the same for homosexual and heterosexual relations. She called attention to two recent reports, prepared by the Institute of Social Psychology in Groningen and by a committee appointed by the Dutch Board of Health (The Speijer Report), which recommended the lowering of the age of consent to sixteen years. She pointed out that the Dutch Parliament had passed a corresponding law a short time ago. In his answer the Minister of Justice made it explicit that the reports in question had been translated and published by the interested party, the Na-

tional Union of Homophiles,⁵⁹ but he agreed to consider the proposal. He wanted, however, first to have an updated “expert evaluation” of possible “risks.”⁶⁰

In a statement in 1972, the Council for Forensic Medicine acknowledged that there was a large body of recent research on homosexuality, including homosexual “seduction.” It based its statement on a paper by the psychiatric consultant at the Copenhagen University Hospital, Preben Hertoft, and went on to say that the new research modified hitherto prevalent viewpoints, but that it was still possible only to a limited extent to reach safe conclusions. However, it could be assumed that the organization of sexual instinct was determined in the embryonic stage or during the first years of life. “Sexual disposition must consequently be considered to be stabilized long before the age of 15-18, either in heterosexual or homosexual direction.” Relations to homosexual adults could not in general be presumed to lead to a change of sexual orientation in a heterosexual youth, the Council claimed. “Present medical experience contradicts the possibility of ‘seducing’ boys in puberty to change their sexual orientation in a homosexual direction if the boy’s sexual orientation is heterosexually directed.” For this conclusion the Council for Forensic Medicine, as well as Hertoft’s paper, mainly relied on John Money’s *Determinants of human sexual behavior*.⁶¹ The statement also referred to Hertoft’s investigation of young men to whom adult homosexuals had made advances, according to which 3.5 percent of the informants had been “seduced” to homosexual acts.⁶² Presumably they were homosexually oriented in advance. Brief sexual contact with adult homosexuals or with other boys did not cause demonstrable social and psychological damage. The majority of boys of 15 appeared disposed to reject sexual advances of adult homosexuals and, only a very few would, without an economic incentive, consent to a homosexual relationship. The Council for Forensic Medicine concluded that, “from the point of view of medical experience and research,” there were no objections to the same age of consent for homosexuals and heterosexuals, i.e. 15 years.⁶³ In a supplementary opinion seven months later, the Council confirmed that although boys reached maturity later than girls but still earlier than in former times, it would not - in spite of certain misgivings - advise against a lowering of the age of consent to 14 years.⁶⁴

In 1973 the social-democratic Minister of Justice introduced the bill in Parliament. There was little debate on the question. At the committee stage the bill was withdrawn by the minister. However, at the first reading of the bill, Hanne Budtz from the Conservative Party voiced her opposition and said that the matter should not be decided solely by the Council of Forensic Medicine: “What counts here is the opinion of the population. The decision is a political matter.”⁶⁵ Later the same year the bill was reintroduced but was not heard before the end of the parliamentary year.⁶⁶ After the general election in December 1973, the Venstre Party formed a government. The new government had no intention of lowering the age of consent but could not, as a minority government, entirely

ignore the question. In April 1974 the Minister of Justice asked the Penal Code Council to submit a report on age limits in sexual relations in general. A month later, the small agrarian-liberal party *Danmarks Retsforbund* introduced a private bill. It could not be heard before the end of the parliamentary year, which was predictable, but it signaled a compromise by proposing that the homosexual age of consent should be lowered to fifteen years only.⁶⁷ This not only evaded the vague reservations of the Council of Forensic Medicine, but also circumvented a likely delay caused by discussions on the lowering of the age of heterosexual consent which was fifteen years already.⁶⁸ Martin Elmer, editor of the homophile journal *Vennen* (The Friend), and parliamentary candidate for *Danmarks Retsforbund* coordinated the initiative to the private bill of May 1974.⁶⁹ After the general election in January 1975 a social-democratic minority government was formed with the parliamentary support of a recently established Christian People's Party (*Kristelig Folkeparti*). It was part of the agreement that the government would not introduce a bill lowering the age of homosexual consent. However, constitutionally the agreement could not oblige individual social democratic MPs to vote accordingly.

In March 1975 the Penal Code Council published its report on age limits in sexual relations. This body too had conferred with Dr. Hertoft. He confirmed that research undertaken after the last opinion issued by the Council of Forensic Medicine in 1972 supported its conclusion: "there is no basis for the assumption that homosexual experiences in early youth may cause a fixation of sexual orientation in homosexual direction."⁷⁰ The bisexuals were done away with in a final statement by Hertoft, "On the concept of bisexuality." It was not in keeping with reality, he wrote, to assume that there existed a group of individuals between homosexual and heterosexual orientations, which through external influence in early youth could be influenced in either heterosexual or homosexual direction.⁷¹

In the fall of 1975 the Gay Liberation Front (*Bøssernes Befrielses Front*) in Copenhagen asked the political parties of the Left – the Socialist People's Party (*Socialistisk Folkeparti*), the Left Socialist Party (*Venstresocialistisk Parti*), and Denmark's Communist Party (*DKP*) – to introduce jointly a private member's bill to lower the age of homosexual consent to fifteen years.⁷² They agreed and in December the Socialist Peoples' Party, probably with the understanding of the Social-Democratic Party and the government, introduced the bill.

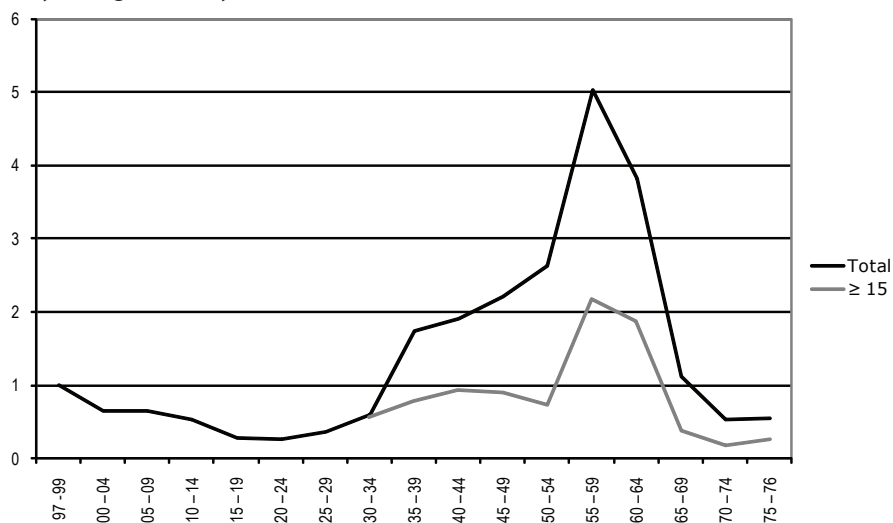
The opponents of the bill argued that young people needed the protection of the law against "influence" from older and more experienced persons of the same sex. They did not use the term "seduction" – that concept was by now rendered invalid – but "harmful and alluring influence."⁷³ The parliamentary spokesperson for the Christian People's Party, psychiatrist Inge Krogh, expressed her fear of, "a wave of homosexuality in our society [...] young people who believe they are homosexuals and later will feel themselves incapable of creating a normal family life." She pointed out that the opinion of the Council of Forensic Medicine was

largely based on the views of only one consultant (Hertoft) and that the council had been far from certain in its conclusions.⁷⁴ The supporters of the bill argued that there were no longer weighty reasons to treat the two sexual orientations differently; “the present separation is largely based on a theory of seduction which experts have long ago abandoned.”⁷⁵ The spokesperson for the Socialist People’s Party, Ebba Strange, added that the country ought to have as few deviant groups as possible; “we ought not uphold a law which in itself creates deviants.”⁷⁶

The bill was carried with the votes of the Social-Democratic Party and other, smaller parties. The Venstre Party was divided while the Conservative Party and the Christian People’s Party voted against it, and the bill was carried with 94 against 51 votes.⁷⁷ When the bill became law and section 225.2 was repealed on May 1, 1976, there was no longer a difference in the Penal Code between heterosexual and homosexual conduct.⁷⁸

The decisive argument in favor of lowering the homosexual age of consent, one that resonated with the majority of Parliament, was the argument of non-discrimination. This argument was explicitly expressed also by experts of criminal law and medicine in statements given by governmental advisory bodies. The scientific-medical argument was clearly of secondary importance in this final phase of homosexual emancipation in criminal law. It was, however, of great importance

Figure 2. Convictions for same-sex sexuality per 100,000 inhabitants in Denmark, 1897–1976. Yearly averages in five-year intervals.



Sources: Danmarks kriminelle Retspleje 1897–1932; Danmarks statistik. Statistiske meddelelser 1933–76.

Note: 1897–1932 section 177 of the Danish Penal Code of 1866 (intercourse against nature); 1933–76 total number of convictions for violation of section 225 of the Danish Penal Code of 1930 (intercourse with a person of the same sex) in combination with section 222 (immoral acts with persons under 15), and convictions for violation of section 226 only.

Table 6. Convictions for violation of section 225 (intercourse with a person of the same sex) combined with section 222 (intercourse with minors) of the Danish Penal Code of 1930, 1933–76.

| Year | Number of convictions | Average per year |
|---------|-----------------------|------------------|
| 1933–37 | 105 | 21.0 |
| 1938–42 | 132 | 26.4 |
| 1943–47 | 159 | 31.8 |
| 1948–52 | 199 | 39.8 |
| 1953–57 | 401 | 80.2 |
| 1958–62 | 264 | 52.8 |
| 1963–67 | 155 | 31.0 |
| 1968–72 | 80 | 16.0 |
| 1973–76 | 76 | 19.0 |

Source: Danmarks statistik 1933–76.

Note: The numbers include convictions for primary and secondary crime.

to the process of legislation that science should be involved and taken note of. The Speijer Report and its endorsement by Dr. Hertoft, backed by the Council of Forensic Medicine, provided the required scientific legitimation. Although Hertoft's paper was a bona fide account of the current state of research, it was also, like the Speijer Report, manifestly pro-homosexual in its sexual politics; an example of the scientific activism which for more than a hundred years characterized most, if not all scientific statements on the nature of (essential) homosexuality.

Convictions, 1933–76

It is perhaps fitting that in the vernacular of American homosexuals by mid-twentieth century “numbers” referred to persons with whom a homosexual man had had sex and foresaw having sex with, for the most part anonymously, in parks and urinals. The novels by John Rechy, *City of Night* (1963) and *Numbers* (1967), are literary interpretations of obsessive promiscuity – what might be termed ‘the numerology of homosexual conduct.’

Table 7. Convictions for violation of section 230 of the Danish Penal Code of 1930 (same-sex prostitution), 1933–67.

| Year | Number of convictions | Average per year |
|---------|-----------------------|------------------|
| 1933–37 | 32 | 6.4 |
| 1938–42 | 66 | 13.2 |
| 1943–47 | 51 | 10.2 |
| 1948–52 | 164 | 32.8 |
| 1953–57 | 193 | 38.6 |
| 1958–62 | 234 | 46.8 |
| 1963–67 | 156 | 31.2 |

Source: Danmarks statistik 1933–67.

Note: The numbers include convictions for primary and secondary crime.

In Denmark, the number, not of homosexual encounters but of convictions for homosexual offences during 1933-76 adds up to a grand total of 4,299.⁷⁹ As shown in table 4, convictions prior to 1933 were on a smaller scale. Figure 2 and tables 4-7 reflect both the frequency of homosexual conduct and the level of police activity, and the variation of these parameters of homosexuality over time.

Table 6 shows the number of convictions according to section 222 combined with section 225, for homosexual conduct with a minor under fifteen years. It is pertinent to ask why the history of section 222 has not been included in the present account of homosexuality and criminal law. The answer lies somewhere in the concept of 'homosexuality' as this generalization is presently constructed. Pedophilia and pedophiles have by now become a category, separate and separated from homosexuality in a conscious and commonly accepted effort to confer homosexuals with respectability. At the time, however, when the crimes that are recorded in table 6 by the number of convictions, were perpetrated they were certainly part of homosexuality.

The unhistorical but 'respectable' national figure of homosexual crimes 1933-76, excluding pedophilia, would amount to 2,680. The criterion for respectability here is that the acts in question have subsequently been decriminalized. But one might surely also ask if the number of convictions for homosexual prostitution (section 230) ought not to be excluded too, since prostitution can hardly be considered a fully respectable activity (see table 7). Furthermore, most male prostitutes were not homosexuals.⁸⁰ The thoroughly respectable total number of convictions for homosexual crimes in Denmark between 1933 and 1976 would thus be 1,792 - or on average 40.7 convictions per year.

There was a dramatic rise in the number of convictions for sex with minors in 1942 and 1943, whereas sex crimes in general remained on the same level during the period 1939-43. In 1943, however, the number of convictions for indecent exposure and for sex with boys between fifteen and eighteen years increased.⁸¹ Both are crimes that are mainly committed in the streets and other public spaces, and the rise in the number of convictions is probably explained by the black-out during the German occupation. The lower level of convictions in 1944-45 reflects the absence of the Danish police force, which between September 1944 and May 1945 was partly interned by the German authorities and partly gone underground. Immediately after the war, the police and the judicial system concentrated on the more urgent issues of treason and black-marketeering, and the subsequent increase in the number of convictions for sex with minors from 1947 on probably reflects a return to normal police activity. It seems probable that the higher level of homosexual activity after World War Two had its origin in the German occupation, facilitated by darkness and by the absence of the police during the seven months of 1944-45 when the people of Denmark, so to speak, enjoyed the greatest freedom in all of its history.

The appointment of Jersild as the head of the Third Inspectorate in 1950 accounts for the sharp increase in the number of convictions for homosexual prostitution that year. The number of convictions for both prostitution and for sex with minors drop in the 1960s, which can be explained by a lessening of homosexual demand for prostitutes and minors (due to the legal [and social?] deterrent), as well as by the shrinking supply of male prostitutes (due to increased prosperity). In 1955-56 and 1961 peak levels were reached in convictions for sex with minors under eighteen years as a result of the pornography affair and the appointment of Heiberg as Police Prosecutor in 1955, and another incident in Odense in 1960.

In general, the numbers illustrate the criminal statistics of marginalization. Already now, fairly short time after the events accounted for, it becomes increasingly difficult to perceive the reason for the marginalization of gays. Why fear and why hostility? The Royal Commission on Prostitution in its report stated, laconically, that the difference in criminal law between regulation of heterosexuality and homosexuality was a matter of "principle" and that it was "well-founded."⁸² The lack of further explanation means that the principle as well as the facts hinted at were self-evident. One fact was undoubtedly traditional. Homosexuality was not in accordance with Christianity and the regulation in criminal law of sex between males derived historically from the Bible.⁸³ This meant that the traditionalist segments of the population saw homosexuality as antithetic to Danish culture and society. More pertinent here is the theory of seduction which explained the dispersion of homosexuality as caused by homosexuals and thus legitimized the efforts of the police and the judicial system to counter the homosexual demand for boys and young men. When the theory was questioned in the 1960s the premise was that homosexuality began to seem less socially unacceptable and less of a threat. It may be that continued urbanization and prosperity in general changed homosexuals from perverts of questionable morality into a sexual minority. As such it could be adopted into the welfare state. Homosexuals were increasingly seen as victims of their own innate nature as well as of discrimination. As we have seen, medical science was used to legitimize the legal changes accompanying this development.

By accepting medical science as the most accurate frame of reference for knowledge on homosexuality, the origin and the cause of homosexuality was moved back to the hereditary taint passed on to an unborn baby or to the formative years of homosexuals, whose nature thereby became an innate 'sexual orientation' that carried a diminished culpability for dissemination of homosexuality. The observations, for instance by Kinsey, suggesting that there were either more homosexuals or more homosexual activity, or both, after World War Two than before, were simply ignored.

Discussion

In 1791 the revolutionary French National Assembly – to be followed by Denmark 185 years later – disregarded the concept of sodomy in the new French penal laws and set the same age of consent for both sexes.⁸⁴ Behind the decision lay not only secular and anti-clerical contempt for the view that some crimes violate the divine order, but also a radical adaptation of the principles of natural law and the spirit of Article 5 of the Declaration of the Rights of Man and of the Citizen from 26 August 1789: "The law can only prohibit those acts which are harmful to society." In reality, the disregarding of sodomy, or crimes against nature, was a confirmation of a long established practice in the enforcement of law by the police in Paris. During the Napoleonic hegemony the French *Code Pénal* was extended to large parts of Central and Southern Europe, and during the decades after the Restauration in 1815 its technical superiority influenced the new penal statutes of literally all the countries of Southern and Mediterranean Europe. Sodomy's disappearance as a crime in these countries during the early decades of the nineteenth century may also reflect a gender system based on 'honor and shame,' in which male hierarchy is established through anal penetration that confers 'honor' on the penetrator as an adult male and confirms the 'shame' of the boy, the servant, the womanly man, or the woman. This may have been the point of Voltaire's observation in the *Dictionnaire philosophique* (1764): "We already know that this contempt for nature is much more common in the warmer climates than among the glaciers of the North, because the blood is more fiery there, and the occasions more frequent. Moreover, what is seen as merely a weakness in the young Alcibiades is a disgusting abomination in a Dutch sailor and in a Muscovite soldier in the supply train."⁸⁵ An unmanly 'weakness' in the South, a biblical 'abomination' in the North.

Homosexuality was invented by medical science and by pederasts in Northwestern Europe during the last decades of the nineteenth century through the production of scientific knowledge concerning sexual conduct and emotional attraction between individuals of the same sex. In the urban space, in the public sphere, and in the scientific discourse of ever-growing modern cities, male erotic fascination with other males developed into homosexual consciousness and conduct. This led to the formation of the modern Northern European gender system of the twentieth century, a system with three sexes of which 'the third sex' became the object of a large and fascinating scientific project and the cause of societal anxiety and hostility. During the first decade of the twentieth century and again during the decades after World War Two, the anxiety grew into a fear which contributed to and generated the drama and social panic of homosexual scandals and affairs.

However, when seen from a historical perspective, scientific and thereby true knowledge of male erotic fascination with males became the primary vehicle and the main legitimating factor in the decriminalization of homosexual con-

duct. As is made evident by the number of convictions for homosexual crimes in the 1950s and by the Ugly Law in 1961-65, this development was not linear. But, on the whole, the history of the regulation of homosexuality in the penal law in twentieth-century Denmark does not markedly differ from the development in Northwestern and Central Europe more generally. The prohibition against sexual relations between men, or rather between consenting adults of the same sex, was abolished in all of Northwestern Europe more or less around the same time, during the middle decades of the century.

Throughout the century, criminal law reform constituted a key element in the discourse on homosexuality and played a pivotal role in homosexual emancipation politics. In the first two or three decades of the century there were, if anything, only attempts or preliminary moves toward legal emancipation. These efforts were effectively checked by a sharp increase in hostility toward homosexuals during the following decades marked by Fascism, World War Two, and the Cold War of the 1950s. The issue, however, was revived in the late 1940s, but it was not until the 1960s that the process of legal reform began to gain momentum. These shifts in the general trend toward legal emancipation, as well as the trend itself, should probably be seen as profound and far-reaching cultural changes that affected not only sexuality and masculinity. Scientists and legislators were implicated in it as agents of change, though largely working with the flow of history. This can be seen in Denmark, where the dominant frame of reference shifted after 1950 from medical science to police expertise, and back again in 1962. To cast police superintendent Jens Jersild in the role of villain, or for that matter Friedenreich, Thalbitzer, Vanggaard, and Hertoft as heroes, is to miss the point. Homosexuality underwent formational changes, from being a crime, a sickness, and a form of degeneration or natural variation during the first period, to being a threat and a danger of epidemic proportions in the middle period, and, in the later decades of the century, the particular property of a rather pitiful sexual minority. The increase in hostility in the middle period and the subsequent transformation of the concept of homosexuality from the early 1960s on were paralleled by postwar homosexual subcultural patterns that seem to have been unacceptable and 'naughty' and their transformation toward a more 'well-behaved' pattern. These transformations – accompanied by changes in heterosexual lifestyles⁸⁶ – prepared the ground for the introduction of the registered partnership in 1989. It may be pertinent to keep in mind that by 1976 no legislator, and no scientist, and no reporter had advanced the view that it was a trivial and inconsequential matter if a boy or a young man happened to become homosexual, and whether or not an older homosexual seduced him into it. An unconcerned attitude would have gone against the efforts of politicians and scientists to seek legitimation in the prevailing value system where homosexuality counted as an individual tragedy. The discourse of the Gay Liberation Front of

the 1970s and certain segments of the gay subculture confronted the dominant sexual economy on this point, but declared that gay is good, not trivial.

From its earliest beginnings, medical science was an inextricable part of homosexuality. It was not accidental that the German-Hungarian writer Karl Maria Kertbeny posed as a doctor in the pamphlet where he introduced his coinage “homosexual” in 1869, and through which he, in vain, attempted to influence criminal law in Germany. Nor was the fusion of the homosexual and the doctor in the person of Magnus Hirschfeld accidental. It was rather a political strategy based on the scientific ontology of modern European homosexuality. This meant that legislators when first they had pronounced the word “homosexuality” were more or less bound to the particular medical and scientific rationale on (essential) homosexuality. In Denmark this bond seems to have been strong; legislation on homosexuality was undoubtedly highly influenced by science.

For the traditionalist political parties, scientific statements worked differently. In opposition they could afford to ignore them and to adhere to a traditionalist anti-homosexual, or even an anti-sodomy, position. When they formed minority or coalition governments, however (1926-29, 1968-71, 1973-75), they could not afford to overlook them. Besides, within both the Venstre Party and the Conservative Party the role of dissenters was significant. In the final analysis the decisive factor here was that for most of the twentieth century, the traditionalist segments of Danish society had comparatively little political influence.

The fact that sex between consenting adults of the same sex was legalized in Denmark as early as 1933 must, as noted above, mainly be ascribed to coincidence. In a longer perspective, comparatively early legal reform, as well as the introduction of the registered partnership in 1989, may also be seen as symptomatic of the early onset of the dismantling of the social drama of homosexuality. The fact that Danish legislation on homosexuality appears to have absorbed comparatively swiftly the cultural changes in gender (masculinity) is probably due to the small size of the population, its homogeneity, advanced urbanization, and an electoral system of proportional representation.

Influence of science means influence from statements of a scientific nature, in other words, the influence of a scientific narrative, in this case of two narratives about the nature and cause of homosexuality. There is a modern narrative and an old, traditional narrative that was modernized through being given a scientific format. This, however, was not the crucial difference between them. Nor did it matter very much that one narrative was advanced by physicians, and the other by a police officer. The difference lies in the general historical process of constructing sexuality, which allocated to each of these narratives its own separate period of supremacy.

In the mid-1960s the British sociologist Mary McIntosh, wanting to further current efforts at legal reform in England, wrote her influential article, “The homosexual role” (1968). She accepted that it was necessary, “to use the arguments

that were suited to the moment,” meaning the notion that homosexuality was a sickness, and she felt that the arguments in her article, “would not contribute to the political developments of the time.” That was perhaps one of the reasons she published it far from home, in the United States.⁸⁷ In similar manner yet more blatantly, Whitam and Mathy proclaimed their politically correct conclusion in the sociological survey, *Male homosexuality in four societies* (1986): “The formulation of homosexual orientation as biologically derived and therefore immutable [...] is not only more scientifically accurate, it is also far more promising for homosexual rights than other contemporary formulations.”⁸⁸ In this they were probably right, at least as far as concerns Denmark, but only to a certain degree. By the 1970s traditionalist politicians like Hanne Budtz and Inge Krogh explicitly rejected science as the relevant frame of reference in favor of pure politics, whereas pro-homosexual politicians like Ebba Strange and members of the Socialist People’s Party argued that legislation in itself creates deviants. This argument was very close to that advocated by Mary MacIntosh, and pointed forward to the change of paradigm soon to follow. That legislation might cause the creation of deviants may have been conceivable to members of Parliament but probably not to the general population. It means, however, that now, at the beginning of the twenty-first century, instead of looking for scientific or biological origin and legitimacy, a more promising perspective might be to call attention to the forces of history and to understand masculinity and the nature of modern homosexuality, collectively and individually, through its historically changing position on a scale ranging from the ‘socially dramatic’ to the ‘socially trivial.’

Notes

- 1 “Omgængelse mod Naturen straffes med ...” Cf. Danske Lov 6-13-15. On the theory and practice of sodomy in Denmark 1628-1835, see Rosen 1989.
- 2 Almindelig borgerlig Straffelov af 10.2.1866 section 177, cf. section 11.
- 3 The Penal Code of April 15, 1930 took effect on January 1, 1933.
- 4 Rosen 1993, 695-96.
- 5 Rosen 1993, 697-98.
- 6 German sexologists that influenced Danish medical discourse include Westphal 1869, Krafft-Ebing 1886 and later editions, and Hirschfeld 1914.
- 7 Rosen 1993, 674-79; Tandem 1892. Cf. Rosen 2001a.
- 8 Rosen 1993, 435-36.
- 9 “Den, som ved uterligt Forhold krænker Blufærdigheden eller giver offentlig Forargelse, straffes med Fængsel paa Vand og Brød eller Forbedringshuusarbeide.” Section 185, Danish Penal Code of 1866.
- 10 Rosen 1993, 399-400, 699-702. Cf. section 225.2, Danish Penal Code of 1930.
- 11 Midlertidig Lov 1/4 1905 om nogle Ændringer i Straffelovgivningen (“Prygleloven”), section 4, subsection 2.
- 12 Midlertidig Lov 1/4 1911 om nogle Ændringer i Straffelovgivningen section 5. Rosen 1993, 706-17.

- 13 “de allerfleste homoseksuelle blev det paa Grund af medfødt Anlæg.” *Forhandlingerne* 1908, 18.
- 14 *Forhandlingerne* 1908, 13.
- 15 Wilcke 1908; Munch-Petersen 1908, 239.
- 16 In the same year, the physician Emanuel Fraenkel published a book, “The homosexuals” (*De Homosexuelle*), which was aimed at general readership. In his opinion homosexuality was acquired and the result of seduction, masturbation, fear of syphilis and, among other things, reading books on homosexuality. The author placed himself way beyond unbiased science by characterizing the early pioneer of homosexual emancipation in Germany, Karl Heinrich Ulrichs (1825-1895), as “somewhat loony” and by speculating that Ulrichs’s compatriots might have been spared the nuisance of the homosexual movement if, as a young man, he had confided in a sensible person who could have cured his incipient homosexuality with a countersuggestion in the form of a couple of clips round the ear. Fraenkel 1908, 68, 92-95.
- 17 *Betænkning* 1912, 73, 206-7; *Betænkning* 1917, 78, 194; *Betænkning* 1923, 66-67, 323-24.
- 18 Jacobsen 1923.
- 19 *Forhandlingerne* 1924, 110-12, 123-24 (Oluf Krabbe); Skadhauge Thalbitzer 1924.
- 20 Thalbitzer 1924.
- 21 *Rigsdagstidende* [Parliamentary Publications] 1924/25. Folketinget. Tillæg A, col. 3374-75. Until 1953, the Danish parliament, the Rigsdag, was divided in an Upper House (*Landstinget*) and a Lower House (*Folketinget*), and the parliamentary publications for both houses were called Rigsdagstidende. From 1953, they are called Folketingstidende.
- 22 *Rigsdagstidende* 1924/25. Folketinget, col. 3858 (20/1 1925).
- 23 *Rigsdagstidende* 1924/25. Folketinget, col. 2573 (2/12 1924).
- 24 *Rigsdagstidende* 1924/25. Folketinget, col. 4045 (23/1 1925).
- 25 *Rigsdagstidende* 1927/28. Folketinget. Tillæg A, col. 5397, 5374-75 (16/3 1928).
- 26 *Rigsdagstidende* 1929/30. Folketinget. Tillæg A, col. 2330-31 (11/10 1929), col. 3924 (10/1 1930).
- 27 *Social-Demokraten*, October 2, 1927.
- 28 Rønsted 1925.
- 29 *Rigsdagstidende* 1924/25. Folketinget. Tillæg A, col. 3374-75.
- 30 Thalbitzer 1925.
- 31 Rønsted 1925.
- 32 Skadhauge 1924, offprint in Department of Justice, 3. Ktr., file no. 1923/642, Rigsarkivet (RAD, Danish National Archives).
- 33 “Misbrug af en paa Alder og Erfaring beroende Overlegenhed,” Danish Penal Code of 1930, section 225, subsection 3; *Rigsdagstidende* 1927/28. Folketinget. Tillæg A, col. 5397, 5374-75 (March 16, 1928); *Rigsdagstidende* 1929/30. Folketinget. Tillæg A, col. 2330-31 (October 11, 1929).
- 34 Vagn Bro and Victor Pürschel among others had signed the private bill. *Rigsdagstidende* 1928/29. Folketinget. Tillæg B, col. 2213; *Rigsdagstidende* 1929/30. Folketinget. Tillæg B, col. 154, 201; Folketinget, col. 3924 (10/1 1930).
- 35 *Rigsdagstidende* 1929/30. Landstinget, col. 614 (31/1 1930).
- 36 Seidel 1969, 119-21. In 1923 Thalbitzer became a member of the Advisory Board of Directories (*Obmänner*) of the *Wissenschaftlich-huminatäres Komitee*.
- 37 Axgil and Fogedgaard 1985, 52-53, 57-60, 132-40.
- 38 *Betænkning* 1948, 87, 156-57, cf. p. 152. The head of the Third Inspectorate was due to retire by the end of January 1950, Rigsadvokaten, file no. 1949/1019. RAD.

- 39 Justitsministeriet [Department of Justice], 5. Kontor, file no. 1949/385, RAD. Cf. Rosen 2001b.
- 40 Justitsministeriet [Department of Justice], Lovkontoret, file no. 1959/71, bundle no. 2, letter 7 Nov. 1960 from Jens Jersild, p. 1, RAD.
- 41 Jersild 1953, 75.
- 42 *Betænkning* 1955, 131.
- 43 Ødegaard's reasoning is contained in the statement of the Norwegian Department of Justice and Police 2/4 1954; quoted from *Betænkning* 1955, 84-85.
- 44 Jersild 1957, 9, 22, 28; quoted from Mikkelsen 1984, 94, 96-97.
- 45 Geert-Jørgensen 1957, 848. Cf. Westergaard 1959. Vanggaard claimed that "It is a well-known fact, supported also by Kinsey, that homosexual practice is habit-forming and that practitioners may become fixated in perverted sexuality." Vanggaard 1962.
- 46 *Politiken*, November 29, 1960; quoted from Mikkelsen 1984, 102.
- 47 The plan was subsequently passed on to the Department of Social Affairs and was not heard of again.
- 48 *Betænkning* 1955, 91-92, cf. p. 142.
- 49 Lotinga 1949, 9. Cf. Lotinga 1947.
- 50 Interview with A. M. Heiberg, "Efterstræbt Ungdom, stigende Kriminalitet [Pursued Youth, Rise in Crime]." *Berlingske Tidende*, December 28, 1955. See also Heiberg 1956; Roving 1959; Rosen 2001c.
- 51 Rosen 1999.
- 52 Majority opinion at the committee stage, *Folketingstidende* 1960/61. Tillæg B col. 918.
- 53 *Folketingstidende* 1960/61, col. 1284 (Else-Merete Ross), 3933 (Arne Bertelsen).
- 54 *Folketingstidende* 1969/61, col. 3949 (second reading May 17, 1961). The votes at the third reading of the 'package' as a whole (May 19, 1961) were 129 for and 32 against, *ibidem* col. 4026. Cf. Lov nr. 163 af 31/5 1961 om ændringer i borgerlig straffelov (ungdomsfængsel, betingede domme m.v.) § 1 nr. 49: "Den, der ved betaling eller løfte herom skaffer sig kønsligt forhold til en person af samme køn under 21 år, straffes med hæfte eller fængsel i indtil 1 år eller under formildende omstændigheder med bøde."
- 55 For a journalistic, and pro-homosexual, history of the Ugly Law, see Ufer 1965.
- 56 Vanggaard 1962, 1433, 1447. Vanggaard's psychoanalytically based theory of homosexuality postulated the existence in all male individuals of a so-called "homosexual radical." In 1969 he applied his theory to the history of homosexuality in *Phallós*, translated into English and German. Vanggaard 1969; 1972. Cf. Rosen 2001f.
- 57 *Danmarks Statistik: Statistiske meddelelser. Kriminalstatistik 1961-67*.
- 58 The National Union of Homophiles organized a public hearing on "Criminal Law and Young Homophiles" (January 11, 1971). The speakers were Knud Thestrup (Minister of Justice, Conservative Party), Knud Waaben (professor of law and chairman of the Council of Criminal Legislation), Else-Merete Ross (MP, Social Liberal Party), Preben Hertoft M.D. (consultant, sexologist). Cf. Hertoft 1971b.
- 59 *16 år for homofile* 1970. Cf. Koning and Blom van Rens 1970.
- 60 *Folketingstidende* 1970/71, col. 5593-96 (April 14, 1971).
- 61 Hertoft had studied for some months with John Money in the United States prior to preparing his paper and he refers to a copy of a manuscript of Money 1967. Hertoft 1971a.
- 62 Hertoft 1968.
- 63 Summary of the opinion of 3 May 1972 of the Council of Forensic Medicine; Department of Justice: Comments to the bill, *Folketingstidende* 1972-73, Tillæg A, col. 5140-41. Full text in *Straffelovrådets udtalelse* 1975, 35-36.

- 64 Council of Forensic Medicine, Statement of December 11, 1972, *Straffelovrådets udtalelse* 197, 37.
- 65 *Folketingstidende* 1972/73, col. 4797.
- 66 *Folketingsårbog* 1973/74, 327-28.
- 67 *Folketingsårbog* 1973/74, 417-18. Danmarks Retsforbund is a political party built on Henry George's ideas on the taxation of land. It was at its most influential during the 1950s, but since 1981 it has no longer been represented in the Danish parliament.
- 68 In 1972 the National Union of Homophiles had publicly argued that an equal age of consent for homosexuals and heterosexuals was essential whereas a lowering of the age of consent (e.g. to 14 years) was a minor issue.
- 69 Letters of June 15 and July 6, 1998 from Martin Elmer to the author. Cf. Rosen 2001d.
- 70 *Straffelovrådets udtalelse* 1975, 27.
- 71 "Om begrebet biseksualitet. Redegørelse til straffelovrådet ved overlæge, dr. med. Preben Hertoft 25/11 1974." In *Straffelovrådets udtalelse* (1975), 54-55; summary p. 28.
- 72 *Folketingstidende* 1975/76, col. 5992 (Preben Wilhjelm).
- 73 "skadelig og forledende påvirkning." Minority opinion at the committee stage, *Folketingstidende* 1975/76, Tillæg B, 846; Cf. *Folketingstidende* 1975-76, col. 8212 (Nathalie Lind).
- 74 *Folketingstidende* 1975/76, col. 8209, 5990 (Inge Krogh).
- 75 *Folketingstidende* 1975/76, col. 5988 (Aase Olesen), 8214 (Ebba Strange).
- 76 *Folketingstidende* 1975/76, col. 5992 (Ebba Strange).
- 77 *Folketingsårbog* 1975/76, 269-70.
- 78 Cf. Lov nr. 195 af 28/4 1976 om ændring af borgerlig straffelov. (Forbrydelser mod Kønssædeligheden) § 1, nr. 2.
- 79 That figure includes convictions for violation of section 225, subsections 1, 2, 3, and 4, alone or in combination with section 210 (incest), 211 (intercourse with in-laws), 216 (rape), 222 (intercourse with persons under 15), 224 (other indecent behavior than intercourse), 226 (cases in which the age of the victim was hard to determine). It also includes convictions for violation of section 230 (homosexual prostitution).
- 80 *Betænkning* 1955, 93.
- 81 *Danmarks Statistik*. Statistiske Meddelelser. Kriminalstatistik (tekstanmærkninger) 1940, 16-17; 1941, 16-17; 1942, 6, cf. p. 22; 1943, 16, 21, 22.
- 82 Royal Commission on Prostitution, *Betænkning* 1955, 93; remarks of the minority of the commission (Jersild and Chr. Ludvigsen, representative of the Department of Justice). The context means that the point of view was shared by the majority.
- 83 Jørgensen 1947, 142-43, 411, 531; Rosen 1993, 51-77.
- 84 Loi sur le police municipale et correctionnelle (July 22, 1791); Code Pénal (September 25, 1791). In the revised Napoleonic Code Pénal (1810) the age of consent was thirteen years for both sexes (art. 331). Daniel 1961/62.
- 85 "On sait assez que cette méprise de la nature est beaucoup plus commune dans les climats doux que dans les glaces du septentrion, parce que le sang y est plus allumé, et l'occasion plus fréquente: aussi, ce qui ne paraît qu'une faiblesse dans le jeune Alcibiade est une abomination dégoûtante dans un matelot hollandais et dans un viviandier moscovite." Voltaire 1764/1937, I, 26.
- 86 Bech 1997, 195-96, 200.
- 87 MacIntosh 1981, 44-45.
- 88 Whitam and Mathy 1986, 182.

Norway 1842-1972: When Public Interest Demands

by *Martin Skaug Halsos*

This chapter will suggest that by introducing the section 213 to its Penal Code of 1902 Norway in effect became the first Scandinavian country to lift a general ban on same-sex sexuality. Unlike preceding regulations, the *raison d'être* of section 213 was not a Christian society's need to legislate against sins forbidden in the Bible, but to prevent men from becoming homosexuals and to uphold public decency. Therefore the clause criminalized all kinds of sexual acts between men, and not only anal intercourse leading to loss of semen as in the former laws. Significantly, however, the section was to be used only when "public interests" were at stake.

I will explore the factors that contributed to the creation of section 213 and to the twists in the law's judicial and legislative history until its abolishment in 1972 by following three major discourses connected to homosexuality: the discourse on age and homosexuality, the discourse on female homosexuality, and finally homosexuality and the Norwegian welfare state.

On the discourse of age and homosexuality, I will focus on the popular belief that especially young people could be converted and become "permanently homosexual" by having sex with an older "homosexual." This belief was the only explicit reason in written records on why Norway needed to have a section like 213 in its penal code. When the medical discourse, and probably also the prevalent general opinion, changed their views on this matter, the law was abolished. In my analysis on the discourse on women and homosexuality, I will address the question why women were left outside the law. The statute only penalized sex between men even though sex between women was not unknown to the legislators, as was shown in the parliamentary debates in 1889, 1902, and 1925 and 1954. As to the discourse of the Norwegian welfare state and homosexuality, I will look into the principles of the welfare state: their effects on the history of the statute, and how they eventually led to the abolishment of the section.

In a previous study on the history of the enactment of section 213 and its enforcement at the Courts of Justice in Kristiania/Oslo between 1905 and 1950 I have suggested that Norway was in fact the first, and not the last, of the Nordic countries to decriminalize homosexuality. This can be attributed to the provi-

sion that limited the scope of section 213 to acts that threatened “public interest.” What was to be considered such a threat was of course a matter of some dispute, but evidently the act of buggery was no longer sufficient in itself.¹

Before section 213

The first Norwegian law against homosexual behavior is a statute from 1164 included in the medieval *Gulating* Law, which penalized intercourse between men. Later, when the church obtained exclusive jurisdiction in church matters in 1277, the law disappeared from secular law until it reemerged in 1687, when the Norwegian law of King Christian V was introduced. Book 6, chapter 13, section 15 of this law penalized “Intercourse, which is against Nature.” The preparatory materials on the law reveal that intercourse between men was only one among several kinds of conduct this section intended to penalize.²

The Norwegian Penal code of 1842 later inherited the old statute’s formulation. Its chapter 18, section 21, which likewise prohibited “intercourse, which is against Nature,” was modernized in 1889, as a result of the introduction of the jury system.³ A member of the Norwegian Parliament (the *Storting*), Fredrik Stang, made clear the need for change: “Today, there is no man who speaks Norwegian, who would only through his knowledge of the language understand what is meant by ‘Intercourse against Nature.’”⁴ In order to clarify the issue, the modernized chapter 18, section 21, came to read, “intercourse between persons of male sex is to be penalized.”⁵

This change was part of a revision of the penal laws begun in 1885, when King Oscar II appointed a commission to examine the Penal Code of 1842. The juridical elite and the enlightened public found the Penal Code to be oldfashioned. It was considered unfair because its linguistic formulations ruled out all flexibility, and undemocratic because there was no democratic control over the legal system. The result was the introduction of the jury system in 1887, and of a new penal code including also a new statute against homosexuality. The Penal Code of 1902 came into force in 1905, and section 213 was thus introduced at the same time as Norway became independent after having spent nearly a century in a union with Sweden. The code remained in force until 1972.⁶

Section 213

Section 213 in the Norwegian Penal Code of 1902 penalized sex between men, and persons who made such an act possible, with imprisonment up to one year:

If immoral intercourse takes place between persons of the male sex, those who are found guilty, or those who contribute to it, will be sentenced to prison for up to one year.

The same punishment will befall anyone who engages in immoral intercourse with animals, or who contributes to it.

Prosecution will only take place when public interest so demands.⁷

The most notable aspect in the new statute was the last sentence, which considerably limited the scope of the law. The preparatory works gave little advice on the question of what were the criteria for public interest except for boy prostitution, and thus left it to the prosecuting authorities themselves to define why a case should be prosecuted.

Another point of interest is that, unlike its predecessors, this statute did not penalize a specific sexual act, but all kinds of sexual acts between men that in some respect could be deemed harmful to others or to society. Accordingly, apart from the ones engaging in the sexual act itself, also accomplices could be prosecuted and penalized. This meant for instance that a pimp, a landlord, or a mutual friend of those taking part in illegal sexual activity, could be convicted for same-sex crimes under section 213.

However, since section 213 did not penalize homosexuality as such, but in practice limited its scope to those cases, which had negative social effects, one might say a different attitude toward homosexuality prevailed in the Norwegian legal system. A corresponding change in approach can later be observed in the other Scandinavian countries, where similar legislative changes also took place.

Introduction of the "homosexual"

Professor Bernhard Getz (1850-1902) headed the commission appointed to revise the Penal Code of 1842, and in his own proposal of 1887 he argued that the new penal code should abolish all special sanctions against homosexuality. In his view homosexuality should only be penalized if it corrupted others or if it "shamelessly exposed itself."⁸ This notion was reiterated in the Penal Code Commission's proposal of 1896, which stated that the only reason to penalize homosexuality was "when public interest so demands."⁹

What was more, Bernhard Getz introduced a new legal definition of sexual intercourse, which covered a wider range of acts than before, prohibiting not only the historically most significant form of same-sex sexual performance, anal intercourse. This proved to be a modernization in the definition of sexual offences in general. In 1892, he wrote that in his opinion there existed, "besides the true sexual intercourse, a number of relationships more or less similar to intercourse."¹⁰ When the word "intercourse" (*omgjengelse*) was used in the earlier penal codes, what was intended was penetration by the male member and ejaculation of semen. The new definition "immoral intercourse" (*utuktig omgjengelse*),

introduced by Getz, was much broader and included for example oral sex and mutual masturbation.¹¹

The silent revolution

Section 213 was quite radical for its time as it did not impose an absolute ban on same-sex sexuality, and it is almost surprising to see how easily it was passed in the *Storting*. One could have expected it to arouse more controversy especially in a Christian nation like Norway with a state church firmly grounded on puritan Lutheran tradition, but it failed to provoke any debate either in the press or the Church.

In the *Storting* there was only one member who spoke out against it, yet not even he preferred the old law. The Doctor of Medicine Magnus Kjølstad Graarud argued for making the section more up-to-date by changing the phrase “between persons of the male sex” to “between persons of the same sex.” He considered the exclusion of women old-fashioned and wanted the law to include lesbian relations too, but he did not manage to win many votes behind his proposal.¹²

A possible explanation for why there was hardly any debate on this new and radical view on homosexuality can well be found in the fact that the author of the proposal, Bernhard Getz, died shortly before the bill passed through the *Storting*. Getz was highly respected in wide circles of the Norwegian political elite, and it was perhaps characteristic of traditional Norwegian values of the time that respect for the dead overrode whatever criticisms there may have been toward his work.

Another circumstance hampering such discussion was probably the taboo on discussing sex in general. Minister of Justice Ole Quam, a member of the appointed committee, thought it was “disgusting that the courts will have to deal with the things that now will be included in the law.”¹³ His dislike toward discussing them in the *Storting* was probably no less acute. The taboo lived on for a long time, and it was perhaps one of the reasons why section 213 was abolished so late. Many decades later, during the discussion on the repeal of section 213 in 1971, Member of the *Storting* Einar Førde congratulated his right honorable friend Arne Kielland for daring to deal with a topic that many felt was embarrassing.¹⁴

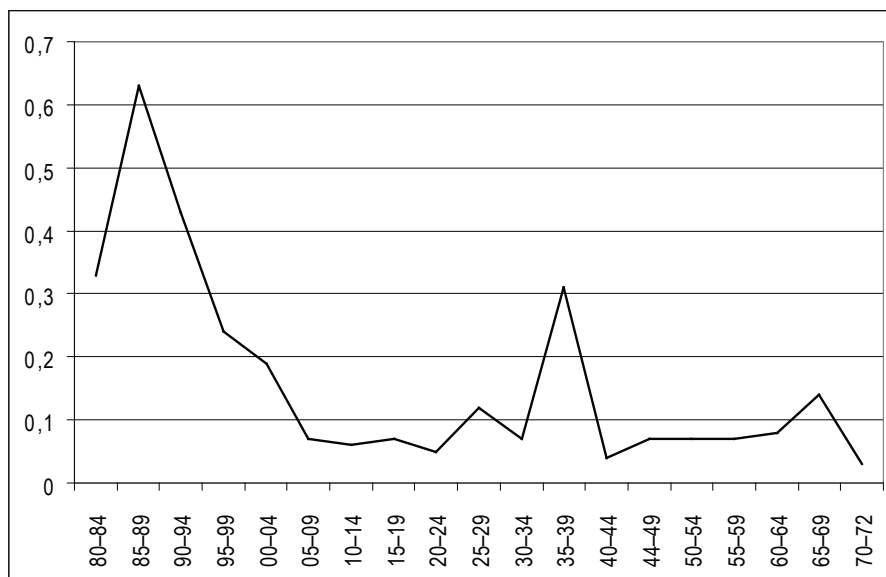
Section 213 and law enforcement

Throughout the existence of section 213 very few people were convicted for violating it. The reason for this is to be found in the passage that restricted the courts of law to convict only cases that were of public interest. My earlier survey on the enforcement of section 213 in the courts of justice in the capital Oslo be-

tween 1905 and 1950 indicated that the section functioned in effect as a higher age of consent for male homosexuality. In this period, in nine out of altogether sixteen convictions, the accused were found guilty of having had sex with a male youth between 16 and 18 years of age. The legal age of consent at the time was 16, and the law against fornication with minors had precedence in cases of same-sex fornication with boys under 16. In the seven remaining verdicts there was always some additional cause for conviction, such as the offenders having had sex in public. In practice section 213 thus served as a higher age of consent for male homosexuality, or its sanctions were used when other criminal offences were connected to the homosexual acts.

Between 1905 and 1950, a total of 119 men were convicted for violations of section 213 in the whole country. This figure includes cases involving sex between men as well as sex between man and beast, but bestiality most likely made up only a small portion of the total number.¹⁵ No less than 29 of the convicted men were judged in a single case, which is known as the morality scandal in Bergen. Besides the 29 men found guilty in the trials, another "160 boys and a number of adults" were involved in it.¹⁶ In a city of 80,000 inhabitants the affair inevitably resulted in a major public scandal when the arrests began in 1937, and

Figure 3. Convictions for same-sex sexuality per 100,000 inhabitants in Norway, 1880-1972. Yearly averages in five-year intervals.



Source: Norges offisielle statistikk. Kriminalstatistikk 1879-1972.

Note: 1880-1889: chapter 18, section 21 of the Norwegian Penal Code of 1842 (intercourse against nature and bestiality); 1890-1904: chapter 18, section 21 (intercourse between men and bestiality); 1905-56 section 213 of the Norwegian Penal Code of 1902 (intercourse between men and bestiality); 1957-72 "other sexual crimes" (intercourse between men, bestiality, fornication with a feeble-minded person, and some other unusual crimes).

when the sentences were pronounced in 1938; especially as a number of people from Bergen's upper-class were also implicated. The case from Bergen is nevertheless an exception, and, generally speaking, very few people were convicted of same-sex crimes in Norway in comparison with other Scandinavian countries. In the capital Oslo, which had a population over twice the size of Bergen, only 16 men were convicted for violating section 213 between 1905 and 1950.¹⁷ In addition to the 16 convictions, there is evidence of police investigations concerning six more men. The low number of convictions explains why section 213 later was regarded as "a dead letter" both by the Ministry of Justice and by the Norwegian movement for homosexual emancipation, which begun to rally for its repeal during the fifties.¹⁸

In spite of this epithet the law was in fact in use almost until its final abolishment in 1972, as is indicated by a case that was tried at the Norwegian Supreme Court as late as in 1970.¹⁹

As can be seen in figure 3, the number of cases fluctuated between 0.3 and 0.7 per 100,000 inhabitants, with a marked drop after 1905, and then reaching an average annual level of 0.05 per 100,000 inhabitants after 1905. After 1956 the statistics lumped together "immoral fornication" and "other sexual crimes" into one category, including fornication with feeble-minded and some other more unusual crimes. This makes it impossible to determine the exact number of convictions under section 213 during this period, but there were certainly only a limited number of prosecutions. Between 1957 and 1971, a total of 54 people were sentenced for crimes falling under this category, with a yearly average of 0.1 case per 100,000 inhabitants.

Proposals for amending or abolishing section 213

Even though very few were punished under section 213, it was for a long time considered to be out of date and unjust. It was out of date because it only penalized sex between men, and unjust because it penalized homosexuality between consenting adults. On two occasions proposals were prepared to change the existing law, but the government decided to set aside both of them, so the section remained in force until 1972.²⁰

In 1925 the Penal Code Committee proposed an amendment to section 213.²¹ It was part of an ongoing legislative revision of the chapters on sexual offences in the Penal Code. The committee's main purpose was to introduce more stringent penalties for offences against minors. As a part of this revision the committee suggested lifting the ban on homosexual acts between consenting adults, and replacing it with a higher age of consent for such acts, 21 years. Among other proposed suggestions was changing the definition of sexual acts in the Penal Code from "immoral intercourse" (*utugtig omgjengelse*) to "immoral acts" (*utugtige handlinger*), which would eliminate physical contact as a precondition

for crimes to be tried under section 213. The section could thus be applied, for instance, if a person had masturbated in front of another person. Moreover, it would criminalize sex between women and same-sex prostitution. Included was also an increase to the maximum sentence, from one to two years in prison, and no provisions were made for judicial discretion in its application, or mitigating circumstances like having mistaken an underage person for being over the age of consent:

With prison up to two years will be punished: 1. Anyone who seduces persons of the same sex under 21 years of age to commit immoral acts with that person; 2. Persons over 25 years of age who commit immoral acts with persons of the same sex under 21 years; 3. Persons over 18 years who commit immoral acts with other persons in order to make a profit thereof. Mistakes regarding age will not eliminate culpability.²²

The 1925 proposal never made it to the *Storting*. The Ministry of Justice was not willing to “legalize perverted relationships of this mentioned kind,”²³ and accused the committee of “misunderstood humanism.”²⁴

The law was not changed, but on the other hand section 213 was the only statute in the chapter on sexual offences, which was not included in the revised section 39 which required courts to determine whether the accused person should be taken into psychiatric custody or not.²⁵ The commission never stated why section 213 was exempted from this provision, and neither was this discrepancy noticed in the *Storting*. Perhaps it was an oversight made by a government too eager to condemn homosexuality. On the other hand, one could also conjecture that homosexuality was seen as a lesser threat to society than other criminalized sexual acts.

In 1951 the Ministry of Justice asked the Penal Code Council to revise section 213 as well as section 397, which penalized heterosexuals living together out of wedlock.²⁶ This initiative probably stemmed from a letter sent by the newly established organization for homosexual emancipation, The Norwegian Association of 1948 (DNF-48), to the Minister of Justice Oscar Gundersen asking for the repeal of section 213.²⁷

In 1953 the Penal Code Council delivered its proposals for the revised sections 213 and 397. The Council followed the example of the previous Penal Code Committee of 1925 in wanting to decriminalize homosexual acts between consenting adults, and instead to introduce a provision for a higher age of consent. The actual wording too was not unlike that of the 1925 proposal.

With prison up to two years will be punished anyone over 18 who commits an immoral act with another person of the same sex under 18 years. The punishment can be waived when the two persons are approximately of the same age and maturity, or if other special reasons make a punishment unreasonable. Likewise will be punished anyone over 21, who: 1. Commits immoral acts with someone of the same sex between 18 and 21 years of age who is in a position of dependence on him; or 2. Se-

duces another person of the same sex between 18 and 21 years of age to commit immoral acts with him; or 3. Furthers another person's immoral acts with a person of the same sex under 21 years. If the offender believed that the other person was over the age mentioned here, but did not pay this matter enough attention, the sentence will be prison up to 6 months.²⁸

The new statute would thus raise the age of consent for homosexuality from 16 to 18 years. This proposal was somewhat more relaxed than its predecessor from 1925 concerning sex between young people and adults. Special reasons could exempt from punishment a person above the age of 18 who was charged with having had sex with a person under 18. Courts would also be allowed to pass lighter sentences if the accused thought the other person to be older, which was not included in the former proposal.

However, the revised version of section 397 put forward by the Committee conveyed quite a different attitude. Originally the section derived from a statute in the earlier Penal Code, which was known as the "concubinate-clause" and which penalized heterosexuals living together as man and wife without being married. If the couple did not get married after being ordered to do so, they could be sentenced to up to one year in prison.²⁹ The council proposed to change the subject matter in section 397 altogether, molding it into a stipulation outlawing social gatherings of homosexuals in public, which would have made it impossible to work for organizations like the DNF-48:

With a fine or with prison up to three months will be punished anyone who leads an organization or other association or a meeting or other gathering which aims to draw together homosexuals without proper control to prevent admittance of persons under 21 years of age.

If a meeting as mentioned in the first paragraph has resulted in persons under 21 being present inside or outside the room, the one who continues to organize, lead or accommodate such meeting after the prosecutor has warned against continued gatherings will be punished in the same way. Anyone who advertises meetings, or gatherings, or the membership of an association, or some other form of gathering as mentioned in the first paragraph, in a newspaper or magazine distributed to other people than regular subscribers, or in any other way advertises among people who are not already members of the association, or who contributes to make this happen will be punished in the same way.³⁰

The proposed section would obviously have made life very risky for anyone who wished to organize for a homosexual subculture in any way. The government's commentary on the proposal was in favor of changing section 213 as outlined by the Council, but it suggested "to abstain from punishment in certain cases" – although it did not specify which cases it meant.³¹ However, it was totally against changing section 397, stating that the justification given by the Penal Code Council was "little founded."³² The proposition was never debated in parliament, since the *Storting's* standing committee of justice was not in favor of



Public urinals were favored cruising spots in the growing Scandinavian cities. The picture shows two young men in a urinal in Oslo in the beginning of the twentieth century. On the reverse of the photograph an unknown hand has written: "You must not show this to anyone, because as you see it is not a pretty picture." Unknown photographer. Courtesy, Oslo City Museum.

either proposals, and preferred the existing laws.³³ In 1955, the *Storting* decided to refer the proposals back to the government for further investigation to see whether section 213 was adequate or not.³⁴ There it lay waiting until the last proposal to change section 213 came up in 1969.

The planned revision on section 379 is particularly interesting as it is the most visible and most notorious example in Norway of the homophobic anxiety that was widespread in the western world in the 1950s. It amounted to infringing homosexual persons' constitutional rights like freedom of speech and freedom of assembly. Equally interesting is the fact that the government disagreed with the appointed council, thus declining to take part in the homophobic witch-hunt. It is also noteworthy how well informed the members of the Penal Code Council were on the social life of the homosexual subculture in Norway. The proposed section 397 was intended to stifle a subculture of small semi-private gatherings and parties, outside the commercial scene of clubs and bars, and this projected target of the law coincided with what little is known about the lesbian and gay subculture in Oslo at the time.

The last days of section 213

DNF-1948 continued to work for the abolishment of section 213, after the *Storting* had sent back the proposal. In 1969, under the leadership of Karen-Christine Friele, the organization once more focused on the statute. In 1970 the or-

ganization published a pamphlet entitled *Section 213 – An evil or a necessity?* which argued against the infamous section.³⁵ This pamphlet was distributed to the members of the *Storting*, and as a result DNF-1948 got in touch with the social-democratic member of the *Storting* Arne Kielland.

Kielland introduced a private member's bill – that is, legislation not officially backed by the government – in the *Storting* with the proposal to abolish section 213.³⁶ The conservative minister of justice Elisabeth Schweigaard Selmer responded to the bill by preparing a government proposal to abolish section 213, and to replace it with a law that would impose an age limit of 18 years on homosexual relations, two years higher than the age of consent for heterosexual relations.³⁷ It occurred that the conservative government fell, and a new social-democratic government was established before Kielland could address the *Storting*. Schweigaard Selmer's proposal never left the Ministry of Justice, but the matter was to rest only for a short while.

During the parliamentary debate on the repeal of section 213, no one spoke in favor of retaining it, and the new minister of justice Oddvar Berrefjord answered on behalf of the government that he wanted the statute abolished without any new laws to restrict homosexuality.³⁸ Both the Ministry of Justice and the *Storting's* standing committee of justice supported this notion and spoke in favor of full abolition. However, some Members of the *Storting* still argued for a higher age of consent for homosexuality, and they presented an alternative legislative proposal for a revision of section 213. It was not unlike that of 1953 apart from shifting the age limit from 21 to 20 years, which corresponded with the lowering of age of maturity from 21 to 20 in 1969.

With prison up to two years will be punished anyone over 18 years of age, who commits immoral acts together with another person of the same sex under 18. The punishment can be waived if the two persons are about the same in age and maturity or if a special reason makes it unreasonable to penalize. The same sentence is given to persons over 20 who: 1. Commit immoral acts with a person of the same sex between 18 and 20 years of age thereby exploiting a situation of dependence; or 2. Seduces a person of the same sex between 18 to 20 years to engage in immoral acts; or 3. Furthers another person's immoral acts with a person of the same sex under the age of 20.³⁹

However, in both chambers of the *Storting* this alternative proposal lost by an overwhelming majority, and section 213 in the Penal Code of 1902 was simply abolished.⁴⁰ An era had ended since Norway was the last country in Scandinavia to formally decriminalized homosexual acts between men. Unlike in the other Nordic countries, however, in Norway it was not accompanied by the introduction of a higher age limits.

Section 213 and the discourse on age and homosexuality

The history of section 213 is closely connected to idea that homosexuality was a threat against the individual and against society. In 1887, when Bernhard Getz proposed to lift the general ban on same-sex sexual acts it was on the grounds that homosexual inclination was “strong and deeply rooted” in a person, which meant that a threat of punishment would be ineffectual.⁴¹ The law, which came to follow closely his views on the matter, changed the discourse on homosexuality and criminal law in Norway. The main focus was to be on preventing the spreading of homosexuality to the rest of the population, in particular by means of regulating the relations between young men under the legal age of majority and older men, which was where such a threat existed according to psychiatric knowledge. In the 1970s, when psychiatric science and society no longer saw homosexuality as a threat, section 213 ceased to exist. The act it self was not longer a crime.

At the end of the nineteenth century, when the new penal code was being prepared, homosexuality as a phenomenon had already been given a name. The dominant opinion within scientific discourse and popular understanding was that same-sex desire was biologically determined.⁴² Similarly, in his proposal from 1887, Bernhard Getz gave voice to the biological understanding of homosexuality when he wrote that such acts “in many cases seem to be founded partly on some kind of special mental deformity, and partly in a sickly disposition, which causes abnormal passion and inclinations.”⁴³

He never used the term “homosexuality” or referred to scientific writings, but spoke of the “experience of the majority of people who are addicted to it,” and common knowledge of the courts of justice.⁴⁴ These sources had also made him aware of other causes of homosexuality, besides the biological ones. In the proposal he mentioned “corruption” as one reason why some people become homosexual. His conclusion was that there was no reason to punish homosexuality in itself, but only when it constituted “an offence against the rights of others.”⁴⁵

In his original proposal from 1887, Bernhard Getz did not mention the protection of young people as an express purpose, but in the Penal Code Committee’s final version from 1896 it was stated that regulating sex between men was considered necessary in order to “prevent a class of male prostitutes” from coming into being through “the seduction of young people.” This was given as the very reason for introducing section 213, and the only motivation for criminalizing homosexuality, since it was in the interests of the public that “each and every instance [of seduction of young people] is prosecuted.”⁴⁶ Thus, the main reason the Committee gave for penalizing homosexuality was not that boys were “corrupted” and became homosexuals, as Getz had proposed earlier, but to prevent the spreading of prostitution through homosexual people.

In the beginning of the twentieth century the discourse on the etiology of homosexuality shifted from a mostly biological view to a psychological one.

Sigmund Freud established the notion that sexuality was formed during a person's childhood, and that homosexuality resulted from a disturbance in the normal development toward heterosexuality. The proposed amendments to section 213 that appeared after the introduction of Freud's theories thus put a greater stress on protecting the young from homosexual influences, and restraining the spreading of homosexuality in society.

In the 1925 proposal the Penal Code Committee had noted that it was wrong to penalize "congenital homosexual inclination," but because some people were born bisexual it was important to make their heterosexual side prevail. The committee therefore wanted a law which protected people under the age of 21 (the age of majority) in order to let "their emotions be led in the right (heterosexual) direction," so that they would get "a normal sexual life."⁴⁷

Ragnar Vogt was the first professor of psychiatry in Norway, and as a member of the Penal Code Committee he had written an appendix to the proposal, where he claimed that a pronounced homosexual inclination was not the only reason for sex between men. As examples he mentioned "homosexual habits in boarding schools, ships on long-distance voyages, isolated military camps." And he referred to other researchers who stated that homosexuality "originates from what is actually bisexuality with future development possible in both normal and abnormal directions."⁴⁸ Ragnar Vogt did not mention by name Freud or any other scholar in particular, but the Penal Code Committee referred to the German sexologist Magnus Hirschfeld in its proposal.⁴⁹ In the beginning of the twentieth century most Norwegian scientists were educated in Germany and were in general highly influenced by German scientific knowledge. Consequently, the scientific understanding of homosexuality in Norway drew heavily from German sexology.

The dominant theory advanced by Hirschfeld and other German sexologists was that homosexuals constituted a third sex, and that they had an inborn disposition, which could be neither acquired nor changed. Psychoanalytic theory, as formulated by Freud and his colleagues, claimed on the other hand that homosexuality was a perversion, which could be acquired through experiences made in a child's formative years. Norwegian legislators tended to refer to the third-sex theory when they wanted to decriminalize same-sex sexual acts, and psychoanalytic theory when they argued for at higher age of consent.⁵⁰

Age was an important issue also in 1953 when the Penal Code Council proposed to change sections 213 and 397. Both amendments were aimed at protecting persons under the age of 21 from being exposed to homosexuals, and the Council argued for a constraining homosexuality because "homosexual experiences for a person under 18 years can contribute to his sexual life taking a permanently homosexual direction." And even if a person was over 18 years, there was still a risk that his sexual development took a "homosexual direction." Therefore, the Penal Code Council suggested a law to protect everyone up to 21

years.⁵¹ Since even mature people could become homosexual by experience, the revised version of section 397 intended to outlaw announcements for meetings and gatherings for homosexuals in public that could attract “persons who are not homosexuals, but could possibly be influenced in a homosexual direction in the company of homosexual persons.”⁵²

The Penal Code Council based many of its arguments on a scientific appendix written by the Professor of Psychiatry Ørnulv Ødegård, who was also an appointed member of the Council in this matter. He was a pupil of Ragnar Vogt, but unlike Vogt he rejected the view that homosexuality would be caused by biological factors. In the appendix he claimed that “[a]ll our knowledge at the present time speaks clearly against the hypothetical homosexual constitution being hormonally grounded.”⁵³ The many latent homosexuals that Alfred Kinsey had reported on in 1948 and 1953 troubled him: they were so many that it would be a serious problem for society if they all became homosexual, especially since Ødegård believed that homosexuality itself gave rise to alcoholism and other social problems. According to Professor Ødegård homosexuality was a rebellion against society, exemplified in the homosexuals’ need to carry on propaganda for a view of homosexuality as biologically and socially equal form of sexuality.⁵⁴

Ødegård’s views and the Penal Code Council’s arguments on age and acquired homosexuality were met with different reactions. The Director of Health Karl Evang did not agree.⁵⁵ In a letter to the Ministry of Justice he declared that he disagreed with the proposed changes to sections 213 and 397, pointing out that “conditions that fixate an individual in the homosexual direction essentially take place earlier than puberty.”⁵⁶ Because of this there was no need for a higher age of consent or to protect others from homosexual influence.

In another letter the barrister Johan Bernhard Hjort, writing on behalf of DNF-48, emphasized that section 213 was unjust because “homosexuality is mostly considered to be congenital, or a disposition acquired during childhood.”⁵⁷ To support his view he referred to a number of Scandinavian scientists and to the Professor of Criminology at the University of Utrecht, Gerrit Theodor Kempe (1911-79). Professor Kempe had been contacted by the DNF-48 for a scientific statement concerning the proposed amendments to sections 213 and 397.⁵⁸

After the *Storting* had referred the Penal Code Council’s proposals back to the Ministry of justice, DNF-48 continued to collect scientific statements and studies that contradicted the belief that homosexuality could be acquired through seduction. Two juridical reports on age, homosexuality and the penal code, the British *Wolfenden Report* from 1957 and the Dutch *Speijer Report* from 1969, gave considerable leverage to arguments against inflicting punishments for homosexual behavior. Both concluded that the belief that young people could be seduced into becoming homosexuals was a scientifically untenable.⁵⁹

The conclusions of the *Speijer Report* were crucial to the efforts to abolish the law against same-sex sexuality in Norway. The Norwegian gay and lesbian movement was afraid that a higher age of consent for both sexes would be introduced instead of the old statute, which only penalized sex between men and allowed flexibility in the practice of law. A higher age of consent would include both men and women, and would oblige the courts to prosecute all instances that involved a person under the age of consent. Member of the *Storting* Arne Kielland therefore warned against replacing the section with “a new and perhaps even worse statute of discrimination.”⁶⁰ Drawing on the results of the *Speijer Report*, Kielland said he did not believe that young people could be seduced into becoming homosexuals.⁶¹

Though it was highly regarded as a reliable scientific report the *Speijer Report* did not convince everybody. Member of the *Storting* Egil Endresen still called for a special protection for people over 16 years of age, because even though he believed the arguments of the *Speijer Report* to be “rather solid” they were still debatable.⁶² Professor Ørnulv Ødegård was again asked to make a statement. In a letter to the Ministry of Justice, Ødegård said he could not produce scientific evidence showing that “young boys in the age of 16-18-21” were at risk of becoming homosexuals through seduction, but he still thought there was reason to believe so. As an argument he compared homosexuality with drug abuse that seemed “clearly to reach a maximum at this age.”⁶³

However, most of the members of the *Storting*, the Ministry of Justice and the government agreed with Arne Kielland and DNF-48 that there was no need for a higher age of consent or for any special protection for minors. On the basis of the two influential reports and a statement from the Directory of Health, which concluded that sexual orientation was “generally fixed before the age of 16,” the Ministry of Justice concluded that there were no medical reasons for any special provisions regarding young people.⁶⁴ On the contrary, it was noted that it was often “the adult homosexual who needed protection” against seductive youngsters who wanted to use them for financial purposes.⁶⁵ As a result, section 213 was abolished without any protective legal measures concerning the youth being introduced in place of it.

The discourse on age and homosexuality is important for the history of section 213, because it is inseparably connected to the very reasons for criminalizing homosexuality in Norway during the last two centuries. It was an issue of public interest to check the spreading of homosexuality, and young men and boys were seen to be particularly exposed to such a threat. The main rationale for the section was originally to prevent the growth of male prostitution that was perceived to result from seduction of young men, and all later proposals to amend section 213 were aimed at protecting persons under 21 from becoming homosexual as a result of a same-sex experience. The main argument for a higher age of consent was founded on scientific discourse, and when the scientific



West end of Carl Johan Street in Oslo in 1909, a known gay cruising area in the first decades of the twentieth century. Unknown photographer. Courtesy, Oslo City Museum.

discourse increasingly shifted toward disputing the seduction theory, the section was abolished. At the same time it is important to know that even though the history of section 213 clearly reveals a wish to protect the young against homosexuality, it also shows that young men were not exclusively seen as victims. All through the history of section 213 at least some of them, the male prostitutes, were described as ruthless exploiters of older homosexuals.

Section 213 and the discourse on sex between women

Section 213 in the Penal Code of 1902 made no mention of sexual acts between women as a punishable offence, which was a deliberate omission by the nineteenth century lawmakers. Female homosexuality was not regarded as a serious enough threat to Norwegian society to be criminalized. However, repeated attempts to extend the statute's penalties to lesbian sexual relations, as well as earlier attempts to penalize sex between women, indicate that this decision was far from uncontroversial.

Sex between women entered legal discourse in Norway in the mid-nineteenth century, shortly after the introduction of the 1842 Penal Code. In 1847 the Supreme Court found a woman guilty of violating the old Norwegian Law's statute 6-13-15 from 1687, which criminalized "intercourse, which is against nature" without any reference to gender.⁶⁶ The section 18-21 in the Penal Code only

interpreted intercourse against nature as “real intercourse” which was penetration by the male sexual member and the ejaculation of semen.⁶⁷ The Supreme Court used the old section because it was more inclusive.⁶⁸ In this case, a velvet dildo had been used so the Supreme Court ruled that penetration by a substitute penis was in keeping with the legal definition of section 6-13-15 in the Norwegian Law. The older woman was sentenced to one year’s hard labor and her two younger servants to fifteen days’ seclusion on water and bread. It was according to the section 18-21 of the Penal Code and not death by fire as the old law ruled. However, this ruling was controversial, especially since it was at variance with the Constitution, which stated that no one could be convicted outside the law.⁶⁹ This ruling would not hold for long though. In 1854, the Supreme Court declared two other women not guilty of violation of section 6-13-15 of the Norwegian Law or section 18-21 of the Criminal Code of 1842, because their sexual relationship did not fulfill the definition of intercourse against nature.⁷⁰

When the Penal Code Commission was appointed by King Oscar II in 1885, the traditional definition of fornication as penetration was the main reason why only men were mentioned in the new text. Member of the *Storting* Fredrik Stang, who was also a member of the Penal Code Commission, specified in a 1889 parliamentary debate on the proposal that only sexual acts of “an intercourse-like character” were to be penalized.⁷¹ In the understanding of sexuality as it then was, this definition excluded sex between women as well as oral sex and mutual masturbation.⁷² Minister of Justice Walter Scott Dahl wanted to criminalize female homosexuality, and in the *Storting* he criticized the narrow definition of punishable acts.⁷³ The Commission’s answer was that it was not within the scope of the Penal Code to punish every “indecent act, which morality strongly condemns.”⁷⁴

In its final proposal for the Penal Code of 1902 the Commission did not give reasons why section 213 would impose sanctions only on sex between men. Instead, it just referred to the changes made to section 18-21 in 1889.⁷⁵ The new definition of punishable sexual acts that included also non-penetrative practices would technically have allowed convicting women for same-sex acts, but this is nowhere specifically mentioned or considered as a possibility. Perhaps this can be accounted for by the motivation given for the last sentence of section 213. Here the Commission wrote, “this crime should not be prosecuted [...] if it is not particularly injurious to the public welfare.” The publicity around a case, and the scandal it would cause were “a more serious evil than the crime itself.” And it went on to argue that the clause was needed to pre-empt the rise of a “class of male prostitutes” since it was in the public interest to prevent such a development.⁷⁶ Women were already prone to this vice, and at the time there was a public outcry against female street prostitution that was openly carried on in Kristiania.⁷⁷

As mentioned earlier, the only dissenting voice during the parliamentary discussion on the bill was that of Gunnar Magnus Graarud, who wished to include sex between women in the statute. As a doctor of medicine he could not let the proposal pass, he said, because it contradicted his “knowledge of natural history.” He knew that homosexuality “occurs just as often, if not more often, between women.”⁷⁸ Cabinet minister Ole Quam, a member of the Commission, responded to Graarud’s proposal by saying that such an act was not possible among women: “Sexual intercourse, fornication between two women – have you heard of such a thing? It belongs to the realm of the impossible.” In his opinion it would be like introducing a law against masturbation. The *Storting* voted against Graarud’s proposal, and sex between women did not become a criminal offence in Norway.⁷⁹

However, lawmakers would later change their attitudes on this matter. In 1925 the new Penal Code Committee regarded excluding women from section 213 as an indication of how outdated the law was, and it recommended that the law on a higher age of consent include sex between women too.⁸⁰ However, this opinion was not supported by the Ministry of Justice, which rejected the whole proposal in 1927.

All attempts to replace section 213 with a higher age of consent embraced also the idea of extending the law to sex between women. The proposals from the Penal Code Committee in 1925 and from the Penal Code Council in 1953 were both worded in gender-neutral language, and this was also the case with the alternative proposal to raise the age limit during the debate on the abolition of the statute in 1971. The logic of all these proposals was that women having sex with other women under the age of legally defined maturity constituted an equal threat to Norwegian society as did sex between men, though none of them discussed the reasons why women suddenly were included in this discourse. One reason for this may have been that sex between women was increasingly recognized within the scientific discourse and therefore needed also to be acknowledged as a threat to society.

Thus, over a period of seventy-five years, three different proposals argued for an amendment of the section to the effect that women too were to be included, but apparently the threat that female homosexuality posed to society was never deemed grave enough to make any of these proposals successful. Proposals to include women under the scope of the law were always linked to the abolishment of the general ban on same-sex sexuality between adults and to imposing higher age limits, which shows that female homosexuality had become conceptualized in equal terms with its male counterpart, as something that adults could engage in, but as something that young people needed to be protected against.

Section 213, homosexuality and the Norwegian welfare state

In Norway the history of the welfare state dates back to the end of World War Two, as it does in other Scandinavian countries.⁸¹ From 1945 up to the 1960s, Norway undertook several important social reforms on pensions and benefits for the poor and unemployed, health care, schools and education. Many of these reforms were based on older systems initiated in the beginning of the twentieth century and especially from the 1930s.⁸² Norway still regards itself as a welfare state, but a political consensus on the material and social aims this involves, has become less evident since the second half of the 1960s.⁸³

Belief in science and striving for equality have been characteristic of the Norwegian welfare state, and in both respects, the history of section 213 is closely linked to the history of the welfare state. There was a strong belief in scientific knowledge when section 213 was being prepared, as well as during later proposals to change and abolish it. There was also a general political strive for social equality which was a key factor in the various attempts to lift the ban on homosexuality. Thus criminalizing homosexuality as such was seen as unjust to all.

Section 213 and the Penal Code of 1902 were influenced by “the third school” in legal theory, which was introduced by Bernhard Getz. In this theory criminal prevention was closely linked to psychiatry and social sciences in an effort to uphold the rule of law.⁸⁴ The third school was closely linked to a will to solve social problems by means of scientific methods.

As discussed earlier, Bernhard Getz employed scientific language in his proposal[s] when he wrote that homosexuality was caused by a “psychiatric deformity,” thereby showing that he understood the scientific discourse of his time though he made no direct reference to any scientific sources.⁸⁵ With all the later proposals, as well as with the eventual abolition of the section, authorities of medicine and psychiatry were included as experts whenever homosexuality was discussed.⁸⁶

With time, the role of science increased in importance, and section 213 became a matter for psychologists and doctors. To the Penal Code Committee of 1925 were appointed the first Norwegian professor of psychiatry, Ragnar Vogt, and two other doctors of medicine along with the legal advisers.⁸⁷ The committee took a scientific approach to the issue, and used science to argue its pros and cons. This would also be the method adopted in later committees on section 213.

In 1951 the Penal Code Council again requested medical expertise by appointing Professor Ørnulf Ødegård as an adviser.⁸⁸ And the Ministry of Justice contacted the Director of Health Karl Evang, a doctor of medicine enjoying high esteem, to comment on the proposals to change sections 213 and 397 in 1953. Later, in 1971, during the debate on abolishing the statute Ødegård was again contacted.⁸⁹

The lesbian and gay movement DNF-48 also used scientific authorities to bolster up their campaign to abolish the section. As mentioned earlier, in 1954 they created a network of scientists on criminology and psychiatry in order to stop the proposed reforms on sections 213 and 397, and in the 1970s they made the most of the scientific *Speijer Report* in arguing against a higher age of consent.

The idea of homosexuality as biologically determined also led to the introduction of the homosexual citizen. Before that, same-sex passions were more commonly perceived as acts that anyone could be tempted to perform. The notion that homosexuality was, at least with some people, an inborn disposition, meant that there was a certain type of people who could never become heterosexuals. This idea would eventually lead to the abolishment of section 213 because the society strove for social equality to all groups, including the “homosexuals.”

During the twentieth century there was a gradual development toward granting minority status and social rights to people who lived out their same-sex desire. Yet Bernhard Getz did not propose to abolish the sentence on homosexuality in 1887 because of any personal sympathies for the homosexual inclination. He did it because he believed that prosecutions and punishments would not help rid society of this vice. This would later change, as all later proposals commented on the problem regarding social equality and homosexuality.

In 1925 the Penal Code Committee argued that section 213 was unjust inasmuch as “to penalize the satisfaction of an inborn homosexual sex instinct [...] means the same as if the law were to forbid sexual intercourse between the normal man and woman.”⁹⁰ When the committee suggested punishments for persons over 18 years who sold sexual services to same-sex partners, it spoke for, and showed empathy with the “victims of homosexuality” instead of the “shameless male whores.”⁹¹ The young men who sold their bodies were seldom seen as victims, but more often as offenders. According to the Penal Code Committee, it was “through the fear of shame” that the young men got power over “otherwise respectable citizens” and could turn them “into weak-minded individuals through their criminal plans.”⁹²

In 1954 the Ministry of Justice considered that the suggested amendments to sections 213 and 397 were flexible enough, as it preferred to exclude penalties on those cases where “the young man in question is a professional prostitute.”⁹³ Such boys’ moral conduct was much in doubt. In 1938 the Court of Justice in Oslo suspended the sentence of a man charged with violation of section 213 on the grounds that the underage boy was known to the court “to have previously displayed a bad character regarding sexual morals.”⁹⁴ This indicates that less consideration was given to the possibility that prostitution among boys was a result of poverty, which raises the question of their exclusion from the welfare state’s aspirations for social equality.

The Penal Code Council's proposed changes to sections 213 and 397 from 1953 were less sympathetic to homosexuals. In principle, the council was of the opinion that homosexual acts should not be considered on a par with heterosexual ones.⁹⁵ The most immediate cause for this negative attitude was Professor Ødegård, for whom homosexuality represented antisocial behavior that constituted a threat to the society. It can also be indirectly attributed to the repressive social climate on sexual difference in postwar Europe, which we know from other countries.⁹⁶ In 1954 Norwegian bishops too discussed the plans to amend sections 213 and 397, and argued against abolishing section 213 because Norwegian society was "confronting a social threat of global proportions."⁹⁷ The bishops and the Penal Code Council were especially alarmed by the emergence of DNF-48, an organization which had close links with similar groups in other Scandinavian countries and showed a strong and radical commitment to gay and lesbian rights.

On the other hand, these fears were not shared by everyone, and the Directorate of Health responded to this overly negative view by stating that homosexual acts "to a large extent [were committed by] persons who in every other respect are good, conscientious citizens."⁹⁸ Similarly, the Ministry of Justice objected to the suggested changes to section 397, which would have rendered the existence of DNF-48 almost impossible. The reasons given by the council in support of its proposal were simply not sufficient to introduce a law that would violate constitutional rights like the freedom of speech and the freedom of assembly.⁹⁹

The debate on the repeal of section 213 that went on from 1970 to 1972 marked a profound turning point toward equality between heterosexuality and homosexuality in criminal law. When Arne Kielland addressed the *Storting*, and moved to abolish the law he concluded with the statement, "150,000 homosexuals in Norway will gradually be given justice."¹⁰⁰ Minister of Justice Oddvar Berrefjord answered his question and agreed by saying that the statute was "unreasonably discriminating" against homosexuals.¹⁰¹ Others spoke of "respect for a group of deviants," or used the word "minority" when they talked about "homosexuals."¹⁰² The Ministry of Justice argued on behalf of the "the adult homosexual who needs protection" against seductive heterosexual youths who wanted to exploit them financially.¹⁰³ However, Member of the *Storting* Bodil Aakre of the Conservative Party (*Høyre*) voted for the abolition of the law only because in her view section 213 could not "prevent" homosexuality.¹⁰⁴

Compared to earlier statements regarding homosexuality and social equality, the 1971 debate in the *Storting* signified a tremendous change in attitudes. Even though the political consensus on the institutions of the welfare state was, according to historians, beginning to diminish from the early 1970s on, there seems to have been a rather broad consensus on pursuing social equality for homosexuals in the sphere of criminal law.

Conclusion

In this chapter I have looked into a number of discourses underlying the history of section 213 of the Norwegian Penal Code, pointing out especially the discourse of the welfare state. The common belief that the legal sanctions imposed on homosexuality in section 213 were a dead letter belies actual judicial practice, where convictions and hearings, however scarce, continued throughout the whole period.

The idea of homosexuality as an inborn disposition, which was first introduced into criminal discourse in 1887 by Bernhard Getz in his proposal for a new penal code, eventually led to the lifting of the general ban against homosexuality. This started with the incorporation of a provision into the law that restricted prosecutions for homosexuality to cases where public interest so demanded. The inborn homosexual could not be helped to overcome his inclination by legal measures; therefore the statute was worded in a way that it would only be used when such behavior threatened the rights of others. This notion would in the end lead to the abolition of the section in 1972.

The discourse on age and homosexuality constituted a significant factor in the history of section 213. In the documents recording the making of the Penal Code, the only motive mentioned was to prevent male prostitution, but all later proposals to change 213 were aimed at reducing the growth of homosexuality among young people by means of imposing a higher age of consent for homosexual acts.

The notion that young people could become homosexuals by being seduced by an older homosexual was readily adopted from scientific writings on homosexuality. As long as the scientific discourse on age and homosexuality spoke in favor of special protection of the young it was impossible to decriminalize homosexual acts altogether. After the scientific discourse, and consequently also the informed public opinion, abandoned the belief in the relevance of special protection against homosexuality, the statute was abolished.

The discourse on women and homosexuality left its mark on the section 213 in the very omission of women from the scope of the statute. Only sex between men was criminalized, because sex between women was originally not deemed to constitute a threat to Norwegian society. This question was, however, discussed already when the section was in preparation, and later proposals to replace section 213 with a higher age of consent were all worded in gender-neutral language. It is difficult to say what brought about this shift, but the reason seems to be connected to the fact that scientific discourse concerning homosexuality also was gender neutral.

The history of section 213 and the history of the Norwegian welfare state are also closely connected. This is made apparent both in the strong tendency to rely on scientific arguments when dealing with homosexuality and in the early recognition of the social equality of the "homosexual citizen". Together with the

rejection of the seduction theory, these were the main factors behind the definitive abolishment of the section in 1972.

Notes

- 1 Halsos 2001.
- 2 “Omgjængelse, som imod Naturen er.” The other punishable crimes were anal intercourse between man and woman, and intercourse between man and beast. Rosen 1993, 54.
- 3 Kjerschow 1896, 321.
- 4 “Nu findes det ikke et Menneske, som taler Norsk, som alene gennem sine Sprogkundskaaber kan vide, hvad ‘Omgjængelse mod Naturen er’ *Stortingets Forhandlinger* [Norwegian Parliamentary Print, SF]. *Forhandlinger i Odelstinget* nr. 82 (1889), 643.
- 5 “Finder legemlig Omgjængelse Sted mellem Personer af Mandkjøn straffes de Skyldige med Straffarbeide i femte Grad eller Fængsel” Kjerschow 1896, 321.
- 6 *Norsk Lovtidende* 1902, 1. avd., 293.
- 7 “Finder utugtig Omgjængelse Sted mellem Personer af Mandkjøn, straffes de, der heri gjør sig skyldige, eller medvirker dertil, med Fængsel indtil 1 Aar. // Med samme straff ansees den, som har utugtig Omgjængelse med Dyr, eller som medvirker dertil. // Paataale finner alene Sted, naar det paakræves af almene hensyn.” Section 213 in the Norwegian Penal Code [Almindelig borgerlig straffelov] of 1902. *Norsk Lovtidende* 1902, 1. avd., 293.
- 8 “der frækt træder frem i Dagen.” Getz 1887, 10.
- 9 “naar det paakræves av almene hensyn.” *Straffelovkommissjonen* 1896, 198.
- 10 “ved Siden av det virkelige Samleie en Række mer eller mindre samleielignende Forhold.” Getz 1892, 60.
- 11 Getz 1887, 8.
- 12 SF. *Forhandlinger i Lagtinget* nr. 22 (1901/1902), 204-05.
- 13 “en afskyelig ting at retterne overhodet skal behandle de materier, som her er taget ind i loven.” SF. *Forhandlinger i Lagtinget* nr. 22 (1901/1902), 205.
- 14 SF. *Forhandlinger i Stortinget* nr. 369 (1970/1971), 2950.
- 15 *Straffelovrådet* 1953, 3. There has been no systematic survey of court cases from the countryside, but even there prosecutions for bestiality seem to represent only a small minority of the cases.
- 16 *Straffelovrådet* 1953, 3-4. Cf. Jordåen 2003, 98-9.
- 17 Halsos 2001, 125. The population of the capital increased from 227,626 inhabitants in 1905 to 417,238 in 1950.
- 18 *Straffelovrådet* 1953, 11.
- 19 *Straffelovrådet* 1953, 4; Halsos 2001; *Norsk Retstidende* 1951, 400; 1956, 127; 1963, 426; 1969, 351, and 1970, 838.
- 20 In 1927 the Ministry of Justice stopped the proposal from being presented to the Storting on the grounds that the proposal was a statement of “misunderstood humanism.” In 1953 the Ministry of Justice sent the proposal on a hearing that lasted until 1969.
- 21 SF. *Straffelovkomiteen* 1925, 1.
- 22 “Med fængsel inntil 2 år straffes 1. Den som forfører til utugtige handlinger med sig personer av samme kjønn under 21 år, 2. personer over 25 år som foretar utugtige handlinger med personer av samme kjønn under 21 år, 3. personer over 18 år som holder sig tilfalds til utugtig handling med personer av samme kjønn i det øiemed å gjøre sig en inntekt derav. Vilfarelse med hensyn til alder utelukker ikke straffeskyld.” *Straffelovkomiteen* 1925, 156.

- 23 “å legaliserer perverse forhold av den her nevnte art” SF. Ot.prp.nr. 8 (1927), 324.
- 24 “misforstått humanisme.” SF. Innst.O.XII (1927), 11.
- 25 *Straffelovkomiteen* 1925, 149.
- 26 *Straffelovrådet* 1953, 2.
- 27 Letter from DNF-48 to Minister of Justice Oscar Gundersen, February 7, 1951. “Str. Lovens 213 1950-1955.” Kim Friele’s archive.
- 28 “Med fengsel inntil 2 år straffes person over 18 år som foretar utuktig handling med en annen av samme kjønn under 18. Straffen kan falle bort når de to personene er omtrent jevnbyrdige i alder og utvikling, eller når andre særlige grunner gjør det urimelig å anvende straff. På samme måte straffes person over 21 år som 1. foretar utuktig handling med en annen av samme kjønn mellom 18 og 21 år som står i avhengighetsforhold til ham, eller 2. forleder en annen av samme kjønn mellom 18 og 21 år til utuktig handling med seg, eller 3. fremmer en annens utuktige handling med person av samme kjønn under 21 år. Har gjerningsmannen trodd at den annen var over den alder som her er nevnt, men ikke vist tilbørlig aktsomhet i så måte, er straffen fengsel inntil 6 måneder.” *Straffelovrådet* 1953, 3.
- 29 There is a long tradition in Norway for people living together as man and wife without being legally married. The couples were mostly engaged and waiting to get the money to marry, and counted as being married in the eyes of the local community. The government, on the other hand, never recognized this.
- 30 “Med bøter eller fengsel inntil 3 måneder straffes den som er med på å lede en forening eller annen sammenslutning eller et møte eller en annen sammenkomst som særlig er beregnet på tilslutning av homoseksuelle personer, uten at det føres forsvarlig kontroll for å forhindre at personer under 21 år får adgang. Har sammenkomster som nevnt i første ledd ført til at personer under 21 år har tilhold i eller uten for lokalet, straffes på samme måte den som iverksetter, leder eller gir husrom for slike sammenkomster på vedkommende sted etter at påtalemyndighetene har advart mot at møtevirkosomheten blir fortsatt. På samme måte straffes den som i blad eller tidsskrift som selger til andre enn faste abonnenter, kunngjør møte eller annen sammenkomst eller adgang til medlemskap i forening eller annen sammenslutning som nevnt i første ledd, eller som på annen måte sprer slik kunngjøring blant dem som ikke på forhånd er medlemmer av sammenslutningen eller som medvirker hertil.” *Straffelovrådet* 1953, 3.
- 31 “straff i visse tilfelle kan falle bort.” SF. Ot.prp.nr. 41 (1954), 18, 19.
- 32 SF. Ot.prp.nr. 41 (1954), 18, 19.
- 33 SF. Innst.O.III (1955), 7.
- 34 SF. Forhandlinger i Odelstinget (1955), 297; Forhandlinger i Lagtinget (1955), 94.
- 35 Friele 1970.
- 36 Kielland 1995, 31.
- 37 J.D.J.nr. 03400/1.12.70, Proposisjon om endring i straffeloven m.v. Lovavdelningen. Justitsdepartementet.
- 38 SF. Forhandlinger i Stortinget nr. 369 (1970/71), 2949.
- 39 “Med fengsel inntil 2 år straffes person over 18 år som foretar utuktige handlinger med en annen av samme kjønn under 18 år. Straffen kan falle bort når de to personene er omtrent jevnbyrdige i alder og utvikling, eller når andre særlige grunner gjør det urimelig å anvende straff. Med samme straff som fastsatt ovenfor straffes personer over 20 som 1. ved utnyttelse av avhengighetsforhold foretar utuktige handlinger med en annen av samme kjønn mellom 18 og 20 år, eller 2. forleder en annen av samme kjønn mellom 18 og 20 år til utuktig handling med seg, eller 3. fremmer en annens utuktige handling med personer av samme kjønn under 20 år.” SF. Innst.O.XII (1971/72), 4.

- 40 The alternative proposal fell with 65 against 13 votes in the Odelsting (SF. Forhandlinger i Odelstinget nr. 39 [1971/72], 319), and with 13 against 4 in the Lagting (SF. Forhandlinger i Lagtinget nr. 8 [1971/72], 60. Lov om endring i Almindelig borgerlig straffelov av 20. april 1972 nr. 18.
- 41 “sterk og rodfestet.” Getz 1887, 10.
- 42 Foucault 1995, 53; Rosen 1993, 16.
- 43 “i adskillige Tilfælde synes at have sin Grund dels i enslags særlig psykisk Misdannelse, dels i sygelig Tilstand, der fremkalder Abnormiteter i Drifter og Tilbøieligheter.” Getz 1887, 10.
- 44 “Erfaringer fra de fleste, der er henfalden til den.” Getz 1887, 10.
- 45 “en Krænkelse af andres Ret” Getz 1887, 10.
- 46 “en Stand mandlige Prostituerede fremales . . . en Forførelse af unge Mennesker . . . i ethvert Tilfælde paatales.” *Straffelovkommisjonen* 1896, 198.
- 47 “medfødt homoseksuell kjønnsdrift . . . deres følelser ledet i riktig (hetero-seksuel) retning . . . et normalt kjønnsliv.” *Straffelovkomiteen* 1925, 39.
- 48 “homoseksuelle uvaner i skole-interner, skibe paa langfart, avsondrede militær-leire . . . oprindelig dreier sig om biseksualitet med mulighet for fremtidig utvikling i baade normal og abnorm retning.” *Straffelovkomiteen* 1925, 166.
- 49 *Straffelovkomiteen* 1925, 38-39.
- 50 Hirschfeld 1914; Freud 1905; Fuss 1995.
- 51 “homoseksuelle opplevelser for en person under 18 år kan være medvirkende til hans seksualliv tar en vedvarende homoseksuell retning.” *Straffelovrådet* 1953, 12.
- 52 “personer, som ikke er homoseksuelle, men som det kan tenkes ville påvirkes i homoseksuell retning i samvær med homoseksuelle personer.” *Straffelovrådet* 1953, 17.
- 53 “Overhodet taler vår viten inntil i dag bestemt imot at den hypotetiske homoseksuelle konstitusjon skulle være hormonelt forankret.” *Straffelovrådet* 1953, 19.
- 54 “å gjøre propaganda for det syn at denne form for seksualitet er biologisk, psykologisk og sosialt likeverdig og likeberrettiget.” *Straffelovrådet* 1953, 20. Cf. Kinsey et al. 1948; Kinsey et al. 1953.
- 55 Karl Evang (1902-81) was a doctor of medicine and director of health in Norway 1938-72. He is considered a pioneer in health education, and in the 1930s he was editor of *Populært tidsskrift for seksuell vitenskap*, a popular magazine on sexual education.
- 56 “forhold som fester individet i homoseksuell retning, i alt vesentlig finner sted tidligere enn i pubertetsårene.” SF. Ot.prp.nr. 41 (1954), 15.
- 57 “homoseksualitet oftest antas å være et medfødt, eller i barneårene ervervet anlegg” Letter from Hjort, March 8, 1954, p. 1. Lovavdelningen. Justitsdepartementet.
- 58 Halsos 2001, 155. DNF-48 contacted the following scientists: In Norway: psychologist Ingjald Nissen and medical officer of the police in Oslo and psychiatrist Irmelin Christensen. In Denmark: Professor of Medicine Hjalmar Helweg, Copenhagen police prosecutor Aage Lothinga, lecturer at the university of Copenhagen Karl O. Christensen, Professor of Medicine Georg Stürup. In Sweden: Professor Einar Sjövall, Doctor of Medicine Torsten Janson Frey, and a Doctor of Medicine named Torstensen. Arne Heli’s archive.
- 59 Friele 1970, 81-92; Weeks 1989, 239.
- 60 “en ny kanskje enda verre diskrimineringsregel.” SF. Forhandlinger i Stortinget nr. 369 (1970/71), 2947.
- 61 SF. Forhandlinger i Stortinget nr. 369 (1970/71), 2946.
- 62 “ganske bastante.” SF. Forhandlinger i Stortinget nr. 369 (1970/71), 2950.

- 63 “unge gutter i alderen 16-18-21 . . . å ha et tydelig maksimum i denne aldersgruppe.” Letter from Ørnulv Ødegård to S. Rognlien, April 15, 1971. Box “Lov 21/4-72, Ot.prp.nr 5 (1971-1972). Endring i straffeloven (homoseksualitet): J.D.J. nr. 00184/181.71E.” Lovavdelningen. Justitsdepartementet.
- 64 “festet seg i hovedtrekkene før fylte 16 år.” SF. Ot.prp.nr. 5 (1971/72), 9, 10.
- 65 “den voksne homoseksuelle som trengte vern.” SF. Ot.prp.nr. 5 (1970/71), 10.
- 66 Halvorsen 2000, 72-78.
- 67 Getz 1887, 8; Halvorsen 2000, 81-82.
- 68 “Grove usedelige Handlinger, hvis Øiemed er at tilfredstille Kjønsdriften eller som dog utvetydig er udsprunget af denne, men som ei tilsigter virkelig Samleie, er da enten straf-fri eller maa henføres under det rummelige Bud i Lovbogen 6-22-3, eller under Kap. Om Æresfornærmelser, Legemesfornærmelser eller Forbrydelser mod Friheden.” Getz 1887, 8.
- 69 Halvorsen 2000, 62, 72.
- 70 Halvorsen 2000, 79-80.
- 71 “en samleielignende Karakter.” SF. Forhandlinger i Odelstinget nr. 82 (1889), 649.
- 72 A conviction by the Norwegian Supreme Court stated as late as 1891 that the section 18-21 of the Penal Code of 1842 could only be applied if anal penetration by a penis and ejaculation of semen had taken place. Kjerschow 1896, 322.
- 73 SF. Forhandlinger i Odelstinget nr. 82 (1889), 644.
- 74 “utugtige Handlinger, som Moralen paa det strengeste fordømmer.” SF. Forhandlinger i Odelstinget nr. 82 (1889), 643.
- 75 “denne Forbrydelse ikke nettop bør søges fremdraget til Paatale [...] der ikke særlig skader almene Interesser . . . et større Onde end selve Forbrydelsen.” SF. *Straffelovkommisjonen* 1896, 198
- 76 “en Stand mandlige Prostituerede.” *Straffelovkommisjonen* 1896, 198
- 77 Ringdal 1997, 323-26.
- 78 “min naturhistoriske innsigt . . . finder ligesaa hyppig sted, om ikke hyppigere mellem kvinder.” SF. Forhandlinger i Lagtinget nr. 22 (1901/1902), 204, 205.
- 79 “Legemlig omgjængelse, kjønnslig omgjængelse mellom to kvinder - har man hørt noget saadant? Det hører til de umulige ting.” SF. Forhandlinger i Lagtinget nr. 22 (1901/1902), 205.
- 80 *Straffelovkomiteen* 1925, 38.
- 81 Lange 1998, 202.
- 82 Lange 1998, 44-45. For a comparison of Norwegian and Swedish social insurance systems, see Johansson 2003.
- 83 Lange 1998, 243.
- 84 Hauge 1996, 218.
- 85 “psykisk Misdannelse.” Getz 1887, 10.
- 86 Halsos 2001, 38-39.
- 87 Halsos 2001, 43.
- 88 *Straffelovrådet* 1951, 1.
- 89 SF. Ot.prp.nr. 41 (1954), 15.
- 90 “Å sette straff for tilfredsstillelse av medfødt homoseksuell kjønnsdrift vil [. . .] bety det samme som om loven forbød ved straffetrusselen den seksuelt normale manns og kvinnes kjønnslige omgang.” *Straffelovs-komiteen* 1925, 39.
- 91 “homosexualitetens ofre . . . de skamløse mannlike skjøgene.” *Straffelovkomiteen* 1925, 40.

- 92 "Gjennem den frykt for skammen . . . ellers aktverdige mennesker . . . viljeløse mennesker i forbryterske planer." *Straffelovkomiteen* 1925, 40.
- 93 "vedkommende ungdom er profesjonell prostituert." SF. Ot.prp.nr. 41 (1954), 18.
- 94 "fra før har vist en dårligandel i sedelig henseende." Conviction February 4, 1938, Christiania 5, Byretten, Forhør, Domsprotokoll 99. Christiania Byrett. Statsarkivet i Oslo (SAO, Regional State Archives of Oslo).
- 95 *Straffelovrådet* 1953, 12.
- 96 *Straffelovrådet* 1953, 12; Weeks 1989, 199
- 97 "overfor en samfunnsfare av verdensdimensjoner." Copy of case 24 for the Episcopal meeting 1954. Arne Heli's archive.
- 98 "i stor utstrekning personer som i enhver annen henseende er bra, pliktoppfyllende samfunnsborgere." SF. Ot.prp.nr.41 (1954), 15.
- 99 SF. Ot.prp.nr. 41 (1954), 18-19.
- 100 "150 000 homofile i Norge etter hvert blir ytt rettferd." SF. Forhandlinger i Stortinget nr. 369 (1970/71), 2947.
- 101 "urimelig diskriminerende." SF. Forhandlinger i Stortinget nr. 369 (1970/71), 2948.
- 102 "respekt for en avvikerguppe." SF. Forhandlinger i Stortinget nr. 369 (1970/71), 2952.
- 103 "den voksne homoseksuelle som trengte vern." SF. Ot.prp.nr. 5 (1971/72).
- 104 "motvirke." SF. Forhandlinger i Odelstinget nr. 39 (1971/72), 314.

Iceland 1869-1992: From Silence to Rainbow Revolution

by *Thorgerdur Thorvaldsdóttir*

Whenever Icelandic history is put into a larger context and compared with that of other Nordic countries, a crucial consideration to be kept in mind is the limited size of the Icelandic society.¹ When the earliest Icelandic law that prohibited any form of homosexual acts or “sexual intercourse against nature” came into effect in 1869, the total population of Iceland was only 69,760 inhabitants, of whom 5,130 lived in the capital region. In 1940, when the absolute ban on homosexual acts was lifted and a law prescribing a higher age of consent was imposed instead, Iceland’s total population had reached 121,570 and the population in the capital region had shot up to 43,840 inhabitants. In 1992, when homosexuals were finally made equal before the criminal law, Iceland’s total population was about 255,700 inhabitants, with 146,150 living in the capital region.²

The political landscape of the late nineteenth and early twentieth centuries was dominated by the struggle for independence, as Iceland remained under Danish rule until 1944. Independence was achieved gradually in several stages. In 1845, the historical parliamentary assembly *Althingi* was re-established as an advisory body in Reykjavík. In 1874 Iceland received a constitution, which granted the *Althingi* legislative power in internal affairs together with the Danish king. In 1918 Iceland became a sovereign state under the Danish crown and finally, in 1944 the Republic of Iceland was founded with an Icelandic president. Iceland was thus under Danish authority when the penal codes of 1869 and 1940 went into effect.³

As indicated by the population statistics, Iceland remained a rural farming community well into the twentieth century. Most people lived on farms or in small fishing villages scattered along the coastline. In the course of the 1920s and 1930s the population of Reykjavík first exceeded 20,000 – and later 30,000. Studies on homosexuality have indicated that the modern “homosexual” is a legitimate offspring of urbanization, wage labor and industrial capitalism, and that same-sex sexual acts were conceptualized differently prior to the emergence of these social structures.⁴ The limited size of the Icelandic community, where the total population barely reached a quarter of a million at the very end of the period under study, thus contributed to the invisibility of homosexuals. In an in-

ternational survey on the position of lesbians and gays published in 1985, Gudni Baldursson, then chair of *Samtökin '78* - The National Organization of Lesbians and Gay Men in Iceland, commented on this:

It is apparent that a society of such proportions is necessarily one of high visibility for each and every person, and of tight social control. For the individual person it means that being openly lesbian or gay comes alarmingly close to being so publicly. And in facing this, one cannot ignore the fact that Iceland offers no refuge, such as a big city, should one wish to retreat, either to get away for a while or to start afresh.⁵

The Icelandic gay and lesbian group *Samtökin '78* was founded in 1978. Before that, homosexuality rarely figured in public discourse and many Icelandic gay men and lesbians chose to emigrate, most often to Copenhagen, but also to New York and other big cities in the United States, or to London, where they could live more openly. In the 1980s homosexuality became more visible in the public discourse, although often in negative terms. One such example was the heated debate between *Samtökin '78* and the National Radio, which lasted for years. It started in 1981 when the National Radio (the only radio station in Iceland at the time) refused to broadcast an announcement that read as follows: "Lesbians, gays, remember the meeting tonight. *Samtökin '78*."⁶ This censorship was enforced in the name of linguistic puritanism, and the National Radio tried to force the organization to use the derogatory term *kynvillingar* (derived from *kynvilla*, which literally means sexual aberration, a term analogous to the word for heresy, *trúvilla*) because it was considered to be "proper Icelandic."⁷ *Samtökin '78* had chosen to use the words *hommi* and *lesbía*, which were the expressions that Icelandic lesbians and gay men used to name themselves but which the National Radio considered improper language that "violates popular taste and decency."⁸

Medieval machismo

Same-sex sexual acts and desires have largely been neglected by Icelandic scholars in general, and by historians in particular. The most notable exceptions are studies of "unmanly men" in Icelandic sagas and medieval laws.⁹ Sex between two individuals of the same sex was not prohibited in *Grágás*, the Icelandic book of law from the Commonwealth period (1117-1271). Nevertheless, such relations seem to have been considered shameful. Three derogatory words were listed in *Grágás* that were associated with male same-sex sexual behavior; *ragur*, *stroðinn*, and *sorðinn*, all of which have become obsolete and have no meaning in modern Icelandic. The word *ragur* could mean homosexual, feminine, and/or cowardliness, while *stroðinn* and *sorðinn* are the past participles of "to have intercourse."¹⁰ *Grágás* laid down a harsh punishment (*skóggangur*, or being declared an outlaw) for using any of the three words to insult another man, and thereby

indicating that he had had sexual intercourse with another male, in particular if it was claimed that he had been penetrated. Such a grave insult entitled the offended party to revenge. According to a paper written by Folke Ström in 1974, the Icelandic terms “*ragur*” or “*argur*” (adj.) / “*ergi*” or “*regi*” (noun) were used to refer to men who were considered to be unmanly or homosexual. “To apply the term *argr* (or its synonym by metathesis *ragr*) to a man meant that he was ‘unmanly’ in various ways, and in particular that he was a coward and a homosexual.”¹¹ Ström claims that the word *ergi* could also be used for women, but in that context it was “virtually synonymous with nymphomania, which was a characteristic as much despised in a woman as unmanliness was in a man.”¹² The Icelandic historian Gunnar Karlsson argues that the terms “*ragur*,” “*argur*,” “*ergi*,” and “*regi*” generally had a double meaning. On one hand they simply denoted cowardice, but on the other hand, they were used to refer to what was considered abnormal sexuality. Examples from old Icelandic texts show that these abnormalities could take on various forms, although homosexual acts between men were the prevalent category.¹³ None of these concepts indicated the possibility of women engaging in same-sex sexual acts. The Icelandic literary scholar Dagný Kristjánsdóttir has pointed out that there were no terms in the Icelandic language for “lesbian” or “homosexual woman” until the late twentieth century. She maintains that this does not mean that people were unaware of the possibility of some form of sexual relations between women. As an example she takes up the Confession manuals of the Catholic Church where all sins needed to be explicitly named and defined, so a just punishment could be meted out.¹⁴ A prohibition on any form of same-sex sexual relation, both for men and women was spelled out in the confession manuals of bishop Þorlákur Þórhallsson from 1178, where it was listed as a deadly sin if “a man was befouled by another’s man’s hands,” or if a woman would do the same thing with other women, or with a four-legged beast.¹⁵

After the reformation, the so-called *Stóri dómur* or the Great Edict came into effect (1564-1838). It was a puritanical ethical code, which imposed severe punishments on sexual relations between relatives or between people that were related by marriage, carrying death sentence as the most severe penalty. During the seventeenth and eighteenth centuries at least 50 people, 25 women and 25 men, were sentenced to death for these “crimes,” or illegitimate love affairs. Adultery and sex between unmarried people was punishable by fines or public flogging. However, in its list of forbidden sexual activities, the Great Edict did not mention sexual intercourse between people of the same sex.¹⁶

A ban on “sexual intercourse, which is against nature”

In 1869 a new penal code came into effect in Iceland, based on a Danish model. The adoption of this legislation marked the abolition of a Danish penal code

which had been in force in Iceland from 1838 to 1869, and which had superseded the Great Edict.¹⁷ The Penal Code of 1869 was basically a translation of the Danish Penal Code from 1866. The new law was sent to Iceland as a Royal Proposal in 1867, and was discussed at length at the *Althingi* that summer. As noted earlier, Iceland was still under Danish rule and the *Althingi* was only an advisory assembly in session for a few weeks every other summer. The legislative power remained the prerogative of the Danish king.¹⁸

Among the provisions of the 1869 Penal Code was section 178, which criminalized sexual intercourse between two persons of the same sex, irrespective of age or consent: “Sexual intercourse [*samræði*] which is against nature is punishable by hard labor.”¹⁹ Section 178 was never mentioned during the discussions at the *Althingi*. Most sections of the new Penal Code were voted on separately, but section 178 was passed without comments or separate voting.²⁰ It was included in chapter sixteen of the Penal Code, which covered “Crimes against chastity” (*Afbrot á móti skírlífi*). Most of the provisions listed in the chapter dealt with adultery, forceful or coerced fornication, or incest. Generally speaking, the laws were gender specific, aimed at protecting women from sexual violation by men. The wording of section 178, however, was very broad and unspecific. The Icelandic word “*samræði*” literally means sexual intercourse and has no connotation of illicit or “bad sex.” Neither perpetrators nor victims are specified in the text, which at first sight seems to be gender neutral. But in regular usage “*samræði*” is equivalent to penetration, a penis entering into something, thereby presupposing the involvement of a man, although women were sometimes portrayed as active participants in the deed.²¹ As mentioned earlier, section 178 was merely a translation of section 177 in the Danish Penal Code of 1866, which only included sex between men, sex between a man and an animal, or anal sex between a man and a woman.²² It is therefore safe to conclude that section 178 did not apply to sex between women, and no evidence indicates that women were ever suspected of engaging in sexual relations with other women, let alone prosecuted for it. Section 178, however, made no distinction between unnatural sex between two men and sex with animals. Although the ban on sex against nature came into effect in 1869, it appears that a total silence surrounded the topic for about half a century. A short announcement that appeared in the journal *Skírnir* in 1900 is symptomatic of this silence. A column entitled “World-view” (*Heims-sjá*) written by the journal’s editor, Jón Ólafsson, listed deceased celebrities. In 1900, the last entry to appear on the list of famous dead people was a brief statement: “Wilde, Oscar, an important English writer and a criminal.”²³

Statistics

Statistical information on prosecutions for sex crimes in Icelandic district courts from 1869 onward is both scattered and unreliable, and it is difficult to ascertain

how many were prosecuted for violations of section 178. The Statistical Bureau of Iceland (*Hagstofa Íslands*) has published data on criminal court cases sporadically, covering the periods 1913–25, 1946–52 and 1966–74.²⁴ From 1885 to 1912 statistical information on crimes against chastity, or sex crimes, is available in Statistical reports (*Landhagsskýrslur*). A problem with these statistics, however, is that the categories used are very broad and inconsistent (see table 8). Sometimes all sex crimes, or crimes against chastity are lumped together without further definitions. Sometimes sub-categories like rape or sexual relation between relatives (*sifjaspell* or *blóðskömm*) have been added to indicate the nature of the offences more accurately. At any rate, the number of convictions for sex crimes is very low.

There was a drastic increase in crimes against chastity in 1910–12, when 10 people were prosecuted. This unexpected rise in sex crimes worried the author of the statistics report who wrote: “These crimes [against chastity] seem to be increasing, and that is not a pleasant thought. Most of these crimes are committed by foreign men, and those who have stayed abroad, where such crimes are quite common.”²⁵ This reference to foreign countries raises the question of the exact nature of those crimes. What kind of sexual crimes were more common abroad during the first decade of the twentieth century? Could the author be referring to the Great morality scandal that shocked Copenhagen in 1906 and 1907?²⁶ It is quite likely that rumors of the scandal had reached Iceland, possibly through Danish newspapers that were also followed in Iceland. No references or reports

Table 8. Convictions for sex crimes in Iceland by year, crimes specified when possible, 1885–1925.

| Year | Con- victions | Type of crime | Year | Con- victions | Type of crime | Year | Con- victions | Type of crime |
|---------|------------------|---------------|------|------------------|--|------|------------------|------------------|
| 1885–89 | 0 | | 1902 | 3 | .. | 1915 | 2 | .. |
| 1890 | 4 | .. | 1903 | 4 | .. | 1916 | 1 | .. |
| 1891 | 3 | .. | 1904 | 0 | | 1917 | 0 | |
| 1892 | 1 | incest (1) | 1905 | 1 | rape (1) | 1918 | 0 | |
| 1893 | 8 | incest (3) | 1906 | 1 | rape (1) | 1919 | 0 | |
| 1894 | 4 | .. | 1907 | 2 | incest (2) | 1920 | 0 | |
| 1895 | 3 | incest (1) | 1908 | 1 | infanticide (1) | 1921 | 0 | |
| 1896 | 4 | incest (1) | 1909 | 0 | | 1922 | .. | .. |
| 1897 | 2 | incest (2) | 1910 | 1 | .. | 1923 | 0 | |
| 1898 | 4 | incest (2) | 1911 | 7 | incest (1) sex with underage girls (2) | 1924 | 1 | .. |
| 1899 | 4 | incest (2) | 1912 | 2 | .. | 1925 | 1 | .. |
| 1900 | 2 | .. | 1913 | 4 | .. | | | |
| 1901 | 1 | .. | 1914 | 0 | | | | |

Sources: Landhagsskýrslur 1885–1912; Dómsmálaskýrslur 1913–18; 1919–25.

Note: “0” indicates that no cases were reported. “..” that no information was available. “Incest” refers to Icel. “blóðskömm,” which includes sex between in-laws.

on the Great morality scandal appeared in any of the eleven major newspapers that were published in Iceland at the time, however.²⁷ Moreover, a closer look at the three criminal cases involving crimes against chastity, which took place in Reykjavík in 1910-12, revealed no same-sex cases: a girl was prosecuted for having a child with her stepfather, and two men were prosecuted for sex with under-age girls.²⁸

Examining actual cases

The first recorded court case on a violation of section 178 was tried by the Reykjavík District Court in 1924. The accused, Guðmundur Sigurjónsson Hofdal, was sentenced to eight months in prison. Hofdal was a renowned sportsman and wrestling champion, who had participated in the 1908 Olympics, not as a contestant but to demonstrate Iceland-style wrestling, *glíma*. He had also lived in Canada for a period of time, where he joined the Canadian army and fought in World War One. Guðmundur was thus a worldly man who had traveled around.²⁹ In 1924, when he worked as a superintendent at the mental hospital “Litli Kleppur” in Reykjavík, he was prosecuted both for violating section 178



The wrestler and Olympic athlete Guðmundur Sigurjónsson Hofdal was the center figure of the first Icelandic scandal concerning homosexuality, in 1924. Here he is (standing furthest to the left in the picture) with the Icelandic Olympic team in 1908. Photo: Pétur Brynjólfsson. Courtesy, Collection of Photographs and Prints, National Museum of Iceland

and for using physical violence against patients in his care. In the police report and the public hearing, the two charges were brought up simultaneously and some of the witnesses testified on both charges. Magnús Magnússon, a lawyer and a writer, who served as a deputy for the Reykjavík chief of police in 1923-24, later described the conviction of Gudmundur in his memoirs.

Then I sentenced the only man that I know of who has been convicted for *homosexualisma* in Iceland. He was held in custody for a long time because he denied everything, in spite of the fact that between ten and twenty men accused him of that. But he eventually gave in after two men had testified that they had engaged in intercourse with him, one after another, at Thingvellir, on the sands close to the lake, on a hot summer day. He claimed that this was not congenital, but something that he had become accustomed to in the German trenches during World War One.³⁰

According to police records, however, only five men reported that Gudmundur had made sexual approaches toward them. The police records include detailed descriptions of the sexual acts that they supposedly had engaged in. The accusations were not limited to penetrative sexual intercourse (*samræði*), but included different kinds of indecent sexual behavior, such as the touching of genitals and oral sex. As Magnússon wrote, Gudmundur disputed most of the testimonies at the beginning.³¹ About a month later, the case was taken to a higher court of law, the Reykjavík District Court. Gudmundur Sigurjónsson Hofdal firmly denied having treated the patients unnecessarily harsh, but he admitted that he had had “carnal relations with other men” over the previous 15-18 years. He claimed, though, that he had never done it excessively, and that his urge was never so strong that he could not control it. Furthermore, he stated that he had never considered his acts sinful or punishable and he insisted that he had also had sexual feelings for women, and frequently engaged in sexual intercourse with the opposite sex. Three witnesses and the accused all agreed that they had had consensual “carnal relations” without any means of force or coercion, and with each of the three men that were called to testify, this had happened on two or three occasions. In addition, a few witnesses claimed that Gudmundur had made advances to them with sexual intention, but failed, as all of them resisted or fought back. They all admitted that once he realized that his advances disgusted them, he immediately stopped. Gudmundur firmly denied ever to have had sexual intercourse with youngsters under sixteen years of age, and none of the evidence proved otherwise. The District Court acquitted him on the violence charge, but found him guilty of illicit sexual contact with other men under section 178 of the Penal Code of 1869, and sentenced him to eight months’ imprisonment.³² Two well-known physicians, Gudmundur Thoroddsen, who also taught forensic medicine at the University of Iceland, and Gudmundur Björnsson, who was the head physician of Iceland at the time, wrote two separate appeals to the Prime Minister, Jón Magnússon. Both of them asked for a pardon for Gudmundur Sigurjónsson Hofdal, arguing that the Penal Code was thoroughly outdated and

homosexuality (*kynvilla*) between consenting adults should no longer be punishable under law. Thoroddsen ended his letter by stating that the honor of the Icelandic legal system was at stake.³³

The Prime Minister ignored the physicians' petitions, and in order to avoid publicity, Hofdal decided to accept the verdict instead of taking his case to the Supreme Court. Public opinion toward homosexuality was changing, however, and ten years after he had served his sentence he was granted a royal pardon. It was granted on August 8, 1935, five years before the ban on consensual homosexuality was abolished from the Icelandic penal code, but two years after a corresponding proscription had been repealed in the Danish metropolis. The initiative for the royal pardon came from Hermann Jónasson, Iceland's Prime Minister at the time.³⁴

Only three more cases of violation of section 178 have been found, all of them from the year 1928, and none of them were brought to the Supreme Court. Some documents of these trials have survived in the archive of the Ministry of Justice. The only document on the first one is a letter asking for a pardon, yet it is impossible to determine the exact nature of the crime it refers to. The petitioner says that "the man is an idiot, who is unable to learn," and concludes that a punishment would not do him any good.³⁵

In the second case from 1928 a teenage boy was prosecuted on the grounds that he had "during last winter, several times, had sexual intercourse against nature with a boy [...] who is six years old."³⁶ The striking thing here is the terminology and the categorization that is used. According to the standards of today, a sexual act with a six-year-old child, a boy or a girl, is considered child abuse, and strongly condemned by the society at large. In 1928 however, the case was categorized under the umbrella term "sexual intercourse against nature" where the focus was on the child's gender, while his young age appeared to be irrelevant. The violator, who was only sixteen years old at the time, was ordered to stay on a "good childless farmhouse" in the countryside until he was eighteen years. The court records state that "the vice was not deeply rooted, and as the accused now knows that this kind of behavior is highly indecent and punishable, the judge expects him to give it up for good and believes him to be harmless."³⁷ A similar pattern emerges a decade later, in 1938, in the wording on a case where a man was prosecuted for small thefts and for what was defined as "slightly abnormal sexual behavior," when the case in question concerned intercourse with a five-year old girl.³⁸ From a modern point of view, the focus on gender, and the indifference toward the child's age is quite astonishing. It seems that having intercourse with five- or six-year-old children was considered less of a crime than consensual sex between adult men, when compared with the case of Gudmundur Sigurjónsson Hofdal a few years earlier.

The last of the three cases from 1928 concerned attempted bestiality. A man was accused of two failed attempts to have intercourse with cows; in both in-

stances he was very drunk. The prosecution was based on section 178, and filed along with cases concerning men who were prosecuted for homosexual activities.³⁹

Homosexuality enters into public discourse

The scandalous case of Gudmundur Sigurjónsson Hofdal became very public and controversial at the time. *Morgunblaðið*, one of Iceland's biggest newspapers at the time, regularly published an update on the case, which became known as "*kynvillumálið*," or the "homo-case."⁴⁰ According to the paper, the "*kynvillu*" case was the talk of the town, and rumor said that the accused had in turn accused several men of similar sexual acts as he was being prosecuted for. *Morgunblaðið* maintained however, that this was only a rumor with no grounds in reality. Interestingly enough, a short ditty by an unknown author gives evidence that the Icelandic public probably knew and jokingly spoke about Hofdal's same-sex sexual desires already long before the "*kynvillu*" case reached the courtroom. The ditty refers to Gudmundur's participation at the 1908 Olympics where he was granted the honor of carrying the Icelandic flag at the opening ceremony. It parodies the sportsman's position in a slightly homophobic manner, suggesting that people knew about his tendencies at the time, although the word "*kynvilla*" was still not part the Icelandic vocabulary:

Gvendur walked before the lads
 carrying his burden.
 The reason was that nobody
 wanted him behind them.⁴¹

"Gvendur" is a commonly used nickname for Gudmundur, and "his burden" may refer both to his homosexuality and the flag he was carrying at the opening ceremony. As the verse refers to the 1908 Olympics, there are grounds to believe that it was written around that time, long before the concept of homosexuality had reached Icelandic public discourse. Another reference was made to Gudmundur and his sexuality in a ballad from 1927 (*Hótel rímur*), but there he was nicknamed "*Gvendur sóðómisti*," *sóðómisti* being a derogatory term for someone who engages in sodomy.⁴²

It was only in 1922, two years prior to the conviction of Gudmundur that the word "*kynvilla*" first appeared in print in Iceland. This was in the scholarly journal *Skírnir*, in an article entitled "On sex research" written by Stefán Jónsson, who at the time was a physician and an associate professor of medicine at the University of Iceland. The substance of the article was that natural differences between the sexes, both mental and physical, originate in the sex glands. The author argued that sometimes a mix-up between the two sexes could occur, resulting in severely deformed sexual organs, even to the extent that it could be hard to tell whether a baby was a boy or a girl, so the "wrong" sex could be assigned

to the baby. According to Jónsson, “These people only love people of their own sex. They are the so-called ‘*kynvillingar*.’” But this kind of “sexual aberration,” he claimed, could also appear without any signs of physical deformity. He went on to describe the prevailing view on same-sex sexuality: “*Kynvilla* is most often considered by healthy people as both disgusting and criminal.” In his opinion *kynvilla* was first and foremost a disease, which scientists should aim to cure, and he informed the readers about new research in the field of sexology. He reported the results by Eugen Steinach, a professor of medicine in Vienna, who tried to cure homosexuality by transplanting testicles taken from heterosexual men on his patients. He also mentioned the work of the Danish physician K. Sand, who was a student of Steinach, but unlike Steinach, Sand did all his experiments on animals. Jónsson concluded his article by stating that it would be a great victory for the medical sciences, if they could find ways to help and cure *kynvillingar*.⁴³

In 1925, a year after the sex scandal around Gudmundur Sigurjónsson Hofdal, a young Icelandic writer, future Nobel Laureate Halldór Kiljan Laxness wrote: “Reykjavík now has all that a cosmopolitan city needs, not only does it have



Nobel Laureate Halldór Kiljan Laxness. Unknown photographer. Courtesy, Laxness museum..

a university and a cinema, but also football and *hómosexúalisma*.⁴⁴ It is hardly a coincident that Laxness wrote this a year after the sensational “*kynvilla*-case.” According to Thorvaldur Kristinsson, however, Laxness was most likely referring to his good friend, Thórdur Sigtryggsson, who in 1925 already lived an openly gay life among friends and close acquaintances, although not in the society at large.⁴⁵ More importantly, when Laxness wrote about “football and *hómosexúalisma*” he was staying in Taormina in Sicily, which had been a popular gay retreat since the turn of the century, a place often associated with Wilhelm von Gloeden’s nude photographs of young men. In Taormina Laxness got acquainted with some gay men who became his friends, and that undoubtedly influenced his writings.⁴⁶ At that time Laxness was young and radical, and he enjoyed challenging his compatriots with provocative writings.

Thórdur Sigtryggsson was a well-known bohemian in Reykjavík and later left an imprint on Icelandic literature. According to Halldór Gudmundsson, author of a biography of Halldór Laxness, Sigtryggsson was the first inspiration for the character of the organist in Laxness’ novel *The atom station*, published in 1948.⁴⁷ Gudmundsson quotes Peter Hallberg, who demonstrated in 1953 that in the first draft of the book Laxness had described the organist in unambiguous terms: “He is self-educated, eccentric, and homosexual.” Yet all traces of homosexuality had been edited out from the final version of the book. Hallberg, however, is careful not to mention the name of Thórdur Sigtryggsson as the original inspiration, probably due to the hostile attitude toward gay men in the fifties.⁴⁸ Sigtryggsson can also be connected to the short story “Witticism and wisdom combined” (*Saman lagt spott og speki*), which is the earliest example of Icelandic literature with a gay theme. It was written by Elías Mar in 1960 and dedicated to Thórdur Sigtryggsson on his seventieth birthday.⁴⁹ Later, Elías Mar modestly claimed that in the story he had done little more than to write down Sigtryggsson’s own views and perspectives.⁵⁰

Higher age of consent for same-sex sexual intercourse

The Penal Code of 1869 was in force for seventy years, until it was replaced by the Penal Code of 1940. In the meantime, parts of the law had been amended or abolished, but section 178 retained its original wording till 1940, and during the seventy years it was in force, its legitimacy seems never to have been under discussion in the *Althingi*. The new Penal Code of 1940 was in preparation for some years, and its main author was Thórdur Eyjólfsson, a distinguished Supreme Court Justice. It was to a large extent modeled after the Danish Penal Code of 1930, although it had been modified to fit the circumstances of the Icelandic society. The 1940 Penal Code lifted the absolute ban on homosexuality prescribed in section 178 from 1869, and the modern view that consensual sex between two adults of the same sex should not be seen as a criminal offence was codified. The

prohibition of sex with animals was also abolished.⁵¹ The Penal Code was presented to the *Althingi* as a comprehensive body of law in the spring of 1939 and there was hardly any discussion about individual clauses. Only two members of the *Althingi* mentioned the fact that consensual sex between two adults of the same sex was no longer going to be illegal. Both of them did so in their presentation speech, when they introduced the whole bill to be voted on, and they both did it matter-of-factly, without any attempts either to justify or to problematize the decision. Magnús Gíslason who presented the bill in the Upper House of the *Althingi* had this to say:

Then there is a clause that states that sex between persons of the same sex shall no longer be punished. It is still punishable for a person over 18 years of age to have sexual intercourse with a person younger than 18 years. One can also be punished with up to 2 years in prison for having intercourse with a person of the same sex in the age span of 18-21 if one uses the advantage of age or experience to make the other participate in the intercourse.⁵²

In the Lower House of the *Althingi*, Bergur Jónsson gave the presentational speech and he made it even shorter: “Sexual intercourse between two persons of the same sex can only be punished, if either of the persons are younger than 21. In that case, the older one should be punished.”⁵³

As these two speeches suggest, the new law still imposed limitations on homosexual relations that were not applicable to heterosexuals. These were sections 203 and 207 that were both to be found in chapter 22 of the Penal Code, “Violation of Chastity” (*Skírlífisbrot*).⁵⁴ This chapter was generally gender specific, just as its predecessor. It dealt with various sexual crimes, where the violators were understood to be men, while women were portrayed as victims in need of protection. However, the first part of section 203 stated that the sexual violations listed in sections 194-98 and 200 should also apply to violent or coerced sex between persons of the same sex, carrying a sentence of up to six years in prison. The maximum punishment of six years for same-sex sexual crimes substituted the variety of punishments for men’s heterosexual sex crimes, which varied from one to sixteen years, the latter being the Icelandic legal definition of lifetime imprisonment.

The second and third subsections of section 203 both dealt with the age of consent, establishing higher age limits for same-sex than different-sex sexual relations. The general rule was outlined in section 200, aimed at protecting minors, which stated that “Anyone who has intercourse with a child, 14 years or younger, shall be sentenced to prison for a maximum of 12 years.” This part of the clause applied equally to the molestation of boys and girls. The next paragraph of section 200 added that anyone who seduced a girl aged 14-16 to have sexual intercourse, should be imprisoned for not more than four years.⁵⁵

As an exception to the above age limits, the second subsection in 203 stipulated: “If anyone has sexual intercourse with a person of the same sex under 18

years, up to three years of imprisonment is recommended for the person who is over 18. However, charges can be dropped if both persons are equal in age and maturity.”⁵⁶ But the higher age limit imposed on homosexuals went further than that. The third subsection of section 203 continued: “Anyone, who has sexual intercourse with a person of the same sex, aged 18-21, shall be put in custody or be imprisoned for up to two years if he had used the advantage of age and experience to persuade the younger party to participate in sexual intercourse.”⁵⁷ No court cases based on the last paragraph have been found, but more research is needed to rule out the possibility of prosecutions on this charge. Word of mouth from older members of the gay community in Reykjavík lends support to the supposition that the provision was not enforced, as they do not recall that anyone was ever prosecuted for same-sex sexual conduct with someone in the age group of 16-21. Nevertheless, the clause was a deterrent. Gay men certainly were aware of it, and knew that they had to be careful, so that they would not be caught in the gray area of the laws.⁵⁸

Section 207 dealt with same-sex prostitution. Generally speaking, heterosexual prostitution was not punishable under the Penal Code of 1940, but section 207 imposed specific limitations on homosexuals: “Anyone who engages in sexual intercourse with another person of the same sex for payment, shall be put in custody or imprisoned for no more than two years.”⁵⁹ As in other Scandinavian countries at the time, the blame for homosexual prostitution was put on the prostitute, usually a younger boy who sold his body in exchange for money to serve the sexual needs of an adult man. The buyer, the wealthier (and presumably older) homosexual, was not held responsible for such interaction. However, section 207 turned out to be a dead letter in Iceland. It appears that gay prostitution simply could not thrive in Iceland, probably due to the small size of the Icelandic society and its equally small gay community in particular. However, some of the court cases indicate that money was involved in some same-sex affairs, and in 1950 one man was prosecuted for violation of section 207 – the only known prosecution on this charge.⁶⁰

The Supreme Court of Iceland

The Supreme Court of Iceland held its first session in 1920, but no same-sex cases were tried there before 1940. Between 1940 and 1990, a total of nine cases were brought before the Supreme Court regarding violations of section 203 of the Penal Code. Of these, five were from the 1980s, and all but one involved sex with minors, i.e. boys younger than sixteen. In five of the nine cases, violation of section 203 was not the only offence, but was connected to violations of section 209, that is, “offence against public decency.” In spite of the fact that the wording of section 203 was gender neutral, no women were ever prosecuted before the Supreme Court for same-sex sexual acts.⁶¹

The first time that the Supreme Court had to deal with cases where sex between persons of the same sex was involved was in 1940, when two such charges were brought up in the same year. In both instances, the men in question were first prosecuted for violating section 178 of the 1869 Penal Code, but by the time the cases had reached the Supreme court, the Penal Code of 1940 had come into effect, so both of them were sentenced for violating section 203 of the new Penal Code. In both cases, a twelve-year-old boy, here referred to as Siggí, was the main witness. A third case, also from 1940, has been found where Siggí had accused yet another man of homosexual acts, though not of completed sexual intercourse. According to a report by the Reykjavík criminal police, this case was dropped for lack of evidence.⁶²

In the first case that was actually tried by the Supreme Court, a man was accused of fondling and making sexual offers to two sixteen-year-old boys, and thereby violating section 186 of the 1869 law, which in 1940 was reformulated as constituting a breach of section 209, “the public decency clause” of the new Penal Code. A more serious offence, however, was a violation of section 178/203, namely repeated sexual intercourse with a twelve-year-old boy that took place over the course of one year. The court records state: The boy [Siggí] “always agreed to have sexual intercourse with the accused, and he always received some payment afterwards, 1,50-3,00 krónas each time. He insisted that he only did it for the money, as he found no pleasure in it whatsoever.” The accused was convicted to eight months in prison, and the court set out that even if all the boys had agreed to the sexual acts committed, it was not possible to hand out less than full punishment for the sexual intercourse because of the young age of the boys.⁶³

The other case from 1940 also involved sex with two boys, aged twelve and fifteen. The twelve-year-old boy was Siggí, the main witness in the case mentioned above. Again he gave a similar testimony. “Siggí claims that he did not enjoy the sexual intercourse, but participated only because the accused usually gave him some money, only a few kronas each time, or at least most of the times.”⁶⁴ In 1941

Table 9. Convictions for violation of chastity in Iceland, 1946–74.

| Year | Rape | Sex with minors | Immoral sexual acts between persons of the same sex | Offence against public decency | Other sexual offences (art. 195–210) |
|---------|------|-----------------|---|--------------------------------|--------------------------------------|
| 1946–52 | 6 | 11 | 4 | 27 | 0 |
| 1953–65 | .. | .. | .. | .. | .. |
| 1966–68 | 8 | 4 | 1 | 25 | 5 |
| 1969–71 | 8 | 7 | 2 | 16 | 7 |
| 1972–74 | 8 | 5 | 0 | 9 | 6 |
| 1975–92 | .. | .. | .. | .. | .. |

Source: Justice statistics 1946–52; 1966–74.

the Supreme Court received a letter from the defendant's lawyer asking for pardon for the accused in this second case and he based his demand on scientific arguments. "It has become common knowledge, among scholars in the field of both medicine and criminal law, that the sexual misdevelopment known as *kynvilla* is a disease, for which it is generally both pointless and inhuman to punish someone. [...] The truth of the matter is, that such men deserve sympathy and help, rather than punishment."⁶⁵ No evidence indicates that the Supreme Court took this appeal into consideration. The convicted man served his eight-month sentence in full.⁶⁶

The next cluster of same-sex cases reached the Supreme Court in the 1950s. In 1955 a man was sentenced to prison for one year for violation of the second subsection of section 203, for having had sexual intercourse with a fifteen-year-old boy.⁶⁷ A year later, in 1956, another man was sentenced to three years' imprisonment for violating both the first and second subsections of section 203. On numerous occasions he had had sexual intercourse with, or raped, five boys between ten and twelve years of age.⁶⁸ No further cases concerning same-sex sexual acts reached the Supreme Court before the 1980s. From 1981 to 1990 the Supreme Court tried five such cases. Four of them involved attempted or actual same-sex sexual acts with minors, of sixteen years and younger, but one was a same-sex anal rape. Two of the accused were referred to psychiatric examination.⁶⁹

Statistics

Statistical information on sexual crimes brought before the different District Courts in Iceland is scattered and filled with gaps. The heading "immoral sexual acts between persons of the same sex" first appeared in the criminal statistics from the years 1946-52, and during this period four men had been convicted to prison for such crimes (see table 9). The four cases were all judged by Reykjavík District Court. There is a gap in the criminal statistics from 1953 to 1965, so for those fourteen years we do not know the number of court cases related to homosexual behavior that reached the district courts throughout the country. During the next period for which statistics are available, in 1966-68, only one man, from outside of Reykjavík, was convicted for "immoral sexual acts between persons of the same sex." His sentence is categorized in the statistics as falling between two and five years of unconditional imprisonment.⁷⁰ In the criminal statistics from the next period, 1969-71, two such violations are mentioned, again outside of Reykjavík, one resulting in conditional imprisonment and the other in 12-23 months of unconditional imprisonment.⁷¹ Those cases, however, have not been traced. During the six years 1969-74, no such cases are reported from Reykjavík District Court. From 1975 onward, no criminal statistics are available.

The criminal cases tried by Reykjavík District Court have been traced, and a closer look at the cases reveals that three of the men in question were charged for violating section 203 and one for violating section 207, or the prostitution clause. In the first case from 1950, two men were on trial: the older one, whom I will call Jón, for violating section 203, and the younger one, whom I will refer to as Hans, for violation of section 207. According to the court records, Jón paid Hans, who was nineteen at the time, for engaging in various kinds of sexual activity, but never anal sex. According to their own account, those encounters took place at least fourteen times. On each occasion Jón paid Hans 10–50 kronas, although sometimes he paid nothing.⁷³ Hans, who was also charged for theft and fraud, was sentenced to six months in prison for violating section 207, but the punishment was suspended. The older man, Jón, on the other hand, was sentenced to twelve months in prison for violation of section 203, though not on account of his sexual relation with the nineteen-year-old Hans. Instead he was found guilty of having had sexual contact with six young boys, five of whom were under sixteen.⁷³

In the next two cases that were tried by the Reykjavík District Court in 1950 and 1952, two men were sentenced to six months in prison. In 1950, a man, here named Karl, was accused of inviting two thirteen-year-old boys to his room, where he touched their genitals, and had them touch his. Another, more incriminating incident concerned a ten-year-old boy and it was supposed to have taken place in a public swimming pool, but the accused firmly denied those allegations. The court records are filled with very imaginative and homophobic descriptions of Karl's behavior around young boys in public swimming pools. Swimming pool guards were called to testify on events that they had witnessed years back. The reports are clearly colored by the homophobic atmosphere of the time.⁷⁴

In the case from 1952, a man, here called Sigmar, was accused of sexually assaulting two boys, aged eight and fourteen, on separate occasions. In both instances the defendant had lured a boy into his room, made him undress, and attempted to have intercourse with him, on both occasions without succeeding though. Like Karl, Sigmar too was given a six-month prison term.⁷⁵ Three years later, in 1955, Sigmar violated section 203 again, and that time his case went all the way to the Supreme Court where he was sentenced to one year in prison.⁷⁶

Gay and lesbian subculture

The year 1940 marked enormous changes in Iceland. It was the year when the new Penal Code came into effect and the absolute ban on homosexual relations between two consenting adults was revoked. In a broader historical context however, it was the year when World War Two struck Iceland. On May 10, 1940, Iceland was occupied by British troops and within about a month, around

20,000 British soldiers landed on Iceland. In 1941, the British and the Icelandic government reached an agreement with the United States that the US army would take over the defense of Iceland as the British army was needed elsewhere. The first American soldiers entered Reykjavík in July of 1941, and it has been estimated that as much as 60,000 American and British soldiers were stationed in Iceland during the peak time, most of them in the Reykjavík area.⁷⁷ It goes without saying that the invasion by the foreign armies had an enormous impact on all aspects of Icelandic society. Thousands of Icelanders moved to Reykjavík to take advantage of the new employment opportunities that were opening up through the foreign troops. Furthermore, relationships between Icelandic women and British and American soldiers quickly became an issue of national concern. Those relationships, nicknamed “The Situation” (*Ástandið*), were heavily condemned by the society at large, and women who became involved with the soldiers were by many conceived as traitors to the Icelandic nation, carelessly exposing the purity of the Icelandic race to foreign pollution.⁷⁸

While the focus was on sexual relations between Icelandic women and the foreign troops, the possibility of homosexual encounters between Icelandic men and British and American soldiers passed unnoticed. No research has been done on the matter, so it is impossible to estimate how widespread such relations really were. One police record has accidentally been found that describes a sexual encounter between an Icelandic man and an American officer that took place in a public park in Reykjavík in August 1943. The police caught them lying on the ground, the Icelander with his trousers down, turning his back toward the American officer. The Icelander was immediately arrested, and he later gave a testimony stating that they had been masturbating each other, and this was their second encounter. The first time, they had gone to the Icelander’s house, where they stroked each other’s penises. The Icelander insisted that the fact that he was turning his back toward the officer was just a coincident, which happened when he was trying to stand up after he had noticed the two policemen.⁷⁹

In a short interview that was published in 2004, Thórir Björnsson, or Thor, who was a young man at the time, fondly looks back on the war years.

The hordes of young men in uniform tantalized the teenager. [...] The Hotel Borg was semi-gay then [...] They had a “noon bar” open early afternoons. It attracted a bohemian crowd, and you could always meet men. It really was a pick-up place. [...] I don’t know how we knew each other was gay [...] but we managed. There were three or four cafes where you could discreetly meet guys. And down near the harbor there was a pissoire that was used for cruising during the war. Once the NATO base came, there were parties every weekend. Scandalous, some of them.⁸⁰

In spite of the fact that the fifties are generally known as a homophobic and repressive period in the Nordic countries, it was also a time when gay subculture first began to emerge in Reykjavík, most notably in connection to a café on Laugavegur 11, where openly gay men were among the regulars, along with

artists, actors, and students. The general public considered this unconventional crowd quite shocking.⁸¹ A weekly paper named *Mánudagsblaðið*, which could be seen as representing Iceland's yellow press at the time, wrote in 1953:

Renowned physicians have informed the paper that weak youngsters can become "homosexuals" if they are tempted to this field by older men, or by peers who have already caught the "disease" [...] and will never be what can be called "normal."

Later in the article the writer states:

It so happens now, that groups of *kynvillingar* have come into being, who don't try to hide their wrongdoings and have become troublemakers who don't hesitate to offend their colleagues and other people they come across.⁸²

Another example of the homophobic discourse, which from time to time flourished in the media, could be found about a decade later, in December 1964, when *Morgunblaðið* asked six citizens about their views on the Beatles-craze. In the opinion of a respected psychiatrist in Reykjavík,

... when the Beatles craze has reached this point, there is a certain danger. The danger I am referring to is *kynvilla* and especially *homosexualitet*. Many adult *homosexulistar* make passes, first and foremost, at feminine boys in their teens, and seduce them to have sex. And that is a real danger, as many boys, who are seduced to homosexual acts at this age, are unable to stop and then they become *kynvillingar*. ... I believe that the Beatles-boys are more in danger of being molested by homosexuals than other boys in their age group. So if we don't take a stance against the Beatles craze now, when it has reached this point, we are directly and indirectly promoting a situation in which more boys enter the road of *kynvilla*.⁸³

The atmosphere of homophobia that pervaded the Icelandic society at the time certainly had its effect on the gay population in Iceland. No one dared to "come out" as gay, but rumors spread easily, and some men were given derogatory nicknames like "*sóðó*," short for sodomite. Some gay men in Reykjavík still remember how they were called to testify, when their friends and fellows were being arrested for violating section 203 of the Penal Code.⁸⁴ Another manifestation of the deep-seated homophobia in Icelandic society was gay bashing. The maltreatment suffered by Haraldur Ómar Vilhelmsson, or Harry Schrader, as his German name was before he was granted Icelandic citizenship, is a case in point. In October 1968, three men broke into his house in the middle of the night with intent "to beat him up because of his unnatural sexual desire."⁸⁵ Two of the three men participated in the actual assault using a flower vase to beat him up, and they also tried to strangle him. Harald's fifteen-year-old boyfriend, Baddi, who was staying with him that night, came to his rescue and called the police. The police commissioner in charge, however, made no attempt to search for the three assailants who had run away, but instead he arrested Harald, the victim. Though he had suffered severe injuries, Haraldur was sent to prison instead of hospital, and accused of violation of chastity. The prison's physician refused him proper treatment, and it was only after the intervention of a pastor and Harald's

private doctor that he was transferred to a hospital and given proper treatment. Meanwhile, only one of the three perpetrators was taken to court, and ironically enough, it was the only one who had not participated in the physical violence. The incident hit the news, but the media was keener on Harald's "sexual perversions" than on the violence he had suffered. The assailants, and in a more grievous sense the juridical system of Iceland, thus not only destroyed his health but also his reputation and thereby his career as a teacher. In the end he was forced to leave the country.⁸⁶

Ironically, a year after the incident described above, Magnús Magnússon, the deputy who held Gudmundur Sigurjónsson Hofdal in custody, gave in his memoirs a rather positive account of the change in public attitudes toward homosexuality from the twenties to the sixties. According to him, the "kynvilla-case" of 1924 provoked both curiosity and rumors, and he went on to say: "Nowadays it would not attract any attention, as many men, and some of them not of the lowest ranks of society, are said to be 'gay,' and it is even fair to say, that it is considered to be 'smart,' and a sign of sophisticated artistic nature."⁸⁷

During the seventies things were slowly beginning to change. The first Icelandic to come out publicly as homosexual was Hörður Torfason, a well-known actor and musician at the time. In a magazine interview published in 1975 he openly discussed his homosexuality, and the prejudices and the persecution that he had endured because of it. The interview was considered quite scandalous at the time, as "the unspeakable" had been said out loud. It turned out that in the seventies Icelanders were not ready to tolerate gay lifestyle. Hence, shortly after coming out, Torfason was forced to leave the country and he emigrated to Denmark as many had done before him.⁸⁸ Later, he returned to Iceland and took active part in founding *Samtökin '78 - The Organization of Homosexuals* during the spring of 1978. Its name was modeled after that of the Danish gay organization, the Federation of 1948 (*Forbundet af 1948*), and its first declaration states:

We, lesbians and gay men in Iceland, want to share our knowledge with other homosexuals, to strengthen their understanding of themselves, and to encourage them to strengthen their self-respect. We want to increase awareness of our situation in the society at large so people will understand that we are a normal part of society. We want to enjoy the full ethical and legal rights; without discrimination, but we don't ask for special treatment.⁸⁹

Due to the organization's limited budget, its meetings were held mostly in private homes or short-term rentals. The around twenty founding members were all men, but some women had participated in a preparatory meeting held earlier that spring, and some women became members already during the first year.⁹⁰ Women continued to be a minority within *Samtökin '78*. For a long time lesbians made up about a quarter of the total membership, but more recently the number of lesbians has equaled that of gay men.⁹¹

If prejudice and homophobia characterized society's view on gay men, silence and invisibility surrounded the existence of lesbians in Iceland. An anecdote told by Dagný Kristjánsdóttir, a literary scholar and at the time an active member of the feminist group "The Redstockings," may serve as a humorous testimony of that. In the summer of 1978, Kristjánsdóttir was at the Redstockings office when an American journalist entered the office and asked where she could find Icelandic lesbians. Kristjánsdóttir replied quickly and without slightest hesitation: "They don't exist." When she noticed the surprise and the disbelief on the woman's face, she added, "They are both in Denmark." Kristjánsdóttir says that she didn't know any better at the time. There was a rumor that two or three members of the Redstockings might possibly be lesbians and they just happened to be in Copenhagen at the time. At any rate, lesbianism was not something that was spoken of, not within the feminist movement, nor in the society at large.⁹²

Toward equal rights for homosexuals

In the 1980s, advocates of lesbian and gay rights campaigned to make discrimination on grounds of sexual orientation illegal, just as Norway had done in 1981, but their proposal never even reached the parliament. An absolute silence on homosexual matters prevailed in the *Althingi* from 1940, when the new penal code came into effect, until 1985, when Kristín Kvaran, a representative of a small leftist party, The Association of Social Democrats (*Bandalag jafnaðarmanna*), proposed a bill to end the discrimination of homosexuals in criminal and civil laws. She called for the repeal of section 203, but she also called attention to various cultural and social injustices that lesbians and gay men were facing. The proposal was co-sponsored by representatives from all political parties except the conservative Independence Party (*Sjálfstæðisflokkurinn*). In her presentational speech, Kvaran referred to the anti-discrimination statements issued by the European Council on October 1, 1981 and by the Nordic Council on March 1, 1984. In spite of that, the bill did not receive much attention. It was sent to a committee, and nothing was heard of it since.⁹³

Seven years later, in 1992, the *Althingi* passed two bills, both carrying major improvements for the legal status of lesbians and gay men in Iceland. The former one was the abolishment of sections 203 and 207, the discriminatory clause on different ages of consent and the anti-prostitution clause. From its onset *Samtökin '78* had called attention to the unfairness of section 203 although the organization never made its abolition a priority issue as there were more pressing social and civil injustices that needed to be dealt with. In 1992, however, Chapter 22 of the penal code, "Crimes against Chastity" (*Skírlífisbrot*) was amended and renamed "Sexual Crimes" (*Kynferðisbrot*).⁹⁴ In connection with this, the chapter was fundamentally reworked to be gender neutral. Instead of

naming women as victims and men as sex violators the bill originally suggested using the gender-neutral term *manneskja* (a person), but when the bill was passed this term had been replaced by the more traditional term *maður* (man/person).⁹⁵ However, sections 203 and 207 were abolished altogether so that in 1992 homosexuals and heterosexuals finally gained equality before the criminal law. The commentary of the new bill included the following remark on the abolition of section 207: “On the basis of modern views toward homosexuals, the clause is no longer acceptable.”⁹⁶ This important legal change went through without any opposition in the *Althingi*, which indicates that the public opinion on its homosexuality had changed before the laws did. At the same time the general age of consent was lowered from 16 to 14, so that consensual sex between individuals over fourteen – men or women, gay or straight, was no longer punishable.⁹⁷ In the commentary it was further stated that the first paragraph of section 203 was no longer needed, as the new Chapter 22 of the Penal Code was gender neutral, and thus applicable to heterosexuals and homosexuals alike. During the general discussion on the law in *Althingi*, some members of the parliament, especially the representatives of the Women’s Alliance (*Kvennalistinn*), pointed out that the abolition of all laws that discriminated against homosexuals was long overdue.⁹⁸ Yet Sólveig Pétursdóttir from the Independence Party took quite a different stance. She argued that the abolition of section 203 was a matter of justice in the sense that homosexual sex offenders had been unjustly benefiting from the lower punishments stipulated for same-sex than heterosexual sexual crimes such as rape.⁹⁹

Epilogue

A further new proposal was brought up in 1992, identical to the one from 1985, this time by a member of the Women’s Alliance party, Ingibjörg Sólrún Gísladóttir, and co-sponsored by members from all political parties.¹⁰⁰ By now Icelandic society had become more tolerant of lesbians and gay men. Forty-eight members of the *Althingi* voted in favor of the proposal, fifteen were absent, and no votes were cast against it. The proposal stated that the Icelandic government should immediately appoint a committee of experts to investigate the legal, cultural, and social situation of homosexuals. On account of its findings, it was to suggest measures for obliterating all forms of discrimination against homosexuals in the Icelandic society. The committee delivered its comprehensive report in 1994, and thereby set the ground for some further legal improvements that were soon undertaken.¹⁰¹

To sum up: Before the 1990s, silence was the main response of the *Althingi* and of society at large, whenever the unjust legal and social status of homosexuals was called into question. Discrimination on the grounds of sexual orientation was a problem that all lesbians and gay men were faced with in their every-

day life, in one form or another. *Samtökin '78* thus made an anti-discrimination clause a priority issue and tried in vain to lobby for such a clause in the course of the 1980s.

Their old demand was eventually made a law in 1996, when the *Althingi* passed an amendment to sections 180 and 233 of the Penal Code, and the phrase “on grounds of [...] sexual orientation” was added to the list of causes protected under the law against discrimination on the work market.¹⁰² As a result of the committee report of 1994, the *Althingi* further passed a law in 1996 recognizing registered partnerships between individuals of the same sex.¹⁰³ Consequently, the 1990s brought with it substantial discursive change as homosexual matters gained visibility and they became an acceptable topic in public discussion and in the *Althingi*. Nevertheless, according to the equality clause of the Icelandic Constitution of 1995, sexuality is not listed as a ground on which discrimination is prohibited, instead sexual orientation falls under the category of “other status.”¹⁰⁴ In recent years, homosexuality has become a matter of concern for the majority culture. A clear demonstration of that is the fact that the Reykjavík Gay Pride festivities, “*Hinsegin dagar*” (Queer days), now draw massive crowds and rival the National Day celebrations in popularity. In a historical context, it is nothing short of a revolution in ways of thinking that in 2006 – some thirty years since the first Icelander came out publicly as a gay man and was forced to leave the country – an estimated crowd of 40,000 people, or 10–15 percent of Iceland’s population, gathered in the center of Reykjavík to enjoy the “*Hinsegin dagar*” festivities and express their solidarity to the lesbian and gay population of Iceland.

Notes

1 I want to express my particular gratitude to Thorvaldur Kristinsson, the former chair of *Samtökin '78 – The National Organization of Lesbians and Gay Men in Iceland* for providing me an excellent starting point on this project. He was generous with his own writings and suggestions, and later read early versions of this chapter, offering thoughtful comments and further advice. Thorvaldur also invited me to present this chapter in a lecture series organized by *Samtökin '78* and the University of Iceland in 2006, where I received lots of encouraging comments and suggestions. I am also indebted to my mother Guðrún Bjarnadóttir, a teacher and a historian, for her invaluable assistance in archival research in the National Library and in the National Archives. She spent some valuable weeks during her summer vacation in 2003 gathering data and transcribing court cases for me. I further want to thank Birna Thórarinsdóttir, who as a student employee at the Center for Gender and Women’s Studies at the University of Iceland searched through the rulings of the Supreme Court. The Reykjavík Academy gave me the opportunity to present my work at an early stage and my colleagues offered encouraging and useful comments and suggestions. Special thanks go to Jón Torfason at the National Archives of Iceland, and to Barbara Björnsdóttir at the Reykjavík District Court for all their help. Finally I want to thank the Center for Gender and Women’s Studies at the University of Iceland for hosting the project.

- 2 The population statistics are based on the National Register of Persons from 1990 on. Earlier statistics drawn from “Population in censuses 1703-1960 and according to the National Register of Persons 1953-1990,” and “Population of parishes, towns and counties 1769-1990.” In *Hagskinna* 1997, 49, 74-75.
- 3 For a general history of Iceland, see Karlsson 2000.
- 4 See for example Faderman 1981; Greenberg 1988; D’Emilio 1993; Katz 1995. Rydström 2003.
- 5 Baldursson 1985, 59.
- 6 “Lesbíur, hommar, munið fundinn í kvöld. Samtökin ’78.” Quoted in Thórarinsdóttir 1999, 288.
- 7 Baldursson 1985, 59.
- 8 “stríddu gegn almennum smekk og velsæmi.” Letter, March 6, 1981, from the head of the National Radio to Gudni Baldursson, who was the first chair of *Samtökin ’78*. Quoted in Thórarinsdóttir 1999, 289.
- 9 Karlsson 2003; Gade 1986; Meulengracht Sørensen 1983; Kress 1977/1996; Ström 1974.
- 10 “Ragur: samkynhneigður; blauður, huglaus.” “Stroðinn: (lh. þt. af sterða: hafa samfarir) sorðinn.” *Grágás* 1992, 273. (Chapter 114, *Vígaslóði*).
- 11 Ström 1974. Quoted in Kress 1977/1996, 22.
- 12 Ström 1974. Quoted in Kress 1977/1996, 38.
- 13 Karlsson 2003, 7-10.
- 14 Kristjánsdóttir 2003a, 458-59.
- 15 “mest ef madr saurgaz af annars karlmanz hondum . . . ef konor eigaz uith þangat thil er þeim leysir girnd . skal bioda þuilika skrift sem korum þeim er enn liotazsta hordom fremia sijn amillum . eða þann er framdr er uith ferfætt kuikendi.” *Diplomatarium Islandicum* I, 1857-76, 243. See also Karlsson 2003.
- 16 Jónsson 1993; Hákonardóttir 1992.
- 17 *Forordning ang. Criminalvæsenet paa Island, Kbhavn den 24. Januar 1838*, Copenhagen 1863. The Danish code was King Christian V’s Danish Law.
- 18 *Tíðindi frá Alþingi Íslendinga. Ellefta þing 1867*. Fyrri partur, 615-81, 727-87; *Tíðindi frá Alþingi Íslendinga. Ellefta þing 1867*. Síðari partur, 51-151, 424-42, 498-520, 598-611.
- 19 178. grein. “Samræði gegn náttúrlegu eðli varðar betrunarhúsvinnu.” *Almenn hegningarlög* [Penal Code] 1869, 683.
- 20 *Tíðindi frá Alþingi Íslendinga. Ellefta þing 1867*. Fyrri partur, 788.
- 21 See *Íslensk orðabók* 1980, 550. *Orðabók Háskólans* [The University dictionary online] lists 40 examples where the word “samræði” appears in written text. One of the examples refers to a man’s intercourse with two cows, in which case the man was punished by being buried alive. “Madr var þá qviksettr, er játað hefði a sic samræði med tveimr kúm.” The example is from Espólin, 1821, 87. The other 39 excerpts all refer to sexual intercourse between men and women, usually with men as the grammatical subject, but there are also examples where women are said to have “samræði” or intercourse with men.
- 22 Rosen 1993, 397-8.
- 23 “Wilde, Oscar merkt enskt skáld og glæpamaður.” *Skírnir* (November 30, 1900), 42.” I’m indebted to Thórarinn Eldjárn for this reference. See Ólafsson, 1900.
- 24 *Dómsmálaskýrslur* 1913-25; 1946-52; 1966-74.
- 25 “Þessi brot [afbrot gegn skírlífi] virðast vera að færast í vöxt, og er það allt annað enskemtileg tilhugsun. Þessi brot stafa mest frá útlendum mönnum, eða þeim sem í útlöndum hafa dvalið, því þar eru þessi brot all-tíð.” *Landsbagsskýrslur* 1899-1913, 261. [Statistical reports.]

26 The great morality scandal in Copenhagen involved dozens of men from the Copenhagen upper class and it was extensively covered by the press. Rosen 1993, 719–60.

27 Eleven newspapers that were published in Iceland at the time: *Ísafold*, *Reykjavík*, *Lögréttta*, *Þjóðólfur*, *Þjóðviljinn*, *Fjallkonan*, *Ingólfur*, *Norðri*, *Norðurland*, *Vestri* and *Austri* were consulted. No mention of the scandal could be found in any of them in a survey that covered the issues from around November 22, 1906, when the great morality scandal first hit the news in Copenhagen, to January 1907, and from mid June to September 1907, when the trial was resumed.

28 For this purpose, three court cases from Reykjavík were examined. See *Dómabók* [Court cases for Reykjavík] 1910–11 and 1910–13. Bf. Rvk. VII 17 and 18. *Hérðsdómur Reykjavíkur* (HR, Reykjavík District Court). *Þjóðskjalasafn Íslands* (ThI, National Archives of Iceland). The three cases in question were from May 20, 1911, September 23, 1911, and September 6, 1912.

29 Kristinsson 2002; Jökulsson 2000, 183–85.

30 “Þá dæmði ég eina manninn, sem ég veit til að dæmdur hafi verið hér á landi fyrir homosexualisma. Ég hafði hann lengi í gæzluvarðhaldi, því að hann neitaði öllu, þótt milli tíu og tuttugu menn bæru það á hann. En loks lét hann sig er tveir menn báru, að hann hefði haft samfarir við þá, hvorn á eftir öðrum austur á Þingvöllum í sandi niður við vatnið í breyskjuhita. Hann sagði, að þetta væri sér ekki meðfætt, heldur vanizt á það í skotgröfum í Þýskalandi í fyrri heimsstyrjöld.” Magnússon 1969, 235.

31 *Lögregluþingbók* [Records from the Reykjavík police.] 1923–26. February 28, and March 1, 7, and 12, 1924. Bf. Rvk. XVIII, 29. *Sakadómur Reykjavíkur* (SR, Reykjavík Criminal Court) ThI.

32 *Dómabók* 1923–25. March 31, 1924. *People versus Gudmundur Sigurjónsson*. Bf. Rvk. VII, 28. ThI.

33 Quoted in Jökulsson 2000, 184.

34 Jökulsson 2000, 185.

35 “Maður þessi er fábjáni, sem ekkert hefir getað lært.” *Stjórnarráð Íslands* [Government Offices of Iceland] I. Db. 7, nr. 403. ThI.

36 “kannast við að hafa síðastliðinn vetur nokkrum sinnum haft samræði gegn náttúrlegu eðli við drenginn [...] 6 ára gamlan.” *Stjórnarráð Íslands* I. Db. 8, nr. 414. 2927/1928. ThI.

37 “Talið var að lösturinn væri ekki rótgróinn hjá honum og þar sem hann viti nú að þetta athæfi sé mjög ósæmilegt og refsivert, býst dómarrinn við að [...] hætti þessu fyrir fullt og allt og verði ekki hættulegur.” *Stjórnarráð Íslands* I. Db. 8, nr. 414. 2927/1928. ThI.

38 “lítilllega afbrigðileg kynhegðun..” *Stjórnarráð Íslands* I. Db. 13, nr. 804. 3068/1938. ThI.

39 *Stjórnarráð Íslands* I. Db. 8, nr. 456. 3690/1928. ThI.

40 *Kynvillumálið* – or the ‘homosexual case’ – is a concept formulated with the derogatory word *kynvilla*. For the press coverage, see *Morgunblaðið*, February 28, March 1, March 19, April 3, and April 4, 1924.

41 “Gvendur undan gutta her / gekk og bar sinn klafa, / af því hann á eftir sér / enginn vildi hafa.” I am indebted to the poet and writer Thórarinn Eldjárn, who first told me about the ditty after I had presented an early draft of this paper at the Reykjavík Academy in the fall of 2003. He first heard it from his father, Kristján Eldjárn, the president of Iceland 1968–80. Thórarinn Eldjárn did not know the author’s name, nor the date when it was written but it refers to the 1908 Olympics, and to his best knowledge it was written around that time. It is impossible to rule out the possibility though that the ditty was written after the “*kynvilla*-case” in 1924. Eldjárn later saw the ditty on the Internet, on a specialized web site on Icelandic poetry, where it was presented as part of a poem, named Hotel Ballads (*Hótel*

rimur) from 1927. It turned out, however, that the ditty was not a part of the original Hotel Ballads, so it was left out from a mimeograph published in 1996. Þórarinn Eldjárn, personal communication, February, 2005.

42 The poem in question was named Hotel Ballads (*Hótel rimur*). It was originally from 1927, written by Tryggvi Magnússon and Finnur Jónsson. In the second ballad the name “*Gvendur sóðómisti*” appears, and in a footnote to a mimeograph publication from 1996, it was explained that “*Gvendur sóðómisti*” refers to Guðmundur Sigurjónsson Hofdal. Þórarinn Eldjárn, personal communication, February, 2005.

43 “Þessar manneskjur elska aðeins sitt eigið kyn. Þær eru það sem kallað er *kynvillingar* . . . Kynvilla hefir alla jafnan verið heilbrigðu fólki andstygd og talin glæpsamleg.” Jónsson 1922, 96; Oosterhuis 2000, 280.

44 “Þá hefur Reykjavík í skjótri svipan eignast hvaðeina sem heimsborg hentar, ekki aðeins háskóla og kvikmyndahús, heldur einnig fútboll og hómosexúalismá.” Laxness 1925/1986, 17. See also Kristinsson 2000.

45 Thorvaldur Kristinsson, personal communication, October 13, 2003; Guðmundsson 2006. For more about Þórdur Sigtryggsson, see Bergmann 1986, 228–39.

46 Guðmundsson 2004, 183; idem 2006.

47 Laxness, 1948/2003. In the final version of *The atom station*, the influences of Þórdur Sigtryggsson had more or less vanished, as another close friend of Laxness, Erlendur Guðmundsson (í Unuhúsum), who died while Laxness was writing the book, replaced him as the most influential model for the character of the organist. See Guðmundsson 2004, 526–27.

48 “Hann er sjálfmentaður sérvitringur og kynvillingur.” The sentence is a direct quote from Laxness’ first draft, which was probably written in 1946. Note that Laxness now used the word *kynvillingur* instead of *homosexual*, which he had used in 1925. See Hallberg 1953, 150.

49 Elías Mar 1960.

50 Kristinsson, personal communication, October 13, 2003.

51 *Alþingistíðindi* 1939 A, 388–89. For debates concerning the Penal Code in general see *Alþingistíðindi* 1939 B–D, 769–98.

52 Magnús Gíslason: “Svo eru og ákvæði um það, að kynferðismök persóna af sama kyni skuli ekki lengur teljast refsiverð. Þó er það refsivert fyrir persónu eldri en 18 ára að hafa kynferðismök við persónu yngri en 18 ára. Einnig varðar það allt að 2 ára fangelsi að hafa kynferðismök við persónu af sama kyni á aldrinum 18–21 árs, ef til þess er beitt yfirburðum aldurs og reynslu að koma hinum til þess að taka þátt í samförunum.” *Alþingistíðindi* 1939 B, 773.

53 Bergur Jónsson: “Kynferðismök milli manna af sama kyni eru því aðeins refsiverð, að annar aðili sé yngri en 21 árs; þá skal refsa þeim, sem eldri er.” *Alþingistíðindi* 1939, B, 781.

54 *Almenn hegningarlög* [Penal Code]. Law no. 19, February 12, 1940. Chapter XXII “Skírlífisbrot” in *Stjórnartíðindi fyrir Ísland árið 1940*. A–deild, 50–52.

55 “Hver, sem á samræði við barn, yngra en 14 ára, skal sæta fangelsi allt að 12 árum.” *Almenn hegningarlög* 19/1940 § 200.

56 “Eigi nokkur kynferðismök við persónu af sama kyni, yngri en 18 ára, þá varðar það fangelsi allt að 3 árum fyrir þann, sem eldri er en 18 ára. Ákveða má þó, að refsing skuli niður falla, ef báðir aðiljar eru á svipuðu aldurs- og þroskaskeiði.” *Almenn hegningarlög* 19/1940 § 203.2.

- 57 “Hver, sem hefir kynferðismök við persónu af sama kyni á aldrinum 18 til 21 árs, skal sæta varðhaldi eða fangelsi allt að 2 árum, ef hann hefir beitt yfirburðum aldurs og reynslu til þess að koma hinum til að taka þátt í mökunum.” *Almenn hegningarlög* 19/1940 § 203.3.
- 58 Kristinsson, personal communication, October 13, 2003.
- 59 “Hver, sem hefir kynferðismök við annan mann, sama kyns, fyrir borgun, skal sæta varðhaldi eða fangelsi allt að 2 árum.” *Almenn hegningarlög* 19/1940 § 207.
- 60 Dómabók, October 11, 1950. Case no. 3764-5/1950, 1170-79. Héraðsdómur Reykjavíkur (HR, Archives of the Reykjavík District Court). ThI.
- 61 *Hæstaréttadómar* [Rulings of the Supreme Court of Iceland] 1920-90.
- 62 Stjórnarráð Íslands I. Db. 15. Nr. 339. 994/1940. ThI.
- 63 “[Siggi] samþykkti ætíð að hafa mökin við ákærða og fékk alla jafnan einhverja borgun fyrir, frá kr. 1.50 til kr. 3.00 í hvert skipti. Kvaðst hann eingöngu hafa gert þetta vegna þess, að hann fékk fyrir það, því að nautn hafði hann enga haft af þessu.” *Hæstaréttadómar* XI, 1940. September 30, 1940, no. 52/1940, 358-66. Quote p. 364. For the sake of comparison, the prize of men’s haircut was 3 *krónur*, and shaving was 1 *króna* according to a price list published by the Association of Barbers in Reykjavík on March 30, 1942, four years after the incident took place.
- 64 “[Siggi] kveðst hins vegar enga nautn hafa haft af mökunum, heldur hafi hann gefið sig í þetta einungis vegna þess, að ákærði lét hann fá peninga fyrir, fáeinar krónur í hvert sinn, eða a.m.k. oftast nær.” *Hæstaréttadómar* XI, 1940. November 20, 1940, no. 51/1940, 477.
- 65 “Það er nú orðin almenn skoðun vísindamanna í læknisfræði og refsirétti, að sá kynferðislegi misþroski, sem nefnd er kynvilla, sé sjúkdómur, sem bæði sé gagnslaut og ómannúðlegt, að refsa fyrir að jafnaði. [...] Sannleikurinn er sá, að slíkir menn verðskulda fremur samúð og hjálp heldur en harðar refsingar.” Letter, January 27, 1941, from Sigurdur Ólafsson to the Supreme Court. Stjórnarráð Íslands I. Db. 15. No. 438. 366/1941. ThI.
- 66 *Hæstaréttadómar* XI, 1940. November 20, 1940, no. 51/1940, 472-73.
- 67 *Hæstaréttadómar* XXVI, 1955. May 16, 1955, no. 46/1955, 331-34.
- 68 *Hæstaréttadómar* XXVII, 1956. November 16, 1956, nr. 127/1956, 682-702.
- 69 *Hæstaréttadómar* 1981, 1988, 1990. May 13, 1981, no. 114/1981, 684-87; July 8, 1981, no. 147/1981, 1036-39; February 24, 1988, no. 348/1987, 241-54; February 22, 1990, no. 64/1990, 237-39; May 18, 1990, no. 122/1989, 720-27.
- 70 *Dómsmálaskýrslur* 1966-68.
- 71 *Dómsmálaskýrslur* 1969-71.
- 72 As a point of comparison, at that time the cost of men’s haircut was 8 *krónur* and the prize of shaving was 2.75 according to a prize list of the Association of Barbers in Reykjavík, June 8, 1950. It appears that Hans received a higher payment for his sexual services than Siggi had done a decade earlier. The most likely explanation for this is the age difference between them; Hans was nineteen at the time while Siggi was twelve or thirteen years old.
- 73 Dómabók 1950. October 11, 1950, no. 3764-65/1950, 1170-79. HR. ThI.
- 74 Dómabók 1950. April 4, 1950, no. 1362/1950, 394-401. HR. ThI.
- 75 Dómabók 1952. May 27, 1952, no. 1619/1952, 819-27. HR. ThI.
- 76 *Hæstaréttadómar* XXVI, 1955. May 16, 1955, no. 46/1955, 331-34.
- 77 Bernhardsson 1996, 12.
- 78 Helgadóttir 2001; Baldursdóttir 2000.
- 79 Lögregluþingbók Reykjavíkur, August 7, 1943. A 293, 1-6. SR. ThI.
- 80 Björnsson 2004, 28.
- 81 Kristinsson 1999.

82 “Merkir læknar hér hafa upplýst blaðið um það, að veikgeðja unglingar geti orðið ‘homosexuals’, ef þeirra er freistað á þessu sviði af eldri mönnum eða jafnöldrum sínum, sem tekið hafa ‘sjúkdóminn’ . . . og aldrei verið það sem kalla má ‘normal’ . . . Svo er nú málum háttað hér, að skapazt hafa hópar kynvillinga, sem ekki fara með nokkurri leynd með villu sína og eru á sinn hátt orðnir vandræðamenn og sjást ekki fyrir að móðga samstarfsmenn sína og aðra sem þeir umgangast.” “Kynvilla á Íslandi,” *Mánudagsblaðið*, November 23, 1953. Quoted in Jökulsson 2001, 35.

83 “Þegar Bítlaðið er komið á þetta stig þá er hér ákveðin hætta á ferð. Sú hætta sem ég á hér við er kynvilla og sérstaklega homosexualitet. Margir fullorðnir homosexualistar leita fyrst og fremst á kvenlega stráka á táníngaaldrinum, og tæla þá til kynferðismaka við sig. Það er einmitt í þessu sem hættan er fölgín, því að margir strákar, sem láta tælast út í homosexual mök á þessum aldri, geta ekki hætt og verða síðan kynvillingar. . . . Ég tel t.d. að bítlastrákar eigi að öðru jöfnu frekar á hættu að verða fyrir áreitni kynvillinga, en jafnaldrar þeirra. Ef við tökum ekki ákveðna afstöðu gegn bítlaeðinu, þegar að það er komið á þetta stig, þá erum við beint eða óbeint að stuðla að því að fleiri strákar leiðist út á braut kynvillunnar.” *Morgunblaðið*, December 1964. Quoted in Kristinsson 1999. See also Hjálmarsson 2001, 57. For more about the media discourse on homosexuality in the 1960s, 1970s and 1980s, see Björnsdóttir 2006.

84 Kristinsson 1999.

85 “berja hann vegna óeðlilegra kynhvata, sem hann væri haldinn.” This is a direct citation from the offender’s testimony. Quoted in Vilhelmsson 1971. At that time, Icelandic law required new citizens to adopt a name that would fit into the Icelandic name system, based on the given name and a patronymicon.

86 Vilhelmsson 1971, see also Kristinsson 1999.

87 “Nú mundi það ekki vekja neina eftirtekt, því að fjöldi manna og það jafnvel ekki af verra taginu eru sagðir ‘hommar’ og mun jafnvel ekki fjarri, að það þyki ‘fint’ og bera vott um háþroskað listamannseðli.” Magnússon 1969, 235.

88 The interview was published in *Samúel* in August 1975. Quoted in Jökulsson 2001, 318-19. Cf Björnsdóttir 2006.

89 “Við lesbíur og hommar á Íslandi viljum miðla þekkingu til hómosexúal einstaklinga og efla með þeim skilning þeirra á sjálfum sér og treysta afstöðu þeirra til sjálfra sín. Við viljum miðla þekkingu á málefnum okkar til alls samfélagsins svo að það öðlist skilning á þeim og á því að við erum eðlilegur hluti af samfélaginu. Við viljum njóta fyllstu réttinda, siðferðilegra og lagalegra án nokkurs manngreinarálits, en förum ekki fram á nein forrét-tindi.” Quoted in Kristinsson 2003b, 264. In 1982 the organization’s subtitle was changed to its current form, namely, *Samtökin ’78 – Félag Lesbía og Homma á Íslandi*.

90 *Skýrsla nefndar um málefni samkynhneigðra* [Report from the Commission on the situation of homosexuals], 1994, 75; Jökulsson 2001, 59.

91 Kristinsson 2003b, 263.

92 There are two versions of the story. In the printed version Dagný Kristjánsdóttir says about the Icelandic lesbians: “They are all in Denmark.” see Kristjánsdóttir 1999, 292. In a paper that was presented at the 25th anniversary of *Samtökin ’78* at the University of Iceland on April 11, 2003 all changed into *both*: “They are both in Denmark.” The latter version, of course, makes a better story. Kristjánsdóttir, 2003b.

93 *Alþingistíðindi* 1985-86, A-2, column 940-41; *Alþingistíðindi* 1985-86, B-2, col. 1791-96.

94 Lög nr. 40, 26. maí 1992: Lög um breyting á almennum hegningarlögum, nr. 19, 12. febrúar 1940 [Law no. 40 of May 26, 1992: Amendment of the Penal Code, no. 19, February 12, 1940] in *Stjórnartíðindi A* (1992), 108-11. “Heiti XXII. Kafli breytist svo að í stað

‘Skírlífsbrot’ komi: ‘Kynferðisbrot.’” *Althingi* May 15, 1992. <http://www.althingi.is/altext/stjt/1992.040.html>.

95 The Icelandic term *manneskja* is a generic noun, meaning “human being,” while the term *maður* is a pseudogeneric. On the one hand it is a general term including all human beings, but it is also used as the noun for “man,” or “male person.” *Maður og kona* thus means a man and a woman. There was an intensive debate on whether the term *maður* or *manneskja* should be used. Tradition won, and the term *maður* was adopted for the law, in spite of protests from the members of the Women’s Alliance.

96 “Miðað við nútímaviðhorf gagnvart samkynhneigðum er ákvæðið úrelt.” *Alþingistíðindi* 1991-92, A-2, col. 792.

97 Lög nr. 40, 26. maí 1992: Lög um breyting á almennum hegningarlögum, nr. 19 12. febrúar 1940 [Law no. 40 of May 26, 1992: Amendment of the Penal Code, no. 19 of February 12, 1940]. Thorvaldur Kristinsson discusses how radical the new laws were in Kristinsson 2003a, 260.

98 Ingibjörg Sólrún Gísladóttir, Speech at *Althingi* November 13, 1991. See: *Alþingistíðindi* 1991-92, B-2, col. 1346-47.

99 According to the Penal Code of 1940, heterosexual rape was punishable for a maximum of 16 years, while the maximum punishment for any same-sex crime was 6 years. See Sólveig Pétursdóttir, speech at the *Althingi* November 13, 1991. *Alþingistíðindi* 1991-92, B-2, col. 1353.

100 *Alþingistíðindi* 1991-92, B-6, col. 9596.

101 *Skýrsla nefndar um málefni samkynhneigðra*, Reykjavík, October 1994.

102 Lög nr. 135, 13. desember 1996. Lög um breyting á almennum hegningarlögum, nr. 19, 12. febrúar 1940 [Law no. 135 of December 13, 1996. Amendment of the Penal Code, no. 19 of February 12, 1940, along with later changes (protection against discrimination)]. <http://www.althingi.is/altext/stjt/1996.135.html>.

103 When registered partnership was enacted, it had an equal status with heterosexual marriage, with the exception that registered partners were denied the right to adopt children, and lesbians were denied access to assisted reproduction. Since June 27, 2006, couples in registered partnership have the right to apply for adoption on the same terms as different-sex couples, and lesbian couples have access to assisted reproduction. Still, partnership between same-sex couples can only be registered by a civil registrar, as the Church of Iceland refuses to accept such relations. Lög um staðfesta samvist nr. 87, 12. júní 1996 [Law on registered partnership, no. 87 of June 12, 1996 (effective as of June 27, 1996)]. Lög nr. 65, 14. júní 2006, um breytingu á lagaákvæðum er varða réttarstöðu samkynhneigðra (sambúð, ættleiðingar, tæknifróvgun). [Law no. 65/2006, June 14, 2006, amending laws regarding the rights of homosexuals, assisted fertilization)]. <http://www.althingi.is/lagas/129/1996087.html>.

104 Lög nr. 97, 28. júní 1995. 65. gr. [Law no. 97, June 28, 1995, Article 65].

Greenland and the Faroe Islands 1866-1988: Nordic Peripheries

by Jens Rydström

Once an extended sea power, Denmark for centuries controlled trade and fishing in the North Atlantic.¹ In the twentieth century, however, the Danish North Sea empire began to break up, and when Denmark was occupied by Nazi Germany during World War Two, its overseas territories began leading their own life. Iceland broke its bonds with Denmark in 1944, when a 25-year-old agreement of a personal union with Denmark had expired.² The Faroes, an archipelago of steep volcanic islands between Scotland and Iceland, were granted autonomy within the Danish kingdom in 1948. In 1953 the colonial status of Greenland formally ended when the new Danish constitution declared it a Danish overseas province, and in 1979 Greenland obtained a similar kind of home rule as had previously been given to the Faroes.³

The differences between Greenland (present population 57,000) and the Faroes (present population 48,000) are so enormous that any systematic comparison between the two risks becoming meaningless. In the nineteenth century, the Inuit-speaking hunters on the vast ice-covered island of Greenland, targets of Danish and German missionary efforts, had nothing in common with the fishermen of the green and hilly islands of the Faroes, speaking a Nordic language that was marginalized by the authorities, and living in scattered fishing villages with staunch Lutheran traditions. But their shared history as Danish dependencies, and their experiences of increasing independence from Denmark during the last half century motivate their being treated in the same chapter. In both countries the relation to Denmark and Danish law is a sensitive issue, and since 1997 they both cooperate politically with Iceland in the West Nordic Council. Being two isolated areas in the periphery of the Nordic community, they also have in common the fact that same-sex sexuality has been a taboo subject and that their small coastal towns and villages never have had the ability to support gay and lesbian networks in the modern sense. Instead, they display the typical traits of rural same-sex sexuality during the twentieth century: complete discretion and/or exile.

Danish popular attitudes to its two Atlantic provinces differ considerably between the two. If Greenland is the vast unexplored *terra incognita*, a sym-

bol of Danish masculinity, where ideally bold Danish explorers go hunting for new land, the Faroes are mostly seen as a backward folkloric province inhabited by conservative Christians who are constantly complaining and cost a lot of money.⁴ The colonial relationship is more obvious in the case of Greenland, but there are tensions between both areas and their mother country, in which the attitudes to the former colonies include tendencies to exoticize “the Other.” In the history of both countries, Danish voices have set the stage and possessed the privilege of interpretation. What Gayatri Spivak calls subaltern voices are hard to discern. Moreover, in the present study we must not forget that the court system is one of many tools for colonial domination. On the one hand the principle of likeness before the law helps to fight discrimination, but on the other the suppressing of difference will impose the values of a dominant culture upon a dominated group. And, as always, it is hazardous to use court records for historical research, since they are, so to say, impregnated with power, or are indeed an incarnation of power itself. This makes it all the more important to tread cautiously when interpreting these sources – to “read against the grain,” look for alternative interpretations, and listen carefully for the voices of the dominated.⁵

In the case of the Faroes, however, the legal court was not imposed from the outside as part of a “civilizing” mission. On the contrary, the Faroese court of law, which was also a parliamentary assembly, has been the most important forum for the Faroese quest for independency and self-determination.

THE FAROE ISLANDS

The Faroe Parliament, the *Løgting*, disputes with the Icelandic *Althingi* the honor of being the oldest still-functioning parliamentary assembly in the world. The Faroese trace its history back to the beginning of the ninth century, and like its Icelandic counterpart, the *Løgting* divided its workings in deliberative and judiciary functions. In the sixteenth century the Icelandic collection of laws, the “Great Edict” (*Stóri dómur*), was in force in the Faroes and stipulated severe punishments for sexual crimes, in particular for incest.⁶ Formally, the Faroes were part of the Norwegian king’s domain, and after the Danish-Norwegian union in 1380 remained so. Thus, it was King Christian’s Norwegian – and not his Danish – Law that was promulgated in the islands in 1687. Two centuries later, however it was the Danish Penal Code of 1866 that was put in force in what had then become a Danish county (*Amt*). After having been abolished in 1816, the *Løgting* was restituted as an advisory body in 1852, but it still had no influence on criminal legislation.⁷

The Reformation was detrimental to Faroese language, since Danish became the language used in churches and schools. Written Faroese virtually died out in the seventeenth century, and the romantic nationalist movement in the nineteenth century concentrated much of its efforts on reviving the language and

constructing a modern orthography. Consequently, Faroese nationalism became particularly romantic and conservative. Old habits, like the medieval ballads and chain dances, became powerful symbols of Faroese culture, and innovations from the Danish capital were regarded with suspicion.⁸

Criminal Law

In modern times, the Faroese judicial system has been, and still is, a part of the Danish judiciary. Separated from the *Løgting* since 1816, the Faroese Court (*Færøernes Ret*) in Tórshavn is court of first instance, and Eastern High Court (*Østre Landsret*) in Copenhagen serves as the appellate court. During World War Two, when the Faroes were blocked from all communication with Denmark, the Faroese Court dealt with appeals itself by trying the cases anew with a new judge. After the war, however, the old hierarchy was reestablished and, unlike Greenland, the Faroes do not have any court of appeal in their territory.

The Danish Penal Code that was in force in the Faroes from 1866 to 1933 included a total ban on “intercourse against nature,” but that provision was hardly ever used in the Faroes. Only twice did the prosecution press charges for violation of section 177, but both these cases were in the end judged as gross indecency according to section 185.

The overall pattern of prosecutions for sexual crimes in the Faroes corresponds with what can be expected from a rural province with no large urban areas (see table 10). Many minor offences were probably taken care of by the informal mechanisms of control and only instances of violence and abuse were

Table 10. Prosecutions for sexual crimes in the Faroese Court, 1875–1932. Five-year intervals.

| | Adultery (§ 159) | Incest (§§ 161-65) | Rape (§ 168-69) | Intercourse against nature (§ 177) | Prostitution (§ 180) | Gross indecency (§ 185) |
|---------|---------------------|-----------------------|--------------------|---|-------------------------|-------------------------------|
| 1875–79 | | 2 | | | | |
| 1880–84 | | | 1 | | | |
| 1885–89 | | | | | | 1 |
| 1890–94 | 1 | 2 | 1 | | 2 | |
| 1895–99 | | | | | 1 | 1 |
| 1900–04 | | | 2 | | | 1 |
| 1905–09 | 1 | | | | | 5 |
| 1910–14 | | | | 1 | | 2 |
| 1915–19 | | | 1 | 1 | | 1 |
| 1920–24 | | | 2 | | | 3 |
| 1925–29 | | | | | | 2 |
| 1930–32 | | | | | | |

Sources: Docket books and court records, The Faroese Court. Sorenskriveren. Faroese National Archives.

Note: Numbers in parentheses refer to sections of the Danish Penal Code of 1866.

taken to court. But the court also had an important role in setting the moral standards of the community. When the wife of Thearjardis Dam, 51-year-old Anna Maria, in 1899 once more disturbed public peace and order in Tórshavn by pinching a man's buttocks and shouting foul words at him, the court reacted. She had previously been given a lighter sentence for gross indecency and false accusations. According to many testimonies, she was "prone to use raw and indecent language, also in the street, and she is with her whole being a nuisance to the neighbors." Hoping that she would learn a lesson the court decided to put her away on bread and water for three days, and she had to pay the costs of the trial.⁹

The clause prohibiting intercourse with underage girls was never used during this period – it required penetration – and instead the section on gross indecency was used. A small number of prosecutions for gross indecency concerned same-sex sexuality, and almost invariably they were cases of child abuse. Between 1887 and 1928, three male teachers were charged with sexual abuse of their male pupils. A prosecution of this kind, against one of the most important representatives of power in the local community, brought with it severe stress on the hierarchical system. The reluctance to prosecute was probably high, and only severe abuse was prosecuted. In 1887 a teacher of a village school had not only touched the boys' genitals, but also threatened to castrate them, partly as punishment, partly, as he said, "to try the boys and see if they were prepared to suffer for their faith like the martyrs." He had even cut the scrotum of one of his pupils with a pocketknife, but the court noted that the wound was "not even half an inch long, and not very deep, and according to the physician's statement cannot be hazardous to the boy's health." There had been some questions as to whether the teacher was mentally ill, but the physician deemed him accountable for his acts, and he was sentenced for gross indecency and physical damage to thirty days on bread and water.¹⁰

The only teacher who was actually prosecuted for violation of section 177 had in 1913 attempted anal intercourse with a 14-year-old pupil. He was working in an isolated place with few inhabitants, and he asked one of his pupils to move in with him and help him with the household. As they shared the bed, the teacher began fondling the boy. In court, the boy said that he had been penetrated anally, but the teacher denied it. Since it could not be proved that he had actually penetrated the boy, the teacher was sentenced according to section 185 to eight months' hard labor. This time there were more discussions in court whether the teacher was sexually abnormal or not. The Faroese district physician had examined him in search of "possibly occurring degenerative dispositions" but concluded that he was normal. The teacher himself declared that he had not harbored "abnormal" sexual feelings before the boy moved in with him. He had never had sexual relations with women, but when he had had ejaculations at night, he had "always experienced normal sexual proclivities." The normality

of the teacher was thus established by referring to his sexual fantasies, and the deeds he was guilty of were explained by “conditions that were unusual for him (isolated place, shared bed).”¹¹ The pronounced interest for the state of mind of those found guilty of “unnatural” sexual activities reflects the ongoing medicalization of same-sex sexuality in the Western world. Faroese authorities seemed to be in close correspondence with the latest scientific findings, and their regulation of sexuality followed a pattern that can be studied in almost every Western European country.

In 1917, however, another court case indicates that the medical discourse was not yet completely dominant. For two years, the 38-year-old first mate of the *Ofelia* had had sexual relations with the ship’s two deckhands, 16 and 18 years old. None of the crimes had been committed in Faroese territory, but in port in Portugal, Newfoundland, Norway, and other places. In November 1915, when the ship was at Lerwick, in the Shetland Islands, the first mate told the younger deckhand lascivious stories about men having sex with men and then persuaded the boy to let himself be used sexually. When the older boy joined the ship in April 1916, however, the first mate lost interest in the younger one. He told the 18-year-old that having sex with men was “just as good as doing it with women” to which the boy replied that “he didn’t believe it.” He nevertheless let himself be persuaded, but when they were in port in Setúbal in Portugal he told the captain of a Danish ship that was also in port what the Faroese first mate was doing to him. The Danish captain reported it to the captain of the *Ofelia*, and when the ship arrived in the Faroes the first mate was arrested.¹²

Neither of the deckhands had protested, and the first mate had never threatened them or used violence, but the boys explained to the court that they dared not disobey their foreman. Much of the court’s deliberations circled around the question whether the first mate had penetrated his subordinates anally. Both boys claimed he had, but he firmly denied it. He said that he knew that such a practice was punishable, so he had placed his penis between the deckhands’ thighs. When asked, he said he had never had sexual intercourse with men before, and pointed out that he had been married since 1904. He did not have any “feelings of disgust” for having intercourse with women and had not preferred sexual intercourse with the two deckhands to sexual intercourse with women. He explained to the court that “lacking the one he had begun desiring the other.” There was no medical examination of the first mate, and the court concluded that it could not be ascertained if penetration had actually occurred. Therefore he was not in violation of section 177 but was found guilty of gross indecency according to section 185. The fact that the deckhands had let him have his way with them was not in itself an alleviating factor, but since he sincerely regretted his deeds, and since he already had been in custody for nine days, he was sentenced to only fifteen days on bread and water.¹³

When homosexuality was decriminalized in Denmark in 1933, the same law was automatically put in force in the Faroes, and the higher age of consent for homosexual relations that the Danish Penal Code prescribed also became Faroese law. Section 225 in the new penal code stated that the sexual crimes mentioned in previous sections were also punishable if committed between persons of the same sex, and its second subsection (section 225.2) set the age limit at 18 for homosexual intercourse (compared to 15 for heterosexual contacts). The punishment for all kinds of same-sex sexual crimes was set at six years – considerably less than for instance the maximum sentence for heterosexual rape, which was sixteen years. Thus, women were for the first time included in the anti-homosexuality legislation, but no woman was ever prosecuted for homosexual crimes in the Faroes.

From 1948, amendments to the Danish criminal law were no longer automatically valid in the Faroes, but the *Løgting* was granted the right to decide whether to put them in force. Depending on how the Danish law was constructed, it could either be put in force through a simple *Løgting* decision, which was to be published in *Dimmalætting*, (from 1989, in *Kungerðablaðið*), or the *Løgting* had to request that the Danish Government issue a royal decree putting the law in question in force in the Faroes. Since 1948, Faroese legislation can thus differ from Danish in a number of areas, but the Faroese Court is still part of the Danish court system, and there is a general will not to let the two countries' legislation drift too much apart. On the other hand, the *Løgting* is prone to demonstrate its independence from Denmark, and in some moral issues Faroese laws take a more conservative stand. Thus, abortions in the Faroes are regulated by a Danish law from 1956, which is much more restrictive than the law on abortion currently in force in Denmark. Moreover, the Faroese Parliament for a long time refused to introduce any laws protecting gay and lesbian rights.

When it comes to the Penal Code, the process of keeping it up to date with Danish legislation has been somewhat haphazard. Ideally, the Danish High Commissioner (*Rigsombudsmanden*) should regularly bring amendments to the Danish Penal Code for consideration to the *Løgting*, but that has not always happened. In 1966 the *Løgting* undertook a thorough revision of the Faroese Penal Code and, with some exceptions, adopted all amendments to date of the Danish Penal Code, asking the Danish Government to confirm its decision by a royal decree. That had the queer consequence that the same decree both introduced and abolished section 225.4, known as the "Ugly Law," which criminalized the purchase of sexual services from persons of the same sex under 21. This law was in force only four years in Denmark, between 1961 and 1965, and was severely criticized for making homosexual men easy victims for young blackmailers. To its history might thus be added that the Faroese Parliament both introduced it and abolished it on the same day, on April 1, 1966.¹⁴ This is, of course, a reflection of the awkward position of a legislative assembly, which is not fully

independent, and there is perhaps no wonder that a law on homosexual prostitution had no priority when such prostitution hardly existed in the Faroes.

The same dynamics – or lack thereof – may explain why the Faroes waited twelve years before they adopted a law that established the same age of consent for both homosexual and heterosexual relations. This had happened in Denmark in 1976, but it was not until 1988 that the law amendment was put in force in the Faroes. In 1983, a Swedish gay rights activist wrote to the Danish National Association of Gays and Lesbians (LBL). He asked about the situation for gays and lesbians in the Faroes, and specifically about anti-homosexual legislation. Bent Hansen of the LBL answered him that according to the Danish Ministry of Justice “there is no difference between Danish and Faroese legislation in the areas you mention.” But he did not seem sure, because on the same day he wrote to the Chief of Police in Tórshavn and asked him for a copy of chapter 24 of the Faroese Penal Code (crimes against chastity), “since we are in doubt whether the Danish Penal Code is different from the Faroese [regarding homosexuality].” The Faroese Police promptly sent a copy of the law, which clearly showed that the higher age of consent was still in force in the Faroes, but the LBL did not take any further action in the matter.¹⁵

The higher age of consent was not lowered in the Faroes until 1988, when a package of amendments to the Penal Code was put in force by an announcement in *Dimmaletting*. When this package of law amendments was prepared, the High Commissioner explained to the *Løgting* that 21 Danish Penal Code amendments and 7 related laws had not become law in the Faroes: “The reason is in many cases that a request to put the laws and decrees in force has not been made to Faroese authorities, or that they have not answered such requests. In two cases the Faroese authorities have replied that there is no wish to put the law in question in force.”¹⁶ The *Løgting* does not publish minutes from its meetings, so we cannot know if one of these two occasions, when Faroese authorities refused to accept an amendment, concerned the lowering of the age of consent for same-sex relations. When the homosexual age of consent was finally put on a par with the heterosexual one, it was in the form of an official announcement from the Danish High Commissioner in *Dimmaletting*, that the Danish law amendment would be in force in the Faroes from April 7, 1988.¹⁷

There was thus a higher age of consent for homosexual relations in the Faroes from 1933 to 1988, but that particular law (section 225.2) was probably never enforced. I have been able to study the court records until 1968 and, until then, section 225 had been in use only three times in the Faroes (see table 11).¹⁸ Each of these three instances involved violation of the first subsection of section 225, combined with violation of section 222, sexual molestation of children under 15. But it seems that the number of prosecutions for homosexual child abuse increased by the end of the 1950s, and that by then the idea that homosexuality as primarily a threat to children was gaining ground in the Faroes. Police statistics

Table 11. Prosecutions for sexual crimes in the Faroese Court, 1933–68. Five-year intervals.

| | Incest (\$ 210) | Rape (\$ 216) | Intercourse with insane woman (\$ 217) | Intercourse with children (\$ 222) | Intercourse with step- children (\$ 223) | Same-Sex intercourse (\$ 225) | Gross indecenty (\$ 232) |
|---------|--------------------|------------------|---|---|---|-------------------------------------|--------------------------------|
| 1933–37 | | | | | 1 | | 5 |
| 1938–42 | 3 | | 3 | 4 | | | 3 |
| 1943–47 | 2 | 1 | | | | | 4 |
| 1948–52 | | 2 | | 1 | 1 | | 5 |
| 1953–57 | 1 | | | 1 | | 2 | 3 |
| 1958–62 | | | | 7 | | | 7 |
| 1963–67 | 2 | | | 4 | | 1 | 9 |
| 1968 | | | | | | | 1 |

Sources: Docket books and court records, The Faroese Court. Sorenskriveren. Faroese National Archives (FL); Straffekort, Færøernes Retspleje. Danmarks Statistik. Danish National Archives (RAD).

Note: Numbers in parentheses refer to sections of the Danish Penal Code of 1930 (in force 1933).

reveal that there was a new wave of prosecutions for violation of section 225 in the 1980s. Between 1979 and 1984 there were 19 prosecutions for “homosexual offences with persons under 15,” and in 1985 there were two prosecutions for “homosexual offences with persons under 12.” During this time, two cases in 1983, one in 1984 and one in 1985 are reported as “other homosexual offences.” The exact nature of these cases is not known, but it is noteworthy that the number of prosecutions increased so dramatically in the 1980s (see table 12).¹⁹

The only prosecution related to same-sex sexuality known to have been between adults under the new law also involved a generational gap, but in this case the older person was acquitted. In August 1958, a 29-year-old man from a small village went to the police and reported that he had been sexually molested in the cinema in Tórshavn. He had been on a visit to the capital and wanted to buy a ticket to the movies, but he arrived late and was let in for free. After the show, Table 12. Prosecutions for sexual crimes and same-sex sexuality in the Faroese Court, 1959–86. Five year intervals.

| | Sexual crimes | Homosexual intercourse with persons under 15 (1985–86 under 12) | Other homosexual offences |
|---------|---------------|---|---------------------------|
| 1959–62 | 33 | | |
| 1963–67 | 29 | | |
| 1968–72 | 32 | 1 | |
| 1973–77 | 42 | .. | .. |
| 1978–82 | 32 | 8 | 2 |
| 1983–86 | 31 | 13 | 3 |

Sources: Docket books and court records, the Faroese Court. Sorenskriveren. Faroese National Archives 1959–68. Politiets årsberetning (Færø politikreds), 1959–61, 1974–86; Rigsombudsmandens årsberetning 1962–73.

Note: Data from 1960 are missing. Before 1979 the statistics do not distinguish between homosexual offences and other sexual crimes.

the 64-year-old ticket vendor offered him vodka, and they sat together drinking for a while in the office. Meanwhile, the other employee locked the doors and went home, so the two men were alone in the building. After about three glasses of vodka, the older man started to get “naughty” (*næsvisur*), according to the police report, and fondled the 29-year-old’s thighs and buttocks. The younger man wanted none of that, and left the office. When he came out in the entrance hall of the theater, he found that the doors were locked, and the ticket vendor refused to let him out. Finally, the young man locked himself in the restroom and fled from the theater through a window he had smashed. When he crawled out he tore his jacket and later wanted compensation. In court the ticket vendor denied having touched the other man and claimed that the doors to the theater were easy to open from the inside. Interestingly, the Faroese Court sided with the ticket vendor. It did not question his integrity and abstained from further investigating his sexual habits. In view of the amount of alcohol consumed by the plaintiff, the court argued, it was not possible to base a verdict solely on his testimony. It appears that the judge found it unnecessary to dig further into this case and apparently regarded it as a minor incident.²⁰

Anti-homosexual legislation in the Faroes ended in 1988, when the age of consent was lowered to the same as for heterosexual acts, but homosexuality has been a taboo subject for a very long time. The Faroese Parliament failed to enact the positive legislation now protecting the rights of gays and lesbians in the other Nordic countries, and the Faroe Islands is to date the only territory in the Nordic area without a law on registered partnership for same-sex couples. Moreover, the clause prohibiting defamation on grounds of sexual orientation, introduced in the Danish Penal Code in 1987, was absent in its Faroese counterpart until 2007. In fact, it was almost introduced by mistake in 1988, when it was presented to the *Løgting* for consideration. The heading of the proposal put before the *Løgting* to amend section 266b of the Penal Code said that the section prohibited defamation “on grounds of race, etc.” No one in the *Løgting* reacted to that wording until the leader of the Christian People’s Party, the Rev. Niels Pauli Danielsen, discovered that the list covered by “etc.” also included sexual orientation. His support was necessary for the coalition government. Since the frail coalition between the Republican Party and the Social Democrats was threatened, the proposal failed, seventeen votes to one.²¹

The only member of the *Løgting* who voted in favor of the anti-discrimination clause was Karin Kjølbro, a delegate from the Republican Party and one of the first two women elected to the *Løgting* in 1978. In an interview in 2005, she vividly described the pressure on her from all the other politicians. Her party wanted to demonstrate their political credibility and display a united front. They were in no way prepared to jeopardize the government majority because of a gay-rights issue, but Kjølbro felt she had to follow her conscience. She remem-

bered that when it was time to vote by standing up, the chairman of her party instinctively grabbed her arm, as if to keep her down.²²

Queer life in a small society

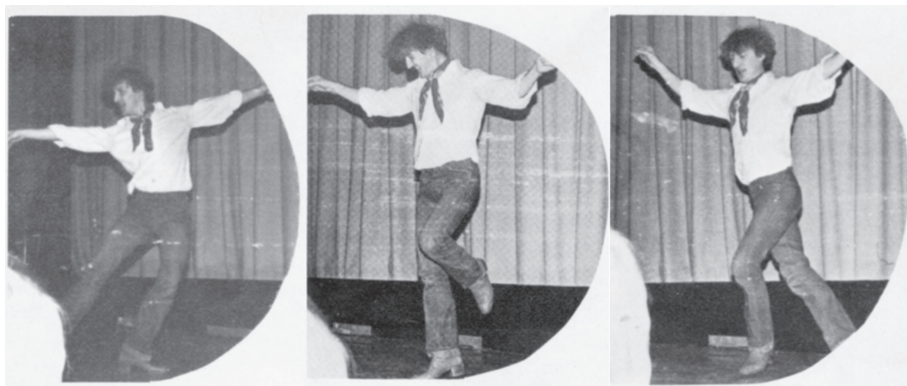
Karin Kjølbro and other Faroese I have interviewed have explained the peculiar mentality in the Faroes as a result of its close ties to Denmark. There is a long tradition, they say, of exporting social problems. Criminals, as well as persons with mental and physical disabilities, were often sent to institutions in Copenhagen and to this day many gays and lesbians leave their home country and go to Denmark. That does not mean that there are no dissenters at all in the Faroes. Many people speak up and fight prejudice, but they all too often find themselves voted down by the conservative majority.²³

Silence around sexuality has always been strong in the Faroes and, as we have seen, court records give meager evidence to the history of Faroese same-sex sexuality. There were, however, at least in the 1950s, people who were known to be gay. "Everybody knew" that the owner of a certain bookshop was gay. And a certain tailor, or even two tailors, and some other men. There were even rumors about parties in the bookshop. Bogi Davidsen, a gay Faroese physician who lives and works in Denmark, emphasizes that all these known homosexuals who lived till their old age in Tórshavn were loved and respected as members of the community, and people did not interfere with their private lives. Moreover, he does not think the parties in the bookshop were special in any way. "There were parties there, that perhaps were just as lively as nowadays," he assumes. These men, he says, were discreet and respected, and the bookseller traveled extensively. We know very little about their personal lives, which they kept discreetly hidden, but it is highly probable that they had homophile friends abroad, and as intellectuals were well read and in contact with the international homophile movement.²⁴

In the Faroes, as in many other places, the discreet homophile generation was succeeded by a new explicitness. From the mid-1960s, the group of respectable gentlemen in Tórshavn was overshadowed by one man, who incarnated the new generation's ideals of openness. Rólant Samuelsen was an openly gay, flamboyant hairdresser and the talk of the town for decades. He was born in Tórshavn in 1942 and from early on he felt he was different. "As a little boy I always played with dolls, never with cars and other things that most little boys play with," he said in 1975, in an interview for a journal for Faroese expatriates in Denmark. He also told the interviewer that he had had his first sexual experiences with boys of his own age in Tórshavn. In 1957, when he was fifteen, he moved to Copenhagen, where he studied to become a hairdresser. In Denmark he could develop a gay identity, and he had a relationship with another young man for three years. In the mid-1960s he moved back to Tórshavn, where he

opened *Salon Rólant*, soon to become the most renowned beauty salon in the Faroes. When he returned, he decided to be completely open and honest about who he was.

Rólant came to Tórshavn when the Beatles craze was at its peak. He loved dancing, and he was best in town to twist and shake. His good friend Bogi Davidsen remembers him from the 1970s: "He was unbelievably lively, unbelievably honest, and enormous fun. With his manners, he was a person who entirely changed modern life in the Faroes." Bogi especially mentioned the women who went to Rólant's salon to get in touch with the latest fashion, as well as the circle of friends around him. Alcohol was rationed until 1992, but there were some member clubs where you could deliver your coupons and legally drink. One such club was *Kaggan* (The Keg), where Rólant was a regular guest. Another place he favored was the local theater and dance hall *Sjóleikarhúsið*, and Bogi remembers how Rólant always led the dance there. "He danced around there on the floor with his arms up high and dressed in various ways." When asked about homophobia, Bogi said that Faroese people generally are peaceful and not very



Dancing Queen. On Mayday celebrations in 1978, Rólant Samuelsen danced Zorba's Dance in the Teachers' School in Tórshavn. Photo from the Faroese monthly magazine *Myndablaðið Nú* (no. 7, 1978). Courtesy, Peter Edelberg.

aggressive. Sometimes, when people were drunk, they would send an insult in Rólant's direction, but then Rólant would always snap back. "He answered back so sharply. And then I think most people wished they had never opened their mouth," Bogi explained.²⁵

In his 1975 interview, Rólant deplored the fact that he was the only openly gay person in the country. "But my God, I know there are many bisexuals in the Faroes, it's just that nobody dares to show it. I know, because I've been together with many of them." The advice he wanted to give them was to be open about it and tell people who they were. He did not consider himself discriminated against, "but of course I've gotten some passing remarks, among other things,

that religious people say it's a sin." He wished that the Christians would understand that all God has created is good, "and he created me as well, didn't he?" The 1975 interview was an appeal for openness, but it was to take many years before anybody else dared come out of the closet.

As did many gay men, Rólant traveled a lot, and when he felt the need to be with other gays he would leave for another country. Sometimes he stayed away for long periods, and sometimes he brought back a lover to the Faroes. Benny, with whom he had his last and longest relationship, he had met in Denmark and brought to Tórshavn. Benny and Rólant lived together in the Faroes for five or six years, but the last years of their lives they spent in Copenhagen. Like so many gay men of his generation, Rólant died early, at age 50. When he got ill, he left the Faroes, never to return. In 1975, Rólant had declared that he did not wish to get married—"why have papers on each other?"—but he wished for the law on inheritance to be amended so that members of same-sex couples could inherit from each other. And in the early 1990s, when he and Benny knew they were dying, they registered as partners under Danish law in Copenhagen.²⁶

Rólant thus single-handedly managed to uphold the gay revolution in the Faroes for more than two decades. To the new generation of Faroese gays, he serves as a forerunner. In Rólant's obituary, Bogi Davidsen wrote that "for me, Rólant was a cairn," and he suggested that "we Faroese should give him a memorial, which in the future could show both Faroese and foreigners that he was, and still is, a cairn." Bogi thus compared Rólant to the heaps of stone that show the way through the mist on trails without a path, typical landmarks in the foggy Faroes. The memorial he had in mind was the law on registered partnership that had been adopted in Denmark in 1989, which he wanted to be introduced in the Faroes. It still is not in force there.²⁷

Birth of a movement

The experience of Rólant's death and of writing his obituary in 1992 inspired Bogi Davidsen to dedicate more time to the gay cause in the Faroes. In the obituary, he used the terms *samkynd*, *tvíkynd*, and *hinkynd* for homosexual, bisexual, and heterosexual, thus introducing more neutral words instead of the old ones that were insulting or full of negative connotations. And in 1995 Bogi gave a speech at the Faroese House in Copenhagen arguing for gay and lesbian rights. The long speech was published in Faroese media, and Bogi was invited to make a 45-minute long TV program about the conditions for gays and lesbians.²⁸ He then hoped that it would soon be possible to introduce the law on registered partnership in the Faroes, but no such initiative has been taken, and Bogi underlines the need to be patient. Unlike many of his Danish friends, he is reluctant to criticize the Faroes as a country, and he argues that if it took fifty years of gay and lesbian activity in the other Nordic countries to achieve what



Gay Pride March in Tórshavn on August 27, 2005. Sonja Jogvansdóttir and Tina Jakobsen lead the parade with a banner saying “Do you dare?” Note Sonja’s national costume and the many Faroese flags along with the rainbow flags. The Nordic House is in the background. Photo: Jens Rydström.

they now have, it is not fair to expect the Faroese to get it in a few years without an open debate. Now there is a debate, he says, and in the long run he hopes for results.²⁹

In 2002 Brynhild Thomsen, a Faroese journalist based in Copenhagen, took the initiative to collect signatures in the Faroes for a petition demanding that the law on registered partnership be introduced there. Her petition argued that all other Nordic countries have such a law, and that the exodus of homosexuals from the Faroes constitutes a heavy toll, “not least for their families – quite ordinary Faroese families – who have ‘lost’ their homosexual children.” More than 300 Faroese signed the petition, which was published in the islands’ two leading newspapers. Soon after, however, a member of the *Løgting* collected more than 2,000 signatures *against* the partnership law. So, in spite of a concerted effort by the gay rights advocates, there is still a solid majority against such a law, both in the *Løgting* and apparently among ordinary people.³⁰

With the exception of Brynhild Thomsen, we have met only men in Faroese queer history. But the gay rights group that now exists in the Faroes was entirely the initiative of women. There was a chat forum on the Internet for gay Faroese diaspora in Denmark, which of course was frequented also by people still living in the Faroes. When Sonja Jogvansdóttir, Beinta Løwe Jacobsen, and Tina Jakobsen used the chat room to suggest a meeting in real life, they thought no-

body would dare to come. But in the evening of October 16, 2003, about a dozen women and men showed up in the restaurant *Vertshúsið* (The Inn), and they agreed to form an organization, which they first called *Ælabogin* (The Rainbow). Later, since the name was already taken by another organization in the Faroes, they changed it to *Friðarbogin* (The Peace Bow). Subsequently, a number of young men and women came out in the press, inspiring a debate on the living conditions for gays, lesbians, bisexuals, and transsexuals in Faroese society.³¹

The worst problem for the new movement is that so many of its members move to Denmark. The women more often stay and fight, while the young men tend to go to Copenhagen, where there is a more interesting gay scene. Four years after its founding, only two members of *Friðarbogin*'s original steering committee, Tina Jakobsen and Sonja Jøgvansdóttir remain in Tórshavn. A third woman, Manijeh Modi, was the driving force behind the 2005 Tórshavn Pride parade, which was organized in connection with a Nordic LGBT-students' conference. Again, the organizers feared that the outcome would be embarrassingly low, and again the opposite happened. Over 200 people showed up, the most renowned Faroese choir sang, and two Members of Parliament spoke. Many citizens of Tórshavn had joined the manifestation to show their support, after a week of homophobic attacks in the press. There were as many Faroese flags as rainbow flags in the march and when the participants reached the square in front of the *Løgting* building, there was a crowd waiting for them. For a moment there was some uncertainty about the intentions of the waiting crowd. When it greeted the parade with applause, some of the activists burst into tears. Sonja Jøgvansdóttir took the stand in her national costume, and the meeting ended with the Faroese national anthem. This way the activists inscribed themselves in a national discourse, claiming their rights as citizens.³²

The events surrounding the Pride March in 2005 inspired new parliamentary action. The two Members of the *Løgting* who had addressed the participants were the social democrat John Johannesen and Finnur Helmsdal from the Republican Party. Together they reintroduced the proposal for an anti-discrimination law, which had been so overwhelmingly rejected in 1988. This time there was a more open debate on the issue, but when the *Løgting* voted on it in December 2005, it failed. The margin was narrower this time: a majority of 20 members voted against it and 11 in favor.³³ Høgni Hoydal, who was a member of the Faroese Government from 1999 to 2004, has worked actively for gay and lesbian rights since 2002, but he is pessimistic as to the possibility of quick change. His own party, the Republican Party, progressive and working for full independence, is split over the question, as are all the major parties in Faroese politics. If the Faroes were only one constituency, Hoydal explains, perhaps the law on registered partnership and all the other laws protecting gay and lesbian rights would have been there already. But since the smaller islands have such a

large influence on national politics, and since the island voters are known to be conservative Christians, legislation will be blocked for a long time.³⁴

In September 2006, however, a brutal assault shocked the Faroese. A young man was beaten and threatened because of his homosexuality. The young man's family stood up for him in public, and Finnur Helmsdal reintroduced the recently defeated law proposal. This time the initiative brought about a lively public debate with international repercussions, as the affair was widely publicized in the Danish press and in other international media. At a meeting of the Nordic Council in Copenhagen in November 2006, the Faroes were on the agenda, since they in 2003 formally had requested to become a full member of the Council. When the matter was discussed this time, politicians from the other Nordic countries criticized the Faroes for not having introduced the clause prohibiting discrimination on grounds of sexual orientation. On December 15, 2006, after a heated debate that split all the Faroese political parties, the anti-discrimination clause 266b was adopted with 17 votes in favor and 15 against.³⁵

To conclude, the idea of homosexuality was constructed in the Faroes in much the same way as in the rest of Western Europe. The islands display patterns and traits similar to those that have been studied in rural areas in other parts of Scandinavia, with the possible difference that the Faroese, being a seafaring people, were less isolated and more exposed to new ideas than people in other rural areas in Scandinavia.³⁶ The staunch conservatism in the Faroes, when it comes to recognizing gay and lesbian rights in the twenty-first century, has nothing to do with being isolated or "backward." Instead, it is a combination of Lutheran values and strong social control that makes it difficult to live as an openly queer person. Powerful mechanisms of exclusion combined with the easy way out to Copenhagen have led to a situation in which Faroese society tends to strengthen its own conservatism.

The same does not apply to Greenland, where larger distances and more accentuated cultural differences have made it more difficult to "export" social problems, and where a history of more relaxed attitudes to sexuality may contribute to more acceptance.

GREENLAND

The legal history of Greenland is inscribed in a context of colonial domination and rapid modernization. When Danish merchants and missionaries colonized the island in the eighteenth century, a colonial administration gradually took shape and parallel legal systems for Danes and Greenlanders were established. Danish colonization began in 1721, and in 1782 an Instruction for the Greenlandic trade was issued, which laid the foundation for the future judicial framework. With later amendments it was to serve as a fundamental law for Greenland until 1908, and some of its basic principles were in force until 1950. In the

same year, West Greenland was divided in a Southern and a Northern inspectorate, whose administrative leaders also had judicial power.³⁷

As German (Moravian) and Danish (Lutheran) missionaries Christianized the West Greenlanders, they built up a church province characterized by close contacts with the local communities, and a powerful religious revival in the nineteenth century further helped westernize Greenlandic culture. But whereas the Danish State Church in the seventeenth century had destroyed the Faroese written language, the missionaries and merchants in Greenland supported and developed Greenlandic written culture. During the nineteenth century, Trade Inspector Hinrich Rink (1819–1893) had a decisive influence on Danish colonial politics. In order to strengthen the Greenlanders' cultural identity and promote traditional values he took the initiative to found Greenland's first newspaper, the *Atuagagdliutit*, in 1861.³⁸ From the beginning it was entirely in Greenlandic, written by the emerging Greenlandic elite and read by most Greenlanders. Thanks to the efforts of the missionaries the level of literacy was high.³⁹ In the mid-nineteenth century, Rink introduced so-called Boards of Guardians (*Paarsisut/Forstanderskaber*) in the Northern and Southern Inspectorates, local governing boards that consisted of both Danes and Greenlanders, representatives from the Trade, the Church, and the seal hunting community. Greenlanders who were not seal hunters lacked representation, and there was a conscious effort to promote a profession that Rink was convinced was the only one that could give the Greenlanders a dignified living.⁴⁰

The democratic breakthrough in Denmark in 1901 also facilitated changes in its colonial politics. The so-called Literary Expedition to Greenland in 1902–4 consisted mainly of journalists, writers, and authors, and was led by the journalist and social critic Ludvig Mylius-Erichsen. Its critical evaluation of Danish colonial politics contributed to important changes, and in 1908 the Danish government took a firmer grip over its colony through the first Law on Greenland's governance. In 1925 it was replaced by a new law that more clearly defined the principles for local governance and law enforcement. Already in 1908, the Boards of Guardians had been replaced by two Provincial Councils (*Landsråd*), one for South Greenland and one for North Greenland, each headed by the Inspector, and after 1925 by the Provincial Governor (*Landsfoged*). The councils, like their predecessors, only governed the colonies on the west coast. The sparsely populated territories in North and East Greenland were placed under direct colonial administration.⁴¹

During World War Two, when Greenland was cut off from Denmark, the Danish ambassador in Washington concluded a defense treaty that allowed the United States to construct airbases in Greenland for their transatlantic transports. The colonial authorities grew accustomed to do without Danish control and increasingly discussed autonomy. After World War Two, Greenland was a candidate for the United Nations' list of remaining colonies that were to

be guided to independence, and Denmark rewrote its constitution in order to change Greenland's colonial status. From 1953, both Greenland and the Faroes are parts of the Danish Realm, with representatives in the Danish Parliament. Since then, Greenland has been thrown into a process of rapid modernization. Until the early 1950s, only a couple of hundred Danes were stationed on the island, but between 1950 and 1970 the percentage of the population born outside Greenland increased from 5 to 20 percent.⁴² Hundreds of Danish artisans, teachers, and administrators went to Greenland, and many of them stayed on. More and more children were born in mixed marriages and urbanization increased rapidly. In 1950 the two *Landsråd* were combined into one, with extended administrative powers, but it was not until the Home Rule Act of 1979 that a proper parliamentary assembly, the *Landsting*, came into being.⁴³

Danish literary scholar Kirsten Thisted has shown how a self-conscious Greenlandic literary tradition has dealt with modernization. Drawing on Homi Bhabha, Thisted argues that Greenlandic reception of Danish customs has taken place in full awareness of the dilemmas faced by Greenlanders and Danes when their cultures intersect. However, there is a huge difference in discursive power when Danes and Greenlanders meet. The gaze of the explorer from without always had the upper hand, and many times educated Greenlanders felt frustration as they were reduced to "native informers" about Greenlandic customs.⁴⁴ It is important to bear in mind this power asymmetry when using Danish sources on Greenlandic traditional attitudes to sexuality. These sources emanate from the male explorer's eye and are often imbued by colonial, sexist, or blatantly racist preconceptions.

Most sources report that the missionaries' sexual morals differed dramatically from traditional Greenlandic attitudes – anything else would indeed be surprising – but it is difficult to ascertain what Greenlandic sexual habits and taboos could entail, using only Danish testimonies. Danish sociologist Signe Arnfred has shown how Danish observers interpreted traditional Greenlandic customs in European patriarchal terms, and thus misinterpreted the position of Greenlandic women. When the Danish explorer Knud Rasmussen described Inuit women as "subjugated to the husband" in sexual matters, he did not understand their sexual agency, Arnfred claims. Instead, she refers to the Danish physician Alfred Bertelsen, who in 1907 wrote that Greenlanders saw sex as "something natural, necessary, enjoyable, and strengthening." As bearers of a Greenlandic more open attitude to sex, Arnfred argues, Greenlandic women could also have an interest and a say in the habit of wife exchange that shocked the westerners so.⁴⁵

What Danes could interpret as "primitive" and unbearably permissive sexual habits may well conceal regulations and taboos unseen by the European eye. In many respects, Greenlanders were much more open about sexual things than Europeans, as during the "lamp-extinguishing game," when the lamp was put



The mother who wanted to be a man wears her hair down in a masculine way. She dances and sings a lampoon to mock her effeminate son whose wife she has kidnapped. The son is hidden under a pile of sealskins and his presence is marked by a dot and a written notice on the pile. Watercolor painting by Jens Kreutzmann who wrote down the tale in 1860. Courtesy, Museum of Cultural History, University of Oslo.

out and the people in the hut had sex with whoever was next to them.⁴⁶ On the other hand, there were strong expectations to get married, and there are several stories about women who are severely punished – turned into stone, hung upside down in caves – for refusing to marry. The gendered division of labor was strict in the hunting community, and both women and men were expected to marry. “Bachelor is only he who is rejected for being a worthless provider,” one of Knud Rasmussen’s Inuit friends told him at the beginning of the century. These strong expectations of marriage and procreation made no room for same-sex couples, but on the other hand there was apparently no explicitly condemning attitude to same-sex sexual acts, just silence.⁴⁷

The earliest notice of such activities may be an observation by Peder Olsen from 1752. During a visit to Ulineq in southernmost Greenland he noted in his diary that “the sin that St. Paul did not want to name was, I think, common among the male population.”⁴⁸ Moreover, a history of the Moravian mission, written in the 1870s, reports that the mission had built dormitories for their parishioners: a Sister House in 1749 and a house for unmarried Brothers in 1753. However, the historian tells us, “since the Greenlanders’ way of life created obstacles for the unmarried people’s cohabitation, and since they found that mo-

rality rather deteriorated than improved by those means," they had to abolish the sex-segregated dormitories.⁴⁹

These and other observations are quoted by Alfred Bertelsen, the Danish physician who was a member of the Literary Expedition in 1902-4, but left it and opened a medical practice in Uummannaq, in North Greenland. He reports about Greenlandic sexual habits without the condemning tone of some Christian missionaries, but his outsider's gaze is sometimes condescending. When he writes about habits of bestiality with living and dead animals among the Inuit of Northern Greenland and Canada, he describes the sexuality of "the Other" as something he obviously regards as uncivilized, raw, and limitless. Bertelsen reported in 1940 that he personally knew of cases of both male and female homosexuality, but that those persons later entered into "normal marital relations." The sexual anomalies that he mentions are hardly the result of abnormality in any deeper sense, he explains, preferring to see them as the result of "the usual Eskimo impressionability and lack of restraint."⁵⁰ In view of such generalizing and patronizing attitudes, it is necessary to look for indigenous voices describing their own sexual culture. And indeed there is a treasure of tales, written down in the nineteenth century, which contain many keys to Greenlandic attitudes in these matters.

One such tale concerns same-sex sexuality between women. It was written down in 1860 by Jens Kreutzmann, who was the son of a Danish colonist and a Greenlandic mother. His first language was Greenlandic and he was known as a great seal hunter. When he was asked by Trade Inspector Rink to write down old stories, he filled a number of notebooks with tales, written in Greenlandic and illustrated by watercolor paintings.⁵¹ They are often drastic and sexually explicit, as is the story of "The woman who wanted to be a man." Arnaqquaq, a woman who again and again scorns her son, saying that he is a bad hunter, likes her daughter-in-law, Ukuamaaq, better than her son.⁵² One day both women are gone, and the son follows their tracks to a hut by a lake. There he finds his wife, who complains that Arnaqquaq keeps her there against her will and calls her her wife. The mother even uses a pointed kayak prow as a penis "and plays the man." Hearing this, the son is furious and hides under a pile of furs waiting for his mother to come home. When she returns, he sees that she wears her hair let down like a man. She takes a drum and sings and dances for her daughter-in-law. She sings a vicious song about her son's lack of manhood:

When I was about to give birth,
 When I finally begat him,
 Then he was a poor hunter,
 And because he cannot support her,
 I take his wife from him!

Haaya - ya-haayaay!

The son is so enraged that he can't keep still and rushes out from under the pile of furs and chases his mother out of the cabin and over the snow. He cannot catch up with her, but then she drops the kayak prow from inside her pants and slows down. When he gets hold of her, he beats her to death and breaks her big "penis" in two. Then he goes back to the hut, where he and his wife live well through the winter on the mother's provisions.⁵³

According to Kirsten Thisted, the story focuses on the son's lack of manliness. The joke is on him since he can't keep his wife and is even cuckolded by his own mother. Even if he kills his mother, the fact that he lives off her provisions is further proof of his unmanliness.⁵⁴

Gender and sexuality

The concepts of unmanly men and mannish women are common enough in Greenlandic society to be expressed by words in common usage. An *arnaasaq* is an effeminate man, and an *angutaasaq* is a woman who acts like a man. Though these concepts do not necessarily carry any sexual meaning, for those who in 2002 founded Greenland's first association for gays and lesbians, it was natural to translate "gay" as *arnaasaq* and "lesbian" as *angutaasaq*.⁵⁵ In Greenland there are somewhat conflicting views as to the actual status of these transgendered persons in the hunter society. Former minister of education Henriette Rasmussen claims that the *arnaasaq* and *angutaasaq* were respected for what they were, and that a certain readiness to accept difference was crucial in small hunter communities along the coast. This traditionally tolerant attitude later made it easier to introduce the law on registered partnership in Greenland, she says.⁵⁶ On the other hand, Asii Chemnitz Narup, minister of health and official protector of Greenland's gay rights group, is less certain. She believes that the mannish women were more appreciated for their skills than the effeminate men, and mentions a case she came across in the extreme north, where a skilled hunter was devastated that his only son was effeminate and obviously not fit for, or interested in, hunting. Narup points out that Greenlandic attitudes to sexuality changed drastically in the twentieth century, when the *Peqatigiinniat* religious revival movement grew strong.⁵⁷ It was founded in Nuuk in 1908 as a reaction to superficial Christianity, and it demanded stricter obedience to Christian values. Its 1917 statutes cited two grounds for being excluded from the *Peqatigiinniat*, namely to violate the sixth commandment – you shall not commit adultery –

or to violate the command in Ephesians 5:3: "Fornication and indecency of any kind, or ruthless greed, must not be so much as mentioned among you, as befits the people of God." The traditional openness to sexual matters, which had characterized Greenlandic society, slowly gave way to a more westernized morality and to silence about sex.⁵⁸ In 1950 the Juridical Expedition to Greenland noted in connection with its discussions of the difference in attitudes to sexuality: "Greenlanders have informed the expedition that intimate sexual matters are discussed quite openly and freely in wide circles, without anyone being offended thereof, but that many are embarrassed to discuss such issues when more distinguished Greenlanders or Danes are present." It seems thus that the new ideas about decency contributed to new class divisions among Greenlanders.⁵⁹

There is, so far, no scientific work on attitudes to same-sex sexuality in Greenlandic culture, and the few works that deal with sexuality avoid the question.⁶⁰ But judging from a sexological survey from the late 1960s, same-sex experience was less widespread in Greenland than in Denmark at that time. In 1967-68, Danish physician Gunnar Aagaard Olsen interviewed 499 Greenlanders between 15 and 19 living in the districts of Qaqortoq, Narssaq, and Nanortalik in South Greenland about their sexual life. Most often Olsen had the help of Cecilie Lund, a Greenlandic nurse who also served as an interpreter.⁶¹ Of the 71 questions they asked their young interviewees, one concerned homosexuality. Olsen and Lund asked them how old they were when they first heard about "homosexuals or homosexuality." If the informants had any knowledge about it they were asked if they had done it themselves and if they knew of "homosexual couples" in Greenland. Only 40 percent of the interviewees (199 persons) had heard about homosexuality, compared to 86 percent of Danes between 18 and 19 at about the same time.⁶² The question remains, of course, what these young Greenlanders understood by "homosexuals" and "homosexuality." The concept of "homosexuality" is young in Europe, younger still in Greenland. Most probably, the interpreter did not use any variety of the international word "homosexuality" but, as is the habit in Greenland, used a long descriptive word meaning approximately "women who do it with women" and "men who do it with men." Only 13 percent of the young men between 18 and 19 had been approached by adult men with sexual intent – compared to 48 percent in Denmark (23 percent in rural areas). Eight girls and 27 boys said they knew "homosexual couples or persons," and another ten girls and nine boys that they "had heard" about such people.⁶³

Moreover, the report cites epidemiological facts to prove that penetrative same-sex relations were less common in Greenland than in Denmark. While at the time 39 percent of known syphilis infections and 5 percent of gonorrhea were transmitted in homosexual relations in Denmark, no such cases were reported from Greenland. And during two years of testing for rectal gonorrhea in Qaqortoq and Nanortalik districts, no such case had been detected.⁶⁴ It is pos-

sible, however, that the young Greenlanders had other ways of thinking about sexuality. Four of the interviewees said they had had same-sex sexual experiences and that none of them involved any attempts at penetration. One girl and one boy had been subject to unwanted same-sex sexual advances by adults, and one 19-year-old boy had over the last five years regularly practiced mutual masturbation with a friend one year older than himself. One 15-year-old boy had practiced mutual masturbation, but also “petting and interfemoral coitus” with boys his own age. He had not practiced anal intercourse but he had seen other boys doing it. All four had had sexual experiences with the opposite sex.⁶⁵

There are obvious problems when a sexological investigation is carried out between one cultural context and another. Not only do the usual difficulties occur, those having to do with differences in class, age, education and discursive power between those who examine and those who are examined, but, in this case, since a linguistic and cultural gap had to be bridged by the doctor and his interpreter, the data risk being even more affected by the cultural expectations of the examiner. The tone of Gunnar Aagaard Olsen’s study is influenced by the open discussions around sexual things that were common in Scandinavia in the 1960s and ’70s, and he writes respectfully of the Greenlandic youth whom he interviewed. His study is interesting but raises many questions. What did the interviewees understand by the doctor’s questions about “homosexuality”? How inclined were they to speak about sexuality in the presence of a Dane and a “distinguished” Greenlandic? In what way did Olsen’s own Danish preconceptions of homosexual practices influence the study? The epidemiological evidence is focused on anal penetration and does not include possibilities of different sexual habits. Finally, the fact that only 54 young people out of 500 had heard about “homosexual couples or persons” perhaps reflected differences in media exposure rather than in sexual habits.

Olsen did not encounter strict taboos surrounding same-sex sexuality, but he was careful to underline the fact that the data was insufficient: “Even if conversations with Greenlanders give the impression that there is a less emotional and restrictive attitude to homosexuality in Greenland than is traditionally the case in Denmark, one must admit that the norms of Greenlandic culture in this area are not disentangled.”⁶⁶ Thus, the question of Greenlandic attitudes to same-sex sexuality remains largely unanswered. There is conflicting evidence as to its prevalence in Greenland and the social regulations surrounding it. But as we shall see, the Greenlandic criminal legislation has never problematized it to any large extent.

Criminal law

The Norse colonies on Greenland were originally the Norwegian kings’ domain, and the trade on Greenland was run from Bergen in Norway until 1729,

when it was moved to Copenhagen. From that year, however, Danish law has been in force in Greenland, and from 1782, the Instruction for the Greenlandic trade served as a written Greenlandic law, applying different rules to Danes and Greenlanders.⁶⁷ The main principle, explicitly formalized in the Laws on Greenland's governance in the twentieth century, was that Danes living in Greenland were subject to Danish law, whereas Greenlanders were to be judged according to customary law. These customs were developed in a society of hunters and adapted to life in a cold climate. Much of the punishment in traditional Greenlandic society was built on the public shaming of your adversary, and at formalized drum-dances, any plaintiff could challenge his opponent. While dancing to the drum, he would sing a lampoon, often with the help of members of his own household. The accused person had to stand up and listen to this until the song was finished, and then it was his turn to answer back with another song. The song duel would go on until one of the conflicting parties gave up. He who got the most cheers and sympathy from the bystanders would win the battle over the other, who would have to endure the sounds and gestures of disapproval from the audience. Public shaming was a practical way of handling the question of punishment in a society that could not waste any resources to keep people locked up, and it was in principle the only alternative to either a death sentence pronounced by the *angakkok* (the shaman) or a blood feud.⁶⁸

From the middle of the nineteenth century, Greenlanders were judged by the Boards of Guardians that also functioned as communal organs. These judicial and administrative bodies functioned as courts of first instance until 1912, when they were split into Communal Councils, consisting only of Greenlanders, dealing with administrative matters, and the so-called Mixed Courts (*Blandede retter*), consisting of the same mixture of Danes and Greenlanders as the Boards of Guardians had been, but with only judicial tasks. In 1926, the Mixed Courts

Table 13. Prosecutions for sexual crimes in Greenlandic District Courts, 1938-48.

| Year | Incest | Rape | Sexual acts with children under 15 | Procurement | Other Sexual Crimes |
|------|--------|------|------------------------------------|-------------|---------------------|
| 1938 | | | 2 | | |
| 1939 | | 1 | | | |
| 1940 | | 3 | 4 | | |
| 1941 | | | 10 | | |
| 1942 | | | 2 | | |
| 1943 | | | | | 1 |
| 1944 | 2 | 2 | 6 | 3 | 4 |
| 1945 | | 1 | 1 | 2 | 3 |
| 1946 | | 1 | 6 | | 1 |
| 1947 | | 6 | 11 | 2 | 2 |
| 1948 | 2 | 7 | 8 | 1 | 5 |

Source: Jurex 1950, Table 1, p. 79.

were replaced by thirteen District Courts (*Sysselretter*), which were in existence until the new procedural law of 1951 was put in force.⁶⁹

Before 1925, any Dane living in Greenland who was subject to criminal prosecution was to be judged by the highest-ranking Danish officer, the Trade Inspector, whose verdict could be appealed to the Eastern High Court (*Østre Landsret*) in Copenhagen. But when the Danish Government took over the governance of Greenland from the Royal Greenland Trade Company in 1925, the Provincial Governors in South and North Greenland functioned as judges of first instance for people under Danish law.⁷⁰

Since 1951 the Greenlandic court system is based on seventeen Circuit Courts (*Eqqartuussivit/Kredsretter*), consisting of laymen, and Greenland's High Court (*Kalaallit Nunaata Eqqartuussivia/Grønlands Landsret*) in the capital, Nuuk. The court system is part of the Central Danish judicial administration, and Greenland's High Court's verdicts can be appealed to the Eastern High Court in Copenhagen.⁷¹

The Law on Greenland's Government of 1925 specified how the inhabitants in Greenland were to be judged, by either Danish law or Greenlandic customary law, and divided people living in Greenland according to kinship, occupation, class, and gender.⁷² Persons born in Greenland were under Greenlandic law, and those born outside were under Danish law, unless they by kinship belonged to a Greenlandic family or lived by a traditional Greenlandic trade. Persons exercising Greenlandic traditional professions (hunting, fishing, etc.) were under Greenlandic law, and a woman marrying such a person automatically belonged to her husband's category as long as the marriage lasted. Higher officials, like colonial managers, priests, and teachers, were under Danish law, while subordinate officers, like trading post managers, artisans, and catechists, were under Greenlandic jurisdiction.⁷³ This was an attempt legally to define who was a genuine Greenlander and who was not, and falls into the tradition of many colonial powers' search to preserve the "authentic" indigenous culture.⁷⁴

Out of 165 verdicts pronounced between 1881 and 1926 by the Boards of Guardians and the Mixed Courts, nine concerned sexual crimes. Six of those were cases of incest, and three were cases of intercourse between in-laws. No case of same-sex sexuality was reported, and such acts were never criminal according to Greenlandic law.⁷⁵ The few Danes living on Greenland (413 people in 1930)⁷⁶ were subject to Danish law, and until 1933 Danish men were thus forbidden to commit "fornication against nature" according to section 177 of the Danish Penal Code of 1866, which in 1933 was replaced by a law stipulating a higher age of consent for both male and female same-sex sexual acts.

No proceedings for same-sex sexuality according to Danish law are known within the Greenlandic legal system before the joint Criminal Code of Greenland was enacted in 1954, but there is one case in which a court dealt with acts of same-sex sexuality according to Greenlandic law. In this case, the focus was not

on the gender of those involved, but on the spreading of venereal disease. In 1938 the District Court of Uummanaq tried a 19-year-old girl who had passed on gonorrhea to a nine-year-old girl. Both of them were patients at the local hospital, where the older girl was treated for her venereal disease, and she had enticed the little girl to come to her bed at night. She was sentenced for transmission of venereal disease, but because of her low age she only had to do 30 days of labor duty. The court did not explicitly discuss the fact that the sexual acts were committed with a person of the same sex, nor did it comment on the age of the little girl.⁷⁷

No cases of sex with children are reported before 1926, but during the 1940s they became by far the most common sexual crime, perhaps an effect of the on-going process of European sexual norms being applied in Greenland (see table 13).

The dual judicial system was criticized by both Danes and Greenlanders, but there was a general consensus that the Danish Penal Code could not be applied in Greenland. In 1915-29, the Provincial Council prepared a proposal for a Criminal Law for Greenland, but the provincial governor in South Greenland remarked in 1931 that the proposed law would be "too heavy an armor for Greenlandic society," and jurists working in Greenland agreed that traditional European law enforcement would be impossible to apply there.⁷⁸ As Denmark prepared formally to end Greenland's colonial status, however, a legal reform became inevitable. In 1948-49, a Juridical Expedition (Jurex) was sent to Greenland to investigate under which form a future criminal legislation could combine Greenlandic customary law and modern Danish legal principles. In its report, Jurex emphasized the need to respect Greenlandic customs, with one exception: crimes concerning sexuality.⁷⁹

Jurex presented several reasons why Danish values must prevail in the area of sexual crimes. To begin with, Danes living in Greenland were also to be judged under the joint legislation, and big differences between the two norm systems must be bridged. There was also a concern that Greenland would provide a safe haven for people with sexual interests that were prohibited in Denmark. Finally, the process of modernization in Greenland narrowed the gap between the two cultures.⁸⁰ A more recent commentary (1985) on the Greenlandic Criminal Code points out the dilemma faced by Greenlandic legislators, as they try to establish joint legal norms for two so different value systems. The law commentary mentions the ongoing process of modernization and holds that "in circles with modern attitudes, sexual morality must be assumed to be of the same character as that protected by the Danish Penal Code." The political will to bring the Greenlanders in line with modern European values is also expressed by the argument that it is logical to introduce rules that "harmonize with the moral views of the growing part of the population adjusted to the new political line."⁸¹

Table 14. Sexual crimes brought to Greenland's High Court, 1963–78.

| Year | Incest (§ 49) | Rape (§ 51) | Sexual exploitation (§ 52) | Same- sex rape or sexual exploitation (§ 52a) | Sexual relations with children (§ 53) | Seduction (§ 54) | Indecent behavior (§ 56) |
|------|------------------|----------------|----------------------------------|---|---|---------------------|--------------------------------|
| 1963 | | | | | | | |
| 1964 | | | | | 2 | | |
| 1965 | | 1 | | | 2 | | 1 |
| 1966 | 1 | 1 | | | 1 | | |
| 1967 | 1 | 4 | | | 5 | | 2 |
| 1968 | 1 | 5 | | | 3 | | 1 |
| 1969 | | 5 | | | 10 | | 1 |
| 1970 | 1 | 10 | | | 10 | | 5 |
| 1971 | 1 | 9 | 1 | 1 | 13 | | 1 |
| 1972 | | 4 | | | 2 | | 1 |
| 1973 | | 2 | | | 1 | | |
| 1974 | | 4 | 1 | | 2 | | |
| 1975 | | 5 | | | 3 | | |
| 1976 | | 6 | | | 3 | | 1 |
| 1977 | | 9 | 1 | | 5 | | |
| 1978 | 3 | 5 | | | 3 | 1 | |

Source: Docket books. Greenland's High Court.

Note: Numbers in parentheses refer to sections of the Greenlandic Criminal Code of 1954. A higher age of consent for homosexual relations was in force through a subsection of section 53 from 1963 to 1978.

The Jurex report discussed at length future legislation concerning rape, child abuse, procurement, and indecency, but had nothing to say about same-sex sexuality. It referred to the court case from 1938 in Ummannaq, when a young girl was sentenced for passing on gonorrhea to a little girl, and notes that it would also be punishable according to the Danish Penal Code, section 225, but did not discuss it further.⁸² Nowhere else is same-sex sexuality referred to in the preparatory work for the Greenlandic Criminal Code of 1954 and thus it remained unregulated. In 1962, however, a commission set up to revise the law presented a commentary with examples of court cases and proposals for revisions. The committee noted that Greenlandic law differed from Danish law in that it never explicitly mentioned such crimes committed on persons of the same sex. It reported that “there is on the whole no information available to the commission suggesting that homosexuality is a problem in Greenland,” and assumed that this was the reason Greenland had no laws against homosexual crimes. This was not acceptable to the commission: “However, it may appear less well founded that such relations are not criminalized in the same way as in the rest of Denmark, since there is no reason to assume that the rules in force in Denmark should be in conflict with Greenlandic attitudes.”⁸³ The Commission suggested that the revised Criminal Law should contain positive restrictions on homosexuality along the same lines as in Denmark, which was also included in the law

proposal put before both the Greenlandic *Landsråd* and the Danish *Folketing*. In the Greenlandic *Landsråd* it was argued that since homosexuality was not a problem in Greenland, there was strictly speaking no need for such legislation, but it would be unfortunate “if a safe haven would be created in Greenland for acts that are punished in other parts of the Realm.” Both the legislators and local Greenlandic politicians were of the opinion that the higher age of consent did not conflict with Greenlandic views.⁸⁴ In the revised law, section 52a was added, which stated that sections 51 and 52 on rape and sexual exploitation were applicable also on those who committed the crime on a person of their own sex, a rule that still stands. Also, a subsection was added to section 53, which prohibited sexual relations with children under 15. Section 53, subsection 2, stated that “[t]he same applies to anyone, who has sexual intercourse with a person of his own sex under 18 years,” thus setting a higher age of consent for homosexual relations than for heterosexual.⁸⁵

This law was in force from 1963 to 1978, when it was revoked in connection with a general revision of the Greenlandic Criminal Code. The proposal to abolish the law noted that the Danish age limits for homosexual and heterosexual relations had been harmonized in 1976, and that the age limits for homosexual relations should be the same in Greenland. No other arguments were presented, and no comments were made in the Provincial Council.⁸⁶

The legal regulation of homosexuality in Greenland thus had a very low priority, and both the introduction and the abolition of a higher age of consent were just reflections of concerns in the Danish capital. Prosecutions for sexual crimes in Greenlandic courts are not unusual, but charges for same-sex sexuality have been almost completely absent. During the period when the age of consent was set to 18 years, there were most probably no prosecutions for violation of that law.⁸⁷ Table 14 shows that rape and sexual molestation of children are by far the most common sex crimes before the High Court in Nuuk.⁸⁸ Some instances of unwanted same-sex activities may be hidden under “Indecent behavior,” but it cannot be known without further research.

Only one prosecution for same-sex sexuality is known in Greenland. It was the case of a furtive relationship between a prisoner and a warden at Nuuk prison in 1971. The prisoner, a Greenlander, had had relations with another inmate, and years before he had been in Copenhagen where he had had homosexual experiences. The Danish warden claimed that the prisoner had insisted on telling stories about his exploits in Copenhagen, and when the prisoner began fondling him, the warden could not resist the temptation. The prisoner’s testimony was different, in that he said it was the warden who had taken the initiative, but he did not deny having had previous experiences. One of the three judges in the High Court was of the opinion that the warden had grossly exploited his position, “notwithstanding that the witness had had nothing against the defendant’s advances,” and wanted to give him a heavy fine for homosexual exploitation ac-

cording to section 52 and section 52a. The remaining two judges, however, sentenced him to a lesser fine for indecent behavior according to section 56.⁸⁹

The attitudes to same-sex sexuality in Greenland are difficult to determine. It has been described as one of several taboos that are never discussed in Greenlandic society.⁹⁰ Now, during the first decade of the twenty-first century, there is more talk, though even the largest town in Greenland, Nuuk with 14,000 inhabitants, and rapidly growing, cannot as yet harbor any gay or lesbian subculture. Like in all rural areas, however, there has always been room for individuals or couples leading different kinds of life.

Estrella Mølgaard and Regine Jørgensen have lived openly as a lesbian couple in Nuuk for more than twenty years. Born in North Greenland, in Qeqertarsuaq and Ilulissat, respectively, they met in school in Denmark when they were 17 and 22, and when they came back to Greenland in 1984, they moved in together in Nuuk. At that time there were already two women living openly like a lesbian couple, but Estrella and Regine hesitated to talk to the others about their own situation, and when one of the other women died prematurely her partner moved to Denmark. Estrella and Regine believe that the other couple was more accepted than themselves. "She who died early was a well-known singer, and because of that I think that people more or less accepted their relationship," Regine says.

In 2002 Estrella and Regine registered their partnership. They invited friends and family, and the Mayor of Nuuk performed the ceremony in their living room. However, the fact that they made their relationship official through the partnership ceremony provoked a very negative reaction from Estrella's family, who begged her not to expose them to such shame. Estrella's family had accepted their relationship long before, but the price for it was silence. Not until the two women wanted to make their relationship official had Estrella's family reacted negatively. On the other hand, Regine's family and one of Estrella's brothers have supported them wholeheartedly, and now they have made peace with Estrella's aging parents.⁹¹

Tom Semionsen came out publicly in the press in 1994, both as a gay man and as HIV-positive. He was born in 1964 and grew up in Uummannaq. "Back then you didn't discuss sex, or if you're straight or gay," he says, referring to a time before modern labels were applied to same-sex sexuality. Later in life he lived for many years in Copenhagen and developed a gay identity before returning to Nuuk. When asked about gay experiences in Nuuk, he chuckles and says: "I had no problems getting men into bed." He would just go to a pub and pick up a guy on any given Saturday night. But it was harder to find a steady partner. Tom has not experienced homophobia, but members of his family have had problems accepting both his being gay and his being HIV-positive. He knows he would get better treatment in Denmark, both medical and psychological, but he does not want to live outside Greenland because he wants to be close to

his family and to Greenland's majestic nature. Like Estrella and Regine, he often walks out in the beautiful landscape outside Nuuk to find consolation and peace.⁹²

Homosexuality was never a controversial issue in Greenlandic politics. The law against discrimination on grounds of sexual orientation has never been introduced, but this is due to lack of initiative rather than to any outspoken resistance, as was the case in the Faroes. In 1994, when the Greenlandic Parliament, the *Landsting*, decided to introduce the law on registered partnership in Greenland, it sparked a short debate about homosexuality in the press. Except for an open letter to the *Landsting* from religious groups in Nuuk, no anti-homosexual voices were raised, and the newspaper articles had more of an informative character, about the fact that there were actually homosexuals in Greenland. Tom Semionsen appeared in a newspaper article and came out as both gay and HIV-positive, which he says did not provoke any negative reactions. Some politicians and a psychologist gave their views on the phenomenon, but there was no big debate, and when the law on registered partnership – after two years of preparation in the Danish Ministry of Justice – was put in force in Greenland, on July 1, 1996, it was not even mentioned in the press.⁹³

Homosexuality was still not discussed openly and not much happened until 2002, when the radio journalist Erik Olsen founded *Qaamaneq*, the Greenlandic National Association for Gays, Lesbians and Bisexuals. Erik got tired of not knowing any other gay or lesbian Greenlanders, so he asked the journalists at *Atuagagdlitit* to interview him. At first, he chose to appear anonymously, but published his e-mail address and got lots of response. Many lesbians and gays wrote to him, so the next step was to meet and organize. The new association, whose name means "The Light," decided to be more inclusive than their Danish sister organization, and added "bisexuals" to their official name. Since then, homosexuality has been more frequently discussed. There are sometimes articles in the press on the topic, and Greenland's Radio's youth show on Sunday afternoons brings it up for discussion fairly often.

In 2004 the Greenlandic government sponsored a tour along the coast to inform young people about homosexuality. Two members of *Qaamaneq* visited schools and talked about their own experiences. Traveling is extremely expensive in Greenland because of the lack of roads, but via e-mail *Qaamaneq* can have contact with people living far away from the capital. Its publication *Tendens* (Tendency) is posted on the group's Web page.⁹⁴ At its peak, *Qaamaneq* could gather up to 60 people at its parties, but, as always, it was much harder to find people to serve on its board. Erik Olsen was its founder and chair, but he was not alone. After the first meeting Hulda Zober Holm, Regine Jørgensen and Jesper Kunuk Egede were among those who worked hard for the association, but both Hulda and Jesper have since moved to Copenhagen, and Erik is contemplating doing the same thing. In this situation, *Qaamaneq* has severe

problems with continuity. Jesper says there is no need for that kind of association anymore, since the Internet facilitates contacts, and there are at least two separate chat rooms for Greenlanders on different Danish Internet sites.⁹⁵

To sum up, the modern conceptualization of same-sex sexuality is fairly recent in Greenland and its regulation in criminal law has been practically nonexistent. Though early Danish visitors reported what they thought was widespread promiscuity, and one of them claimed that same-sex sexual contacts seemed to be common, there is no evidence of institutionalized same-sex sexuality or bonding, as was the case with the North-American *berdache* and transgendered people in other cultures.⁹⁶ The concepts of *arnaasaq* and *angutaasaq* show that gender-transgressive women and men are present in Greenlandic tradition, and the modern gay and lesbian movement harkens back to these concepts. More research is needed, however, to investigate how gender and sexuality are interconnected in these words.



The different ways in which modern homosexuality has been constructed in Greenland and the Faroes offer good examples of how the new concept has spread from center to periphery in a North Atlantic context. From 1866 to 1989, Danish views on how to regulate same-sex sexuality have evolved from imposing a death penalty to offering a registered partnership, and the signals from the central power to its North Atlantic dependencies have changed accordingly. Whereas the penalties imposed – prison, higher age limit, and the ban on male prostitution – appeared unnecessary in the Faroes and completely meaningless in Greenland, the positive regulations, in the form of anti-discrimination laws and registered partnership, have been received as intelligible norms, though they were met with fierce resistance in one case and a somewhat embarrassed acceptance in the other.

Legal prosecution of same-sex sexuality was nonexistent in Greenland and not very energetic in the Faroes. Though there were laws prohibiting all kinds of same-sex sexuality in the Faroes, the rural setting and social control resulted in only abusive sex being prosecuted. In Greenland, there was no perceived need for a regulation of same-sex sexuality. Available data is contradictory as to the prevalence of same-sex activities in Greenland, but there does not seem to have existed any institutionalized same-sex bonding or roles, even if the sexual act itself was not surrounded by the same strong condemnatory discourses as in Europe.

In both societies, couples and individuals have been able to defy prejudice and live in opposition to existing norms, but only recently have groups of women and men organized to demand the right to live openly as lesbians and gay men. Their argument that the queer exodus to Denmark is detrimental to their

native land has found resonance in parts of the majority in each country, even if the resistance to their demands is still very strong in the Faroes. It is not a coincidence that these groups appear almost simultaneously in the beginning of the twenty-first century, as an effect of the globalization of gay and lesbian identities. In this process, the existence of the Danish law on registered partnership has been instrumental as a concrete issue for the gay-rights movement to focus on and, in a sense, has functioned as a tool to spread the idea of the orderly same-sex couple to the peripheries of the Realm.

Notes

1 I wish to thank all the people who granted me interviews during my two weeks of field work in the Faroes and Greenland. For practical help I thank Lena Nolsøe at the Faroese National Archives and Søren Søndergaard Hansen, Chief Judge at the High Court in Nuuk. My heartfelt thanks also goes to Sjurður Rasmussen, who initially helped me with the research on anti-homosexual legislation in the Faroes. I also thank Urban Lundberg, Bo Wagner Sørensen, and Søren Thuesen for useful comments, and Glenn Rounds for correcting my English.

2 During the nineteenth century Iceland managed to obtain an increasing degree of autonomy from Denmark and from 1918 had its own legislation. Between 1918 and 1944, Iceland and Denmark were united as separate jurisdictions under the same king. In June 1944 Iceland declared itself a republic, which many Danes thought less than polite, given that Denmark was still under German occupation. Nevertheless, the Danish king sent a telegram congratulating Iceland on the ceremony of independence. Karlsson 2000, 319-323.

3 Lov om Færøernes hjemmestyre [Faroe Islands Home Rule Act] of March 23, 1948 (in force April 1, 1948); Lov om Grønlands hjemmestyre [Greenland Home Rule Act] of November 29, 1978 (in force May 1, 1979). For a general history of the Faroes, see Debes 2001; Wylie 1987. For Greenland, see Gad 1984; Lidegaard 1991; Petersen 1991.

4 That this highly stylized description focuses on the land in one case and the population in the other reflects the inequality in communication between Danes and Greenlanders, and the comparatively stronger position of the Faroese in the colonial exchange. Whereas written Faroese can be understood by Danish-speaking people after a short period of study, the Inuit language of the Greenlanders is much harder to learn. Virtually all Faroese know Danish well, and most Greenlanders (i.e. two thirds) know Danish. All official Greenlandic documents are in both Greenlandic and Danish, while the Faroes is a monolingual society. There is also a Greenlandic postwar generation of Greenlanders who speak their mother tongue poorly or not at all, because of a general policy of "Danification" in their childhood. "Kalaallit qallunaatuinnaq oqaasillit peqatigiiffiliornialerput / Debat om forening for dansktalende grønlandere," *Atuagagdliutit/Grønlandsposten* (AG), October 29, 2002. Ironically, given the emphatic masculinity of Danish explorers, one of them, Eigel Knuth (1903-1996), late in life declared that he wished he had been more open about his homosexual tendencies. Rosen 2001c.

5 Spivak 1988, 207-11.

6 Wylie 1987, 14.

7 Wylie 1987, 67, 91; Debes 2001, 98-107; Thorsteinsson 1990, 301-21.

8 Debes 2001, 148-201.

- 9 “er hun tilbøjelig til at bruge raa og uanstændige Udtryk, ogsaa paa Gaden, og med sit hele Forhold en Plage for Nabolaget.” The Faroese Court (*Færøernes Ret*, FR), Justitssag nr. 7, 1900. Sorenskriveren. Faroese National Archives (*Føroya Landsskjalasavn*, FL).
- 10 “for at prøve om Drengene [. . .] ligesom Martyrerne ville lide for deres Tro . . . knap 1/2 Tomme langt og ikke videre dybt og kan ifølge den afgivne Lægeerklæring ikke antages at have været farligt for Drengens Helbred.” FR, Justitssag nr. 7, 1887. Sorenskriveren, FL.
- 11 “mulig tilstedeværende degenerative Anlæg . . . abnorme . . . stadig mærket normal kønslig Tilbøjelighed . . . de for ham fremmede Forhold (isoleret Sted, Delen Seng med andre)” FR, Justitssag nr. 2, 1913. Sorenskriveren, FL.
- 12 “lige saa godt som at have med Kvinder at gøre . . . det troede han ikke paa” FR. Justitssag nr. 2, 1917. Sorenskriveren, FL.
- 13 “Følelse af Modvilje . . . at han i Mangel af Adgang til det sidste har faaet Lyst til det første.” FR. Justitssag nr. 2, 1917. Sorenskriveren, FL.
- 14 Danish Law no. 163 of May 31, 1961 introduced the “Ugly Law” in Denmark, and Danish Law no. 212 of June 4, 1965 abolished it. Both these amendments were put in force in the Faroes on April 1, 1966 through Royal Decree no. 90 of March 17, 1966, announced in *Dimmalætting*, March 26, 1966. Cf. *Løgtingstíðindi* 1965 B, p. 176–78. I thank Sjurður Rasmussen for making me aware of this fact.
- 15 “er der ingen forskel på dansk og færøsk lovgivning på de områder, du nævner.” Letter from Bent Hansen, September 27, 1983; “da vi er kommet i tvivl om, hvorvidt den danske straffelov er forskellig fra den færøske [vedr. homoseksualitet]” Letter from Bent Hansen to M. Nepper-Christensen, September 27, 1983. Enkeltsager 1969–1983. Hovedbestyrelsen I.O.II. LBL Archives, Copenhagen.
- 16 “Orsökkin er, at spurnigurin um at seta lógirnar og forskriftirnar í gildi í fleiri førum ikki er lagdur fyri føroysku myndugleikarnar, ella at hesir ikki hava svarað. Í tveimum førum hava føroysku myndugleikarnir svarað, at tað ikki er ynski um at seta lógirnar í gildi.” *Løgtingstíðindi* 1985 A, p. 361.
- 17 Danish Law no. 195 of April 28, 1976. Decided upon by the *Løgting* on September 23, 1986. Announced in *Dimmalætting* on March 10, 1988, p. 9 (in force April 7, 1988).
- 18 The court records from 1969 onward are still kept in the Faroese Court, and a week’s visit in September 2005 was not enough to get the necessary permission to view them. Instead, I went through all docket books and court records before that year, material which is kept in the Faroese National Archives.
- 19 “homoseksuel usædelighed med personer under 15” (from 1985 “under 12”) . . . “homoseksuel usædelighed i øvrig.” *Politiets årsberetning. Færø politikreds* 1979–86.
- 20 FR. Straffesag no. 78, 1958. FL.
- 21 “på grund af sin race, etc.” There are 32 seats in the *Løgting*, so apparently 14 members were absent. *Løgtingstíðindi* 1987 A, p. 232; *Dimmalætting*, March 26, May 7, 1988; *Sosialurin*, March 26, 30, April 9, 1988.
- 22 Interview, Karin Kjølbros.
- 23 Interview, Karin Kjølbros. On the phenomenon of intellectual exile, see Simonsen 2003, 2004.
- 24 “alle vidste . . . Der har foregået fester der, som måske har været lige så livlige som vores nutids forhold” Interview, Bogi Davidsen. There are many examples of the double life and external networks that rural queers could have at about this time. See, for example, Rydstrom 2003, 231–32, 235–53. For a North American example, see Howard 1999, 115–24.
- 25 “Sum smádrongur spældi eg altíð við dukkur, ongatíð við bilar og annað sum flestu smádreingir spæla við.” Samuelsen 1975. I thank Thorvaldur Kristinsson for making me

aware of this source. “Han var utrolig livlig, utrolig ærlig og fantastisk sjov. Han var i sin væremåde en sådan person der ændrede, så at sige, hele den moderne tilværelse på Færøerne . . . Han dansede rundt der på dansegulvet med armene i vejret og klædt på forskellige vis . . . Han svarede så skarpt tilbage. Da tror jeg langt de fleste havde ønsket at de aldrig havde sagt noget” Interview, Bogi Davidsen.

26 “Men harraguð, eg veit at tað eru fleiri sum eru bisexuell í Føroyum, tað er bara eingin sum torir at vísa tað, hetta veit eg tí eg havi verið saman við fleiri av teimum . . . men sjálvandi havi eg fingið nógvar viðmerkingar við á vegnum, t.d. at religiøs siga at tað er synd . . . og hann hevur væl eisini skapt meg! . . . hví hava pappír uppá hvønn annan?” Samuelsen 1975, 8.

27 “Fyri meg var Rólant ein varði . . . vit føroyingar kundu givið honum eitt minni, sum kunde vist okkara framtíð, bæði føroyingum og útlendingum, at hann var og er ein varði” “Til áminnis um Rólant Samuelsen,” *Sosialurin*, May 19, 1992. I thank Turið Sigurðardóttir for finding this source for me.

28 Talking about his experience of growing up in Klaksvík, the second largest town in the Faroes, Runi Kim Petersen mentioned that this particular TV program was of great importance to him when he was sixteen years old. Interview, Runi Kim Petersen.

29 Interview, Bogi Davidsen.

30 “ikki minst hjá familjum teirra - heilt vanligum føroyskum familjum - sum hava ‘mist’ sini samkyndu børn.” “Yvirlýsing til frama fyri rættindi teirra samkyndu og mótmæli móti samnavstri av átrúnaði og politikki,” *Dimmalætting* and *Sosialurin*, September 21, 2002; “Stór undirtøka ímóti skrásettum parlag,” *Dimmalætting*, October 16, 2002.

31 “Vit eru ikki sjúk ella demoniserað,” *Dimmalætting*, November 13, 2003; “Samkynd út úr skápinum,” *Fregnir*, November 14, 2003; “Bíblían skal ikki stýra kjakinum,” *Sosialurin*, November 27, 2003. Interviews, Sonja Jogvansdóttir; Tina Jakobsen.

32 The account is based on the author’s own recollection of the event, conversations with participants, and newspaper reports. “Ráðstevna: - Hvør fuglur syngur við sinum nevi,” *Dimmalætting*, August 22, 2005; “Rørandi stórir stuðul til tey samkyndu á Vaglinum,” *Dimmalætting*, August 29, 2005.

33 “Samkyndu fingi ikki innivist í revsilógini,” *Dimmalætting*, December 14, 2005.

34 Interview, Høgni Hoydal.

35 “Merkini siga hvussu tað er at vera samkyndur í Føroyum,” *Dimmalætting*, September 28, 2006; “Rasmus er sum øll hini,” *Dimmalætting*, October 5, 2006; “Orðaskifti um samkynd avmarkaða umtalu uttanlands,” *Dimmalætting*, November 8, 2006; “At eiga eitt samkynt barn,” *Dimmalætting*, November 29, 2006; “Groft overfald ábnar færøsk homo-debat,” *Politiken*, October 9, 2006; “Homofobi: Nordisk Råd Kritiserer Færøerne,” *Information*, November 1, 2006; “§ 266b: Kynslig orientering verður skoytt uppí revsilógina,” *Dimmalætting*, December 15, 2006.

36 For research on same-sex sexuality in rural areas in Sweden, see Norrhem 2001; Rydström 2003. For Finland, see Löfström 1999.

37 Instruks af 19. April 1782; Gad 1984, 181.

38 Marquardt 1999.

39 *Atuagagdliutit*, which means “Readings,” is still Greenland’s most important newspaper. For a very long time there was no Danish-language press in Greenland, but during World War Two when the Danes had been cut off from the newsflow from home, *Grønlandsposten* (The Greenland Post) was founded. After the war, the two journals merged, and since 1952 *Atuagagdliutit/Grønlandsposten*, or *AG*, is entirely bilingual. For a discussion of

the early years of *Atuagagdliutit*, see Langgård 1999; Thuesen 1988, 119-21; Lidegaard 1991, 155-56, 187; Sørensen 1983, 106-7.

40 Marquardt 1999. For a discussion about the Swedish state's attempts to define the "authentic" Sami, as one herding reindeer, see Amft 1998. In similar terms, Sørensen (1994a) has reflected on the quest for authenticity in Greenland.

41 Mylius-Erichsen 1905-1906; Lov nr. 139 om Styrelse af Kolonierne i Grønland af 27. Maj 1908 [Law of May 27, 1908 on the Governance of the Greenland Colonies]; Lov om Grønlands styrelse af April 18, 1925 [Law of 18 April 1925 on the Governance of Greenland].

42 Sørensen 1983, 212.

43 Lov nr. 271 af 27. maj 1950 om Grønlands landsråd og kommunalbestyrelser mv. [Law no. 271 of May 27, 1950, on Greenland's Provincial Council and communal boards, etc.]; Lov om Grønlands hjemmestyre [Greenland's Home Rule Act] of November 29, 1978, Articles 1-3.

44 Thisted 2005. Cf. Bhabha 1994.

45 "prisgivet manden." Rasmussen 1905, 63-64; "noget naturligt, nødvendigt, behageligt og styrkende." Bertelsen 1907, 18, quoted from Arnfred 1991, 88.

46 Kjellström 1973, 34-35.

47 "Pebersvend er kun den, der vrages, fordi han er en ussel erhverver." Rasmussen 1905, 46, 202, 204; Kjellström 1973, 150-52.

48 Bertelsen (1940) interprets this as a reference to mutual masturbation or anal intercourse. It is impossible to know exactly what unmentioned sin Olsen had in mind, but the euphemism in question was a common designation for sodomy or same-sex activities in the eighteenth century. "Og den Synd, som Paulus ikke vil have nævnt, troer jeg nok, gik i Svang blant Mandkiønnet." Fabricius 1787, 249, quoted from Bertelsen 1940, 190.

49 "men da Grønlændernes Levemåde lagde Hindringer i Veien for de ugifte Folks Samboen, og da man opdagede, at Sædeligheden mere hæmmedes end fremmedes der ved." Fenger 1879, 215, quoted from Bertelsen 1940, 191. The devout and sexually tainted faith of the Moravian brethren gave rise to rumors about same-sex practices in the mid-eighteenth century. See Peucker 2006.

50 "normale ægteskabelige forbindelser . . . den almindelige eskimoiske Letpaavirkelighed og Hæmningsløshed." Bertelsen 1940, 192, 193.

51 The manuscripts are now kept in Greenland's National Museum in Nuuk, except for some paintings that Rink's widow deemed indecent. These images, like the one illustrating the tale of "The woman who wanted to be a man," are now in the Museum of Cultural History in Oslo.

52 The name *Arnaqqaq* means "old woman" or "witch," and *Ukuaamaq* means "favorite daughter-in-law." Kreutzmann 1997a, 178. Cf. Rink 1866.

53 "angutaasaarluni . . . Erniligama / pissarsigama / pitsuimmat pisuimmallu / nuliaanik arsaqaara / haaja - ja-haajaaj!" Kreutzmann 1997b, 175-78. "og spillede mand . . . Da jeg skulle føde / da endelig jeg fik ham / så var han en dårlig fanger / og fordi han ikke kan forsørge hende / tager jeg hans kone fra ham! / haaja - ja-haajaaj!" Kreutzmann 1997a, 175-78.

54 Thisted 1997, 27. Knud Rasmussen wrote down a similar story that he heard among the Polar Eskimos in the beginning of the twentieth century. The storyteller Taterark, "a middle-aged man," who seemed to have specialized in grotesque stories, told Rasmussen about "The mother-in-law who married her daughter-in-law." A man treated his wife so bad that she fled and took up living alone, but her mother-in-law went after her and took

her as a wife, "in that she behaved like a man and used a reindeer's penis." As in the other story, the mother-in-law was a good hunter, and when the man found his wife he asked her about the provisions. As the old woman came home, she dropped her penis from her pants and her son broke out in laughter. He chased her, but before he could catch her, she "lept out in the big waterfall from shame" (midaldrende Mand . . . Svigermoderen som giftede sig med sin svigerdatter . . . idet hun opførte sig som en Mand og anvendte en Rens penis . . . sprang ud i det store Vandfald af Skam"). Rasmussen 1905, 183, 202-3, quoted in Bertelsen 1940, 191, and Goldschmidt 1957a, 105, n. 2.

55 It was much harder for the activists to come up with a word for "bisexual," but finally they opted for "tamanhoortut," which means "in two directions." Interview, Regine Jørgensen and Estrella Mølgaard.

56 Interview, Henriette Rasmussen. Finnish historian Jan Löfström has discussed gender-transgressive people in Finnish rural society before 1950 in similar terms. Löfström 1999.

57 Interview, Asii Chemnitz Narup.

58 "Men Utugt og al Urenhed eller Havesyge bør end ikke nævnes blandt eder, som det sømmer sig for hellige." Thuesen 1988, 165 (Eng. from New English Bible). Cf. Arnfred 1991, 91-92.

59 "Det er fra grønlandsk side meddelt ekspeditionen, at man i vide kredse taler ganske åbent og frit om intime seksuelle forhold, uden at nogen tager anstød deraf, men at man dog generer sig for at drøfte sådanne emner når der er mere fremstående grønlandere eller danske til stede." Jurex 1950, vol. 5, p. 48.

60 As do, for example, Kjellström 1973; Arnfred 1991; Sørensen 1994b. Canadian anthropologist Barbara Bodenhorn has discussed gender roles in connection with hunting among the Inupiat in Northern Canada but does not mention mannish women and effeminate men. Bodenhorn 1990.

61 The number of interviewees corresponded to 83 percent of the population in that age span in the three districts concerned, and 14 percent to that age group in all of Greenland. Olsen 1974, 17-18.

62 Question 67 in the questionnaire was formulated thus: "How old were you when you for the first time heard about homosexuals or homosexuality? If professed knowledge - when did you yourself have such a relation for the first time - do you know - or have you heard of homosexual couples here in Greenland?" ("Hvor gammel var du, da du første gang hørte om homoseksuelle eller homoseksualitet. Hvis Kendskab - hvornår havde du selv et sådant forhold første gang - kender du - eller har du hørt om homoseksuelle par her i Grønland?") Olsen compares his results with those of Hertoft 1968. Olsen 1974, 76, 157.

63 "homoseksuelle par eller personer . . . havde hørt." Olsen 1974, 76.

64 Olsen 1974, 78.

65 "petting og interfemoralcoitus." Olsen 1974, 77-78.

66 "Selvom man ved samtale med grønlandere nok får indtryk af en mindre emotionel og restriktivt præget holdning til homoseksualitet i Grønland end den traditionelt kendes i Danmark, så må man erkende, at den grønlandske kulturs normer på dette område er uopklarede." Olsen 1974, 76.

67 Instruks af 19. April 1782.

68 Oldendow 1931, 62-63; Gad 1984, 135-36.

69 Oldendow 1931, 67, n. 77, 68, n. 79, 80; Marquardt 1999.

70 Oldendow 1931, 54.

71 Lov nr. 271 af den 14. juni 1951 om rettens pleje i Grønland [Law no. 271 of June 14, 1951 on court procedures in Greenland].

- 72 Lov om Grønlands styrelse af April 18, 1925 [Law of 18 April 1925 on the Governance of Greenland], section 40.
- 73 Oldendow 1931, 46. Unlike legal tradition in Europe, the widow did not keep the status granted to her by marriage.
- 74 Cf. Amft 1998; Sørensen 1994a.
- 75 The figures come from a list that was compiled by Greenlandic authorities in 1929 to serve as a base for discussions about the future judicial system in Greenland. According to Knud Oldendow, there were “about half a dozen” prosecutions each year between 1881 and 1926, which would add up to about 270 cases. The list comprises 165 cases, about two thirds of the total number. Oldendow 1931, 85-91.
- 76 Sørensen 1983, 212.
- 77 Goldschmidt 1957a, 104-5; Goldschmidt 1957b, 99-100; cf. Jurex 1950, vol. 5, p. 46.
- 78 “for tung en Rustning for det grønlandske Samfund.” Oldendow 1931, 70.
- 79 The expedition consisted of Verner Goldschmidt, Per Lindegaard, and Agnete Weis Bentzon. They spent one year in Greenland, visited all District Courts, and systematically studied all court records from 1938 to 1948. Jurex 1950; Bentzon 1977.
- 80 Jurex 1950, vol. 5, p. 43, 48-49.
- 81 “I moderne indstillede kredse må den kønslige sædelighedsfølelse antages at være af samme karakter som den, der værnes i den danske straffelov . . . stemmer med moralopfattelsen hos den voksende del af befolkningen, som er indstillet på den nye politiske linie.” Senholt 1985, 197.
- 82 Jurex 1950, vol. 5, p. 46.
- 83 “der foreligger i det hele ingen oplysninger for udvalget, der tyder på, at homoseksualitet frembyder noget problem i Grønland . . . Det kan imidlertid forekomme betænkeligt, at sådant forhold ikke er kriminaliseret på samme måde som i det øvrige Danmark, idet der ikke er grund til at antage, at de i Danmark gældende regler skulle stride imod grønlandsk retsopfattelse.” *Kriminalloven og de vestgrønlandske samfund*, vol. 2, p. 64.
- 84 “om der skabes et ly i Grønland for udøvelse af sådanne handlinger, som er strafbare i den øvrige del af riget.” Bemærkninger til udkast til lov om ændringer i kriminallov for Grønland. Bilag 2, Grønlands Landsråds Forhandlinger 1962, 194.
- 85 “taimatútaoK pineKásaoK inuk arnaKáminik anguteKáminigdlunít 18 inordlugit ukiulingmik pitaitdlíoKatigingnigtoK / Det samme gælder den, der har kønslig omgang med en person af samme køn under 18 år.” pinerdlugtuliornernut Kalátdlit-nunāne inatsisit pivdlugit nalunaerutit 2. juli 1963 / Bekendtgørelse af 2. juli 1963 af Kriminallov for Grønland. *Nalunaerutit / Grønlandsk Lovsamling*, Serie A, no. 2, 1963.
- 86 Grønlands Landsråds Forhandlinger. Forårssamling 1977. Bilag, 62, 83.
- 87 Since criminal statistics do not distinguish between charges for same-sex intercourse and different-sex intercourse this cannot be established with certainty. A survey of the docket books of Greenland’s High Court and Nuuk Circuit Court, however, did not reveal any prosecutions for violation of section 53, clause 2, during the period it was in force.
- 88 According to the Jurex report, the age of sexual maturity was one area where Greenlandic and Danish traditions differed. Penetrative sex with a minor was strongly condemned in Greenlandic society, but other sexual acts were considered harmless. It is perhaps this difference that has led to the high number of prosecutions for sex with minors in Greenland – an area where old and new values collide. There have been waves of prosecutions for sex with children in the 1940s, 1970s, 1990s, and in the first years of the new millennium. See tables 8 and 9; “Atornerluisartooq iperagaasooq / Sexualforbryder går frit rundt,” *Atuagagdluutit/Grønlandsposten*, (AG), December 11, 1997; “Nunatsinni meeqqanik kinguaas-

siutitigut pinerliinerit pisarput - ikinnerpaat meeqqanik atoqatiginninniartunit piliaasarput / Mange seksuelle overgreb mod børn i Grønland - De færreste begås af pædofile," *AG*, August 10, 2004; "Atornerluineq nipangiussaq / Pedofil-sagen der blev tiet ihjel," *AG*, November 4, 2004. Cf. Goldschmidt 1957a, 102-10.

89 "uagtet vidnet ikke har haft noget imod tiltaltes tilnærmelser." Sag no. 41/1971. Kalaallit Nunaata Eqqartuussivia/Grønlands Landsret (KNE/GL), Nuuk.

90 Other taboo areas that have never been openly discussed are sexual violence, rape, child molestation, and alcoholism and the sometimes difficult relationship between Danes and Greenlanders. Since the nineties these things are being discussed openly, but Asii Chemnitz Narup fears that these discussions are often insensitive to complex and difficult contexts in the rapidly changing Greenlandic society. Interview, Asii Chemnitz Narup.

91 "Hende der døde tidligt, hun var en kendt sangerinde, og folk tror jeg af den grund accepterede deres forhold nogenlunde." Interview, Regine Jørgensen and Estrella Mølgaard.

92 "Den gang diskuterede man ikke om sex eller om man er hetero eller om man er bøsse eller lesbisk . . . jeg havde ikke nogen problemer at få nogen at gå i seng med." Interview, Tom Semionsen. Tom has also told his story in a newspaper article "Uagut aamma inuuvugut... / Vi er også mennesker..." *AG*, March 1, 1994, and in a bilingual information leaflet for the Greenlandic HIV-AIDS prevention society *Aamma illit inuuneraat* 2004.

93 "Angutaannaasartut arnaannaasartullu aappariittalernissaat / Bøsser og lesbiske skal kunne indgå ægteskab: Religiøse grupper i Nuuk protesterer," *SermitsiaK*, February 18, 1994; "Aappariittut nalunaarsorneqarsinnaalerput / Bøsser og lesbiske kan nu få papir på deres samliv," *AG*, February 24, 1994; "Tamanna qaqutigooortuunngilaq / Homoseksualitet er slet ikke så sjældent endda," *AG*, March 8, 1994.

94 *Tendens*, www.qaamaneq.gl, viewed August 15, 2006.

95 "Arnaqatinoortunut anguteqatinoortunullu klubbiliorniartuq / Vil starte klub for bøsser og lesbiske," *AG*, January 4, 2002; "Angutinoortartut arnanoortartullu nunatsinni peqatigiffiat siulleq / Grønlands første forening for bøsser og lesbiske," *AG*, February 22, 2002. Interviews, Erik Olsen; Regine Jørgensen and Estrella Mølgaard; Hulda Zober Holm; Jesper Kunuk Egede.

96 Herdt 1994.

Sweden 1864-1978: Beasts and Beauties

by Jens Rydström

The oldest Swedish law written down was the Older Västgöta Law from the end of the thirteenth century. It contained no ban on either same-sex sexuality or bestiality, the classic sodomitic sins bracketed together in so many legislations. But the fifth chapter of its *Rättslösa Balk* (Lawlessness Code) includes the following regulations on defamation:

A man calls another man a puppy. "Who is that?" says the first one, "You," says the second man. "I declare that you called me a word of defamation." It is a case of sixteen *örtugs* for each party [i.e., for the plaintiff, the King, and the court – altogether two *marks*]. He shall take him to court and declare his accusation and present witnesses and prove it with the oath of twelve men. There he may pray that God help him and his witnesses, and say that "you called me a word of defamation, and you are guilty of what I accuse you." That is the way to sue for words of defamation and shameful accusations. §. 1. If a man calls another man a freed thrall, one who is in kinship born, or says: "I saw that you fled before another man, and had his spear in your back." That is a word of defamation, sixteen *örtugs* three times. §. 2. "I saw that a man penetrated you." "Who is that?" "You," he said. "I declare that you called me words of defamation and shameful accusations." That is a case of sixteen *örtugs* for each three. §. 3. "I saw that you had your way with a cow or a mare." That is a shameful accusation, a case of sixteen *örtugs* three times. That is to be prosecuted, he cannot deny. §. 4. "I saw that you had your mother." That is a shameful accusation and a case of sixteen *örtugs* three times, and he cannot deny. §. 5. These are the words of defamation of a woman: "I saw that you rode on a fence with your hair unkempt and in the guise of a troll when it was neither night nor day." If you say that she can destroy a woman or cow, those are words of defamation. If you call a woman a whore, that is a word of defamation. If you say that a woman has lain with her father or that she has caused herself a miscarriage or that she has killed her child, these are shameful accusations. §. 6. All these sins you shall first discuss with the priest and not with envy or anger, or you are guilty to three *marks*. May they be called three but go for two.¹

This long list of slanderous statements shows that having sex with an animal or being penetrated by another man were among the worst things a man could be



Norra Vedbo Rural District Court in Jönköping County in 1908. Rural District Judge (Häradshövding) Ludvig Sandberg presides over a court consisting of a deputy judge and a twelve-member jury of landed peasantry. The oldest member of the jury, with the honorary title district justice (häradssdomare), is seated to the right of the deputy judge, and the rural district police superintendent (landsfiskal) and his two constables (fjärdingsmän), in uniform, are to the left in the picture. Until the 1950s, practically all courts consisted of men only, and when sexual crimes were dealt with, the public was generally excluded from the courtroom. Unknown photographer. Courtesy, Eksjö District Court.

accused of. Judging from this harsh law's wording, both women and men were susceptible to allegations of incest, but women were more likely to be accused of witchcraft.

Subsequent provincial laws prohibited bestiality, which was punishable by death, but not same-sex sexuality, a fact that Jan-Erik Almqvist has explained with the gradually increasing Christian influence on ancient Swedish legislation.² Whatever the reason, bestiality remained outlawed in Sweden from the fourteenth century to 1944, whereas a ban on same-sex sexuality was introduced into written laws relatively late. In 1608 a number of crimes not explicitly mentioned earlier were added to the legal codes through the inclusion of a long quote from Leviticus, the so-called Charles IX's Addendum to King Christopher's Law of 1442. The wording of this biblical text implies that only men could be punished for same-sex sexual acts: "If a man lies with a male as with a woman, both of them have committed an abomination; they shall be put to death, their blood is upon them." No women are known to have been judged under this law, though some women were prosecuted for bestiality during the seventeenth and eighteenth centuries.³

In the unified Law of the Swedish Realm of 1734 (*Sveriges Rikes Lag*), which replaced the medieval laws, homosexual acts were not specifically penalized. The legislators thought it better not to mention all the sodomitic sins, “of which there are three,” in order to avoid spreading knowledge about them among the people.⁴ The only such sin they chose to incorporate into the law was bestiality, which was punished by death. Even if the law did not explicitly prohibit same-sex sexuality, some people were indeed tried and executed for it since the courts could refer to the Law of God in Leviticus or argue that it was a crime analogous to bestiality. Swedish historian Jonas Liliequist has examined almost 1500 court cases concerning bestiality between 1638 and 1778, but from the same period he found only twenty cases involving male same-sex sexuality.⁵

When a new Penal Code came into force in 1864, both bestiality and “fornication against nature” were criminalized in its chapter 18, section 10:

Anyone who commits fornication that is against nature with another person or commits fornication with animals shall be sentenced to up to two years’ hard labor.⁶

Compared to the old capital punishment for bestiality, the new law signified a dramatic alleviation of the consequences and a considerable widening of the scope of the law. The new crime, “fornication which is against nature,” left ample room for interpretation, and until a Supreme Court ruling in 1894, it covered all kinds of sexual acts that were considered unnatural, such as heterosexual anal and oral intercourse. A ruling in 1918 defined one man’s masturbating another as unnatural fornication, thus establishing that unnatural fornication and, by the same token, fornication with animals no longer presupposed a penetrative act but encompassed other kinds of genital contact.⁷ If conceptualizing homosexual practices during the twentieth century changed significantly among legal and medical professions and among the general public, criminological theories on the whole also developed toward more modern types of crime prevention. From 1906 on, the courts could decide to suspend sentences, and in the following decades this became increasingly important in dealing with criminals. Especially in the case of young offenders, a suspended sentence under supervision of a probation officer was seen as a means of rehabilitating them and preventing them from becoming “antisocial.”⁸

Chapter 5 of the Penal Code regulated the treatment of those who were regarded insane. Its section 5 stated that if a person “is not in command of one’s faculties” (*saknar förståndets bruk*) then the person was to be exempt from punishment. If a person “is not in full command of one’s faculties” (*saknar förståndets fulla bruk*) the person should be sentenced, but his or her state of mind was to be regarded as an attenuating circumstance and a milder punishment was to be given in accordance with chapter 5, section 6.

In 1932, two cases of homosexual blackmail, one in Norway and one in Sweden, were made public in the Swedish press. At the time, homosexuality was

outlawed but blackmailing was not. Many people found that unacceptable. As a reaction to this state of affairs, Sweden's largest daily, *Dagens Nyheter*, ran a story whose headline on the front page stated: "Homosexuality a wide-open field for blackmailers." The article contained interviews with some of the most eminent psychiatrists, jurists, and representatives of the police, all of whom were in favor of the decriminalization of homosexual acts.⁹ The social-democratic member of the *Riksdag* and Professor of Criminal Law Vilhelm Lundstedt declared that he was preparing a private member's motion for abolishing the law, and in January 1933 his motion was presented to the *Riksdag*. The Royal Medical Board recommended that the law be abolished altogether. If anyone committed homosexual acts with underage persons, or used violence, it should be solely a medical decision whether to confine the offender to an asylum or not. This radical suggestion was unacceptable to the Penal Code Commission (*strafflagberedningen*, 1938-56) which proposed instead a general age limit of 20 years for same-sex sexual acts and that the courts should retain the right to pass final judgment on such matters.¹⁰

Everything was set for decriminalizing homosexual acts between consenting adults in 1937 when the Penal Code was to be partly revised. In 1936, however, the Social-Democratic Minister of Justice Karl Schlyter, who had prepared the proposal, left his post, which was eventually taken over by Karl Gustaf Westman of the Agrarian Party. The new Minister of Justice withdrew the proposal for decriminalization before it could be presented to the *Riksdag*. In the Government's Bill he argued that lifting the ban on homosexuality would have two unwanted consequences which called for further consideration, namely, the danger that homosexuals would corrupt not only minors but also young adults and the risk of a "more open display" of their perversity. The process of revoking the ban on homosexuality was thus postponed until "further investigations" had been made.¹¹ In 1941 two reports were published that recommended decriminalizing homosexual acts between adults, but Westman did not prepare a government's bill to this effect.¹² It was not until Liberal Minister of Justice Thorwald Bergquist replaced Westman in 1943 that such a bill was presented.¹³

The new law penalized fornication with another person of the same sex with four years of hard labor or prison if the other person was under 15. If the other person had reached 15, but not 18, the punishment was two years of hard labor. If a person over 18 committed fornication with another person of the same sex under 21, thereby taking advantage of the other's inexperience or dependent position, the offender was to be punished with two years of hard labor or prison. The new law, like the old one, was applicable to both men and women. A new article, 10a, was added, which prohibited homosexual acts between teachers and their pupils, prison wardens and their prisoners, and other forms of connection involving institutional authority.¹⁴

It seems symptomatic of consistent party policies that decriminalization was pushed forward by Social-Democratic and Liberal Ministers of Justice, while the process was obstructed by a Minister of Justice from the Agrarian Party, which was renowned for its conservative approach on issues of morality. The question to what extent “pro-gay” legislation¹⁵ is linked to certain political parties is, however, more complicated, as such initiatives more often split parties internally instead of producing “pro-gay” or “anti-gay” coalitions. In the pre-war period homosexuality was not a top-priority issue and thus no party had a pronounced policy concerning it. It seems, rather, that a handful of individuals from different parties were actively working for or against legalizing homosexual acts. These persons could of course be guided by ideological motives, yet a “pro-gay” stance could just as well be fueled by a leftist egalitarian conviction as by a liberal ideology of freedom for the individual. Correspondingly, an “anti-gay” standpoint could be motivated by collectivist normalizing ideas or by moralistic conservative values. In many cases, personal experiences of homosexuals, whether positive or negative, may well have motivated the politicians’ standpoints. An early gay activist has suggested that the man who initiated the process of decriminalization, Vilhelm Lundstedt, had a gay brother who urged him to use his influence to abolish the ban on homosexuality.¹⁶

Still, a consistent pattern can be distinguished in the political debate around the question of decriminalization. Morally conservative politicians within the Conservative Party and the Agrarian Party were generally against making any changes to the existing ban on homosexual acts, whereas members of the Liberal Party and the Social Democratic Party would more often pronounce themselves in favor of decriminalization. The Communists assumed a disapproving stance on homosexuality during the 1930s and 1940s – homosexuality having been recriminalized in the Soviet Union in 1934 – whereas in the 1970s they became the most pronouncedly pro-gay party in the Swedish *Riksdag*.

In the nineteenth century, however, party politics had not evolved very much, at least concerning questions of morality, which were still mostly a monopoly of the Church and religion. Within the older way of thinking, homosexual acts were but one manifestation of the sodomitic sin, like bestiality. In Sweden the development of criminal law dealing with deviant sexuality is largely a history of how bestiality disappeared as a matter of concern from the collective mind and was replaced by homosexuality.

The deconstruction of bestiality

If there was no concept of homosexuality in Sweden before the twentieth century, the crime of bestiality, or sexual intercourse with animals, was a well-known and well-established fact for ages. The Swedish word for bestiality, *tidelag*, has no equivalent in the other Scandinavian languages. When the Vatican warned

A reconstruction of a crime of bestiality in Northern Sweden in 1944, months before the decriminalization of bestiality. The man in the picture confessed attempted bestiality but claimed he had not consummated the crime since he couldn't reach up. The rural police superintendent ordered a reconstruction of the crime and proved that the defendant could reach up, but the court did not accept this as evidence and acquitted him. Courtesy, Härnösand Provincial Archives.



against the *crimen contra natura* in the twelfth century, Swedish clergy interpreted this Latin phrase to refer to fornication with animals, whereas in the rest of Europe it was taken to mean sexual acts between men.¹⁷ In the seventeenth and eighteenth centuries, there was a virtual moral panic concerning this crime, with more than 600 persons executed for committing it in a country with less than 2 million inhabitants. Bestiality was still the most common sex crime in Swedish courts around the beginning of the twentieth century. Out of 353 prosecutions for violating chapter 18, section 10, between 1880 and 1910, more than 70 percent, or 252 cases, concerned bestiality. In the 1920s the number of prosecutions for “unnatural fornication” for the first time exceeded the figures for fornication with animals (see figure 4, p. 192).

Sweden was a rural country where a large part of the population lived close to animals, and it is reasonable to assume that this closeness many times resulted in sexual contacts, especially since other sexual outlets were surrounded by forceful taboos. Masturbation was banned on both moral and medical grounds and sexual intercourse with women was associated with high risks, such as unwanted pregnancy or sexually transmitted diseases. Basically, there were two main categories of people who engaged in bestiality: young boys and older men. Barriers to intimate contacts with women probably affected most these two age groups, when sexual feeling was awakening and when it was declining. The idea of women having intercourse with animals has existed for a long time, both as

a mythological motif and as a male sexual fantasy. In the seventeenth and eighteenth centuries a handful of women were prosecuted for this crime, and in the witchcraft trials it was a recurring theme. In the twentieth century, however, it seems that no women were in fact charged with bestiality in Sweden. Yet the imagery around this particular form of sexual activity prevailed, at least in the minds of men, as is shown by an inquiry sent out to informants born before 1945. The answers to this inquiry report several rumors of women having had sex with dogs, and one informant tells of a rumor from the beginning of the 1930s that a girl in a neighboring village had given birth to puppies.¹⁸

Treatment in the courts of cases of “unnatural fornication with another person” from the turn of the last century seems to differ very little from treatment of cases of “fornication with animals.” The acts were punished in much the same way and were not considered as emanating from an inherent disposition. Yet the perpetrators of both offences could be regarded as recidivists, and it seems that some people actually had a reputation in their local community for being interested in animals. In many cases, the persons engaging in bestiality were caught because they were already suspected and people from the farm had followed them to see what they were doing in the cowshed.¹⁹

Even though some of the same-sex cases could easily be understood as indicative of a definite sexual orientation, the courts generally refrained from trying to explain the motives for such crimes in this way. Likewise, the numerous incidents of bestiality in the countryside at the time are never explained as resulting from a permanent orientation but as caused by other factors.

Though bestiality was never conceived of as a sexual orientation, the crime provoked disgust and was seen as harder to understand than, say, theft. Some attempts at explanation can be found in the court records, but what is explained is always the criminal act rather than a criminal disposition, as was increasingly the case with homosexual crimes. The most typical rationalization was lack of opportunity to have sex with women, but almost never an inherent sexual deviance.

In the first edition of *Psychopathia sexualis* Krafft-Ebing does not include bestiality among sexual perversions. Sexual acts with animals are, in Krafft-Ebing’s early opinion, caused by mental or moral deficiency. In later editions, he describes it as *Zoerastie*, but this perversion never becomes established in the field of forensic medicine in Sweden.²⁰ Of altogether 72 forensic psychiatric statements pronounced in cases of bestiality between 1934 and 1945, only one used the diagnosis zoophilia. The diagnoses referred most often to intellectual weakness: “*imbecilitas*” (26 cases), “lacking mental development” (8), “*dementia senilis*” (8), “senility” (2), “intellectually subnormal” (2), “*oligophrenia*” (2).²¹ In 43 of these cases the defendant was given this kind of diagnosis and thus considered mentally weak or senile. Schizophrenia is used as a diagnosis in seven of the cases and in the remaining ten cases the patient was considered mentally

normal. But only one offender was given the diagnosis “zoophilia.”²² In contrast, homosexual acts were increasingly seen as the result of a sexual drive in its own right and with its own direction, not only as a result of weakened ability to resist the temptations of a more general striving for sexual satisfaction.

The legal construction of the victim

The redefinition of the victim is central to understanding how the judicial system dealt with homosexual acts and homosexual persons during the twentieth century. How did society perceive the parties involved in a homosexual act? The act was criminal, but who was the offended party? In the mid-nineteenth century, when the Penal Code was passed, many crimes were regarded more as a violation of the common order and less as an offence directed against an individual. This was certainly the case with the “Moral Offences” (*sedlighetsbrott*) in chapter 18 of the Penal Code. It contained regulations on incest, premarital heterosexual intercourse, “fornication against nature,” procurement, gambling, and cruelty to animals. All these crimes constituted “a grave offence to public order and morals,” as was stated in the proposal of the Law Committee of 1832.²³ It was thus not primarily a crime against the person with whom or upon whom the act was committed. This explains, for example, why also the younger party in an incestuous parent-child relationship was punished, provided he or she had reached 15 years, the age of legal maturity. It also explains why rape was not included in this chapter, but in chapter 15, “Crimes against the freedom of others.” The moral offences described in chapter 18 were thus regarded as crimes that threatened “order” or “morality” and not the rights of the object of the criminal act. In his authoritative commentary on the Penal Code, Professor Nils Stjernberg explicitly states that “All crimes mentioned in this section are to be considered as *delicta publica*, i.e., it is first and foremost society’s interest in preventing the undermining of public morals among the people, not the violation of individuals’ moral sense, which constitutes the ground for punishment.”²⁴

Today, the basic assumption regarding sex offences is radically different. Sex offences in the contemporary Swedish Penal Code (chapter 6 in *Brottsbalken*) do not require a plaintiff and neither must the victim of a crime suffer physical or other injury. They are regarded as crimes with a “*built-in* injury” in the deed.²⁵ Yet the crimes are certainly perceived of as being directed against a victim. This way of interpreting sexual crimes gained ground in the 1930s and became an increasingly conspicuous feature within both legal practice and jurisprudence. The commission which was appointed to propose “changes in the Penal Code regarding punishments for certain crimes etc.” sharply criticized the law that punished also the younger party for an incestuous relation. It pointed to consequences that now appeared absurd, citing examples of girls and young women who had for years endured constant sexual assaults by fathers or stepfathers, but

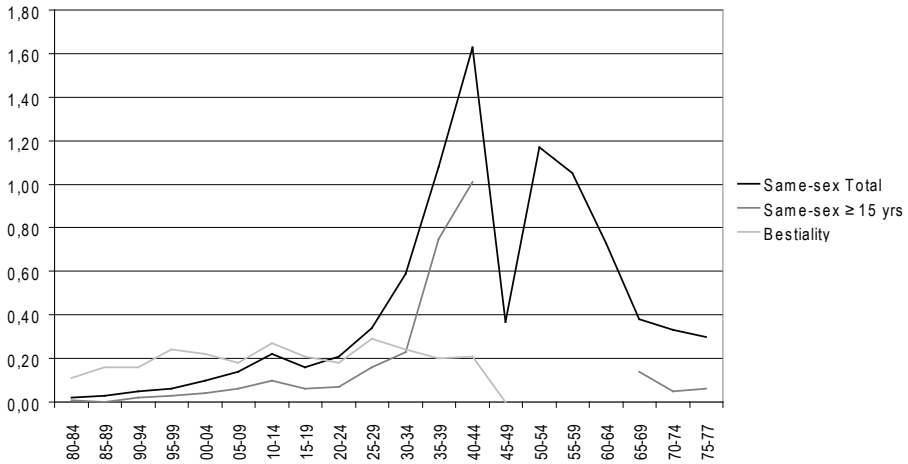
who dared not report it to the police, partly for fear of being convicted themselves. This description of the problem in itself represents a totally new way of perceiving the role of the victim. In 1937 the law was amended so that the younger person was not to be punished if he or she had been induced to engage in fornication by “grave abuse of a position of dependency” (*grovt missbruk av beroende ställning*). In practice this meant that in a majority of cases the younger part was no longer to be punished, even if he or she was older than 15 years.²⁶

A peculiarity in the Swedish law and its interpretation was that the law against “unnatural fornication” had precedence if other forms of prohibited sexual behavior were involved. If a person committed “unnatural fornication” with or upon another person, other laws on incest, fornication with minors, or other sexual offences were not applicable. All cases when two persons of the same sex had committed fornication were judged under chapter 18, section 10, regardless of age, kinship, or other circumstances. Sexual *practice* was thus more important than the *relation* between those involved in the sexual act. This may partly account for the comparatively high number of prosecutions under this law in Sweden.

The precedence of “unnatural fornication” – the fact that section 10 always took over as soon as a criminal sexual activity involved fornication between persons of the same sex – was established through a series of rulings of the Supreme Court. In 1914 a father who had committed fornication against nature with his underage son was sentenced solely under chapter 18, section 10, and not under section 1, which prohibited incest and which would have given him a considerably harsher punishment. Likewise, in 1918, a teacher who had masturbated a number of underage male pupils was sentenced only for unnatural fornication and not according to chapter 18, section 6 (teachers’ fornication with pupils), which also would have given him a more severe sentence. And, as mentioned earlier, a ruling from 1894 had already established that unnatural fornication between an adult man and an underage woman was to be punished only under chapter 18, section 10 and not under section 7, which prohibited fornication with underage girls.²⁷ All these other articles prescribed heavier sentences than chapter 18, section 10, and would have taken over if there had been a possibility for the court to apply them. Stjernberg argued that an act of unnatural fornication can never at the same time constitute an act of incest or of fornication with underage persons, since those presuppose heterosexual intercourse and that unnatural fornication should be interpreted in analogy with them.²⁸

The fact that all same-sex behavior and only same-sex behavior was prosecuted under chapter 18, section 10, was partly due to the gender-specific wording of the other sections in the chapter. Chapter 18, section 7, was applicable “[i]f a man commits fornication with a woman who has not yet reached the age of twelve” and section 8, “if a man commits fornication with a woman who has

Figure 4. Convictions for same-sex sexuality and bestiality per 100,000 inhabitants in Sweden, 1880–1977. Yearly averages in five-year intervals.



Source: Swedish criminal court records 1880–1944; Sveriges officiella statistik 1945–77.

Note: 1880–1944 chapter 18, section 10 (bestiality and same-sex sexuality); 1944–1964 chapter 18, sections 10 and 10a (same-sex sexuality with persons under 21) of the Swedish Penal Code of 1864; 1965–77 chapter 6, section 4 of the Swedish Penal Code of 1962. From 1965, criminal statistics distinguish between sexual acts with persons under 15 and sexual acts with persons between 15 and 21.

reached twelve, but not fifteen years of age.” Obviously, such formulations categorically excluded homosexual intercourse.²⁹

From the 1920s, in the wake of psychoanalytic theory, there was a growing awareness of possible psychological damage, and Stjernberg notes that this is a factor that should be taken into consideration but which unfortunately was not covered by the law.³⁰ Partly as a result of this shift in perspective, section 8 was amended in 1937 and the new wording prescribed prison “[i]f anyone, in any other case than said in section 7, commits fornication with *children* who have not yet reached the age of fifteen” (emphasis added). Section 7 remained gender specific, covering only heterosexual fornication with girls under 12, but the object of the crime described by the new wording of section 8 could be either girls aged between twelve and fourteen or boys of fourteen years and younger. Theoretically the new wording could cover same-sex fornication, but the motives explicitly stated that this amendment was aimed at making it possible to prosecute women who seduced young boys. In his commentary on the amendment, Stjernberg also points out that the *object* of the crime can now be both boys and girls, but that the fornication has to be heterosexual.³¹

The question whether there is a victim in the sexual crime is closely connected to the question of whether the passive partner in a forbidden sexual relationship is also to be considered culpable. The Swedish Supreme Court has spoken on this matter on two occasions. In 1901 it gave judgment in a case where a 20-year-old son of a farmer had been repeatedly anally penetrated by a 36-year-old

farmhand over a period of two years. The court of first instance acquitted the farmer's son, but the court of appeal sentenced him to six months' hard labor. Finally he was acquitted by the Supreme Court, since it claimed that he had only been a passive tool in satisfying the desires of the older person and had experienced no pleasure himself.³² In a similar case from 1938, the Supreme Court was of a different opinion. A 21-year-old bicycle repairman was sentenced in spite of his having been the passive partner. The young man was described as effeminate and obviously homosexual, and the court did not give any consideration to his claim that he had experienced no pleasure. A more modern medical view on homosexuality probably influenced the court's decision. Henceforth, a person who "lets himself be used for unnatural fornication" was also guilty of a crime.³³

Beginning in the 1930s, the traditional view of moral offences as crimes against "public order and morals" was thus replaced by a view that presumed that these offences had a victim. Still, there were hardly ever any claims for damages, and the only thing the physicians tried to establish when examining the object of such a crime was whether there was any lasting physical injury. Not only the victim of the crime was redefined during the 1930s. The same is true for the perpetrator. A new kind of perpetrator, driven not by evil intentions, but by an innate disposition, is constructed.

Courtroom practice and the construction of the gay man

As mentioned before, more than 2,400 men were prosecuted for violations of chapter 18, section 10 between 1864 and 1944 when the law was in force. About a third of the cases between 1880 and 1944 concerned fornication with animals, and until the 1920s this was the most common crime judged under this section. Male homosexuality gradually replaced bestiality as the form of male sexual deviance that was perceived as most problematic (see figure 4).

Table 15. Types of punishment for same-sex sexual acts in Swedish courts, 1920–44.

| Year | Number of prosecutions | Number of committals to mental hospital | Number of hard labor or prison sentences | Percentage of suspended sentences | Average length of sentence (months of hard labour) |
|---------|------------------------|---|--|-----------------------------------|--|
| 1920–24 | 64 | 0 | 51 | 20 | 9.1 |
| 1925–29 | 102 | 4 | 82 | 39 | 8.2 |
| 1930–34 | 182 | 19 | 115 | 38 | 7.4 |
| 1935–39 | 340 | 61 | 200 | 72 | 3.2 |
| 1940–44 | 526 | 72 | 310 | 71 | 3.6 |

Source: Criminal court records.

Note: A number of other penalties, such as reform school orders, fines etc., are not accounted for. The average length of sentence includes suspended sentences and prison sentences. Prison sentences counted as half as severe as hard labor, and have been divided in half when calculating the average length of sentences.

The construction of the gay man is closely connected to the new, medicalizing view on sexual aberrations. The few men who were prosecuted under chapter 18, section 10 for same-sex sexual acts before the 1930s had mostly engaged in sexual acts with children or committed the act in public. However, in 1897, two workers were apprehended as they engaged in anal intercourse in Stockholm's Djurgården Park. They were not particularly remorseful, and when the soldiers who had surprised them asked what they were doing, one of them answered: "We are fucking," and added that it was nobody else's business. The investigation revealed that they had shared an apartment for some time and that they frequently engaged in this kind of intercourse, but neither the court nor the police investigated further. No questions were asked about why they chose to do this. No speculations were made regarding the sanity or the sexual orientation of the two men.³⁴

A turning point was the Santeson case in 1906-07. Shortly after a morality scandal had swept Denmark, a sculpture caster from Stockholm, Nils Santeson, was charged with homosexual acts. His younger lover had attempted suicide and left a farewell note blaming Santeson for his misery. Santeson's extensive network of cultural contacts obviously caused unrest and made his case the object of much talk. For the first time homosexuality was discussed openly in the press. Doctor of Medicine Frey Svensson argued in *Dagens Nyheter* that the law on "unnatural fornication" did more harm than good and should be abolished.³⁵ According to Greger Eman, it was at this point that the word and the concept of homosexuality began to gain currency also outside a narrow circle of biologists and physicians, promoted by new articles and pamphlets. The number of court cases increased after 1907, which may be a consequence of the new way of dealing openly with the concept. As Lisa Lovén has shown, the coverage of the German Eulenburg affair in Swedish press in 1907 was much more extensive than that of the Oscar Wilde trial a decade earlier, suggesting that an important shift in the public awareness of homosexuality had taken place.³⁶

If the court declared someone mentally insane according to chapter 5, section 5, what was to be done next? Before 1929 there was no law specifying what to do with insane criminals. If he was considered dangerous, the court could hand him over to the county governor and demand, on the basis of a Royal Decree from 1826, that the governor "take care of him so that he will not to be a threat to public safety."³⁷ From 1929 on, however, the letter of the law was substantially changed so that the grounds for forced custody were no longer to be the culprit's potential danger to the general public but whether the person was "in need of treatment." The Insanity Act (*Sinnessjuklagen*) of 1929 stated that it was up to the examining doctor to decide whether the defendant was in need of treatment or not. The courts could send a case to the Royal Medical Board to have the diagnosis re-examined, and many times they did. They did not have to pass judgment in accordance with the examining doctor's (or the Royal Medi-

cal Board's) decision regarding the mental status of the defendant. The decision whether to regard a defendant insane or partly insane lay entirely with the court. But once he was declared insane, his treatment became wholly a medical problem. The recommendation of the examining doctor or the Royal Medical Board had to be followed, and the decision whether to release a patient from a mental hospital was made by the local Release Board (*utskrivningsnämnden*) in each of the 25 counties, consisting of jurists, laymen, and doctors.

In the course of the twentieth century, the number of prosecutions for same-sex sexual acts grew dramatically, with the 1930s marking a turning point. The percentage of cases where the defendant was declared insane increased from around 15 percent to around 30 percent in the mid-thirties; the average length of punishment was reduced from about 8 months to less than 4 months; and the percentage of suspended sentences rose from approximately 40 percent to over 70 percent. This clearly implies a wish to find other, more modern ways of dealing with same-sex sexuality. Homosexual behavior was still a crime, but in judicial practice it was increasingly dealt with as the consequence of a diagnosable illness (see table 15).

If, then, the homosexual was to be diagnosed instead of punished, how was the diagnosis determined? It is important to remember that the image of the male homosexual was not just something that was imposed from above, by experts like biologists and jurists. It was just as much a result of the self-understanding of men who preferred men as sexual partners. The most distinguishing characteristic of a typical male homosexual was believed to be effeminacy. "Powdered gentlemen" was a euphemism for gay men, and it seems that many gay men themselves shared the opinion that real homosexuals were effeminate. On the other hand, because of the new medicalized view of homosexuality, the courts had to determine whether the defendant was a "real" (or "constitutional") homosexual or merely "pseudo-homosexual," a heterosexual who for some reason indulged in homosexual activity. Some argued that "constitutional homosexuals" were to be exempt from punishment, but not "pseudo-homosexuals." Therefore the courts ordered forensic psychiatric examinations of many men suspected of homosexual crimes. The forensic statements show that not only the mental health of the defendants was examined but also their bodies. The physician then looked specifically for "feminine" traits, such as wide hips, lack of hair on the body, a small penis, or femininely shaped pubic hair. Thus the medical and legal professions both contributed to establishing and developing the image of the homosexual man as effeminate.³⁸ However, effeminacy was not the only trait that was believed to be inherent in the homosexual. Untrustworthiness, nervousness, a tendency to lie and to create fantasy worlds were among other character flaws that were assumed to distinguish homosexuals from "normal" citizens.³⁹

Throughout the slow legislative process leading to decriminalization of homosexual acts between adults, various parliamentary commissions discussed the need for decisive means to neutralize potential sexual criminals. The most efficient way to stem a person's sex drive that medical science knew at that time was castration – the surgical removal of a man's testicles or a woman's ovaries. A governmental commission investigated the matter and proposed a new law, with the result that in tandem with the decriminalization of homosexuality the Castration Act was passed. It read:

If there are good reasons to assume that a person because of his sex drive will commit a crime that causes serious danger or harm to other persons, he may be castrated in accordance with this law, provided that he has consented to it.

The same law is applied if severe mental suffering or other serious disorder is inflicted upon a person due to the abnormal orientation or strength of his sex drive.⁴⁰

This law, which is still in force, does not allow forced castration. It was discussed when the law was prepared, but in its final form the law came to stipulate a voluntary procedure. This drastic anaphrodisiac intervention had been in use already before the law was passed, requiring only a doctor's decision. In that respect the act enhanced public control over castrations, since every decision henceforth had to be taken centrally by the Royal Medical Board (from 1967 on by the National Board of Health and Social Affairs). It is impossible to estimate how often it was applied to homosexuals before 1944. On several occasions, patients were told that it would increase their chances of being discharged if they agreed to be castrated. One patient spent ten years in mental hospitals just because he refused to undergo the operation. Between 1944 and 1979 there were 463 legal castrations performed in Sweden, only five of them on women.⁴¹

Along with the medicalization of the judicial discourse, social concern was growing in the courts. The Act on Suspended Sentence from 1906 required courts to appoint a person to conduct a preliminary investigation into whether a defendant was eligible for a suspended sentence; in practice, whether the perpetrator could be reformed without punishment. This investigation included interviews with the offender and, many times, with his family, employers, and friends. At the beginning, the person carrying out this preliminary investigation was a deputy judge, a magistrate, or a priest, but in time the investigator was often a representative from the "Safe-guard" (*Skyddsvärdnet*) – a benevolent institution interested in the social adjustment of ex-convicts and the prevention of relapses. Originally staffed by volunteers, and later increasingly by trained social workers, this group often took a different view of how to deal with homosexual people than those in the medical profession. The social workers tended to see homosexuality as a social rather than a medical problem. They did not see the need to punish a homosexual person who led a quiet, otherwise law-abiding life.

In 1934 a waiter and a shop assistant were prosecuted in Stockholm for unnatural fornication. It was the former girlfriend of the shop assistant who had reported them to the police when she found out what was going on between her ex-boyfriend and his friend. The men, 30 and 34 years old, had moved in with the waiter's mother and opened a small grocery shop together. The investigator appointed by the court reported that they led an orderly life, but since they did not repent and did not promise to discontinue their criminal behavior, he could not recommend a suspended sentence. The Supreme Court, however, granted them suspended sentences, which opened the way for a more lenient court practice in similar cases.⁴²

The discourse on homosexuality as it has been described above mainly referred to male homosexuality. Lesbianism was made manifest to some degree in the literature, where it was treated in both negative and positive terms, as exemplified by Strindberg's misogynistic and homophobic remarks and the Swedish translation of Radclyffe Hall's *The well of loneliness* (1932). Also, during the 1930s, a number of novels with lesbian themes were published in Sweden.⁴³ In the legal discourse, however, lesbians were almost nonexistent until the beginning of the 1940s.

The legal construction of the lesbian

Although the law was worded so that both men and women could be prosecuted for unnatural fornication, women were only rarely brought to trial. Between 1880 and 1944, only ten women were tried under chapter 18, section 10, compared to more than 2,000 men. The first two cases, in 1900 and 1925, involved sexual contact with underage women. In these cases, the courts were more concerned with the sexual abuse of children than with the acts' same-sex aspect. In 1900, a 44-year-old woman had sexually abused a seven-year-old and a nine-year-old girl, and she had had sexual relations over a period of time with a 16-year-old girl. Yet she was prosecuted only for what she had done with the smaller girls, and the older girl was not charged with a criminal offence, though she had reached the age of legal majority.⁴⁴

In fact, no women were convicted for having had consensual sexual intercourse with other adult women before 1943. Ignorance about lesbianism was so extensive that the Penal Code Commission decided in 1941 to issue an inquiry in order to improve its knowledge about it. The motive for this was pragmatic. It had to decide whether the new law on a higher age of consent ought to apply equally to male and female homosexual intercourse. The conclusion of this survey was that lesbian sexuality was more common than was generally supposed, only that it was concealed. One female doctor at Malmö General Hospital (*Malmö Allmänna Sjukhus*) reported that she had once known two girls who studied to be nurses. They had an intimate friendship, shared a bed frequently,

hugged and kissed each other. But when one of them “incidentally” heard of homosexuality they both stopped being so intimate. This illustrates neatly how the construction of new knowledge can have a disciplining and oppressive effect.

This quest for knowledge apparently led to an increase in criminal charges against women on account of lesbian acts. Only two cases were brought to court during the first four decades of the twentieth century, whereas the 1940s alone saw altogether nine women prosecuted for violation of chapter 18, section 10. In 1941, a 16-year-old Sami girl was prosecuted for having had sexual intercourse with her two brothers, two other boys under 15, and a 10-year-old female cousin. She had lain down on top of her younger cousin and told her she wanted to do “as the boys do,” and then bobbed up and down on top of the other girl. She was found guilty of unnatural fornication, fornication with children under 15, and incest, but the court declared her not accountable, and before the sentence was pronounced she had been placed in an institution, aborted, and sterilized. This was unusually harsh treatment, perhaps due to the fact that she had become pregnant from an incestuous relationship. Underlying the decision may have been eugenic fears combined with ethnic prejudice against a minority group.⁴⁵

In 1943 a lesbian friendship circle was crushed in Stockholm. One of the women called the police, complaining that another woman prevented her from being in her own apartment, so that she had to take refuge in her neighbor’s flat. When the police arrived, they found two women sleeping on a couch in the apartment, “which gave the officers the impression that [the women] were perverted.” When they woke up the women, one of them flew into a rage and resisted her arrest, yelling that the owner of the apartment was just jealous. In the ensuing investigations, two more women were implicated and brought to court. At the interrogation the woman who had fought the police, a 44-year-old waitress, described herself as masculine, having been a tomboy when young, always wanting to play with the boys, etc. The woman who had called the police was 39 and the other convicted women were around 30 and they all claimed that they had been seduced and that it was all a mistake and that they would all get married as soon as possible.⁴⁶ The typical image of an older, “constitutionally” homosexual person who seduces and corrupts younger “healthy” persons is consistently constructed in this investigation.

A similar pattern emerges in two other cases. In 1946 a 23-year-old woman was found guilty of having had sexual intercourse with two 17-year-old women, but she was declared not accountable, the examining doctor determining her to be “a deeply abnormal, amoral, and asocial hysteric.”⁴⁷ The second case concerns a 36-year-old physical education teacher who in 1948 had a passionate relationship with a 17-year-old pupil, which ended tragically with the young girl committing suicide and the teacher attempting it. The teacher was given one year in prison, sentence suspended. The forensic psychiatric examination reported that she had “a slightly coarse and angular face with a certain masculine tinge. Her

physique is feminine with normally developed secondary sexual characteristics. Her outer habitus and overall behavior give a feminine impression.”⁴⁸ The establishing of an identifiable lesbian type follows the same pattern as the construction of the gay man decades before. It is the inverted sexual and gendered characteristics that are made to constitute the lesbian as well as the gay man, to the extent that it is specifically pointed out when a person suspected of sexual deviance differs from the “invert norm.”

The construction of the lesbian woman in the Swedish judicial system thus develops from a situation where only sexual assault on young girls is prosecuted to a situation where the existence of a lesbian woman has become a reality in the minds of the law-enforcing elite. After she had thus been brought to life, there emerged the need to control her. As the court cases from the 1940s reveal, a new approach was taken to dealing with lesbian sexuality, treating it on the same terms as male homosexuality. Toward the end of the 1930s, however, the discourses on both male and female homosexuality were beginning to be determined by new attitudes to age.

Table 16. Average length of punishment in months of hard labor for same-sex sexuality in Sweden, according to the age of the sexual partner/victim, 1885-1944.

| | ≤ 11 years | 12-14 years | 15-17 years | ≥ 18 years |
|-----------|------------|-------------|-------------|------------|
| 1885-1894 | 17.4 | 6.3 | 4.0 | 2.8 |
| 1895-1904 | 16.2 | 10.0 | 9.0 | 7.6 |
| 1905-1914 | 14.6 | 14.9 | 12.2 | 4.5 |
| 1915-1924 | 13.6 | 16.3 | 4.4 | 3.8 |
| 1925-1934 | 11.0 | 12.3 | 7.6 | 4.3 |
| 1935-1944 | 5.8 | 5.8 | 4.6 | 2.6 |

Source: Court records.

Note: The average length of sentence includes suspended sentences and prison sentences. Prison terms counted as half as severe as hard labor and have been divided in half when calculating the average length in months of hard labor.

The construction of age

In 1924 the old Swedish Act on Depraved Youth (*Vanartslagen*) was replaced by the Child Care Act (*Barnavårdslagen*). This signaled an altogether new approach to young people and to problems connected with them. The Child Care Boards in each municipality were assigned the task of protecting children and attending to their needs instead of merely imposing society's norms on them. A tendency to see children as potential victims instead of potential criminals grew stronger during the next few decades. The discourse on youths shifted from perceiving them as a threat and the object of corrective measures toward their being in need of society's protection.⁴⁹

Among other things, this development led to the raising of age limits for youths that were the responsibility of Child Care Boards. Before 1924, that age

was 15. Asocial persons over 15 were to be treated in accordance with the Vagrancy Act, and were the responsibility of local courts and the Poor Relief Committees, but lawbreakers under 15 were in the custody of the Child Care Boards in accordance with the Child Care Act. This was also the age of criminal responsibility. In 1924, the age limit for young people that were dealt with by Child Care Boards was raised from 15 to 18, and in 1934 from 18 to 21, with corresponding raises made to the age limits of the Vagrancy Act. Consequently, the whole 15 to 20 age bracket was transferred from the world of adults to the world of children, at least legally.⁵⁰

However, the age of legal responsibility remained – and still remains – at 15 years. All persons above that age are legally responsible for their behavior, unless diagnosed as insane by a psychiatrist. So what these changes really did was to create a new group of young people in society with a legal framework of its own, a group controlled by a combination of social and judicial authorities.

Furthermore, the 1924 Child Care Act upheld an important difference between children under 16 and older persons. The boards were liable to take action on children under 16 if their life or health was endangered through the negligence of their parents. Children between 16 and 18 years were to be acted upon by the Child Care Board in case the children themselves were so depraved (*vanartad*) that special measures had to be taken for their correction. In the first case, it was clear from the wording of the law that the Board acted solely in the interest of the child, whereas formulations like “correction” of “depraved” children indicate that the measures were primarily designed to protect society against crime.⁵¹

In 1934 the Child Care Act was renamed the Act on Society’s Child Care and Youth Protection (*Lag om samhällets barnavård och ungdomsskydd*). An amendment to this law made it the responsibility of the Child Care Boards to deal with persons between 18 and 21 who were found to be leading a “disorderly, idle or vicious life.”⁵² This amendment was explicitly attributed to the growing concern about boy prostitution. In many ways the shift in general attitudes to youths influenced the way homosexuality was dealt with. From being relatively loosely related concerns, the problem of youths and the problem of homosexuality became closely connected.

Even if chapter 18, section 10 did not formally penalize sex with minors more than sex with adults, the courts generally gave more severe sentences to men who had had sex with pre-pubertal children, whereas consensual sex with adolescents or adults was generally treated more leniently (see table 16).

The length of punishments diminished throughout the period, but the difference in length between those who were convicted for having had sex with children or minors compared to those who had had sex with youths or adults remains significant throughout the period. The average punishment for same-sex acts with children under 12 was 13 months of hard labor, whereas it was only

4 months for sex with persons 18 year or older, but the average punishment regardless of the age of the partner or victim declined from 10 to 5 months. The sharp decline in average length of punishment for all categories during the last ten-year period can be explained by the increase in those deemed insane according to chapter 5, section 5 (see table 15). It is to be assumed that the most notorious child molesters were no longer given extensive prison sentences but were instead declared insane and committed to mental institutions.

When decriminalization of homosexuality first began to be discussed, the arguments mainly depicted homosexuals as victims and the young boys who took part in this activity as blackmailers and petty criminals. The earlier-mentioned article in *Dagens Nyheter* in June 1932 described homosexuals as victims of criminal youngsters and had very little to say on the corruption of young boys by adult men. Prominent lawyers, police inspectors, and physicians were interviewed and they all agreed that the legal ban on homosexuality ruined the lives of otherwise decent citizens. The absence of legislation against blackmailing was also something that all the interviewees deplored. They agreed on the necessity of age limits to protect the young from being seduced by older homosexuals, but the most pressing problem addressed in the article was the threat that ruthless blackmailers posed to decent homosexuals. The lawyer Hugo Lindberg said that blackmailers must be controlled, and psychiatrist Olof Kinberg talked about male prostitutes as the “dregs of the parasitizing and criminal elements who always concentrate in larger cities.” Blackmailers and male prostitutes were thus the main problems according to these leading physicians and jurists. However, they also argued that there should be a law protecting young people from having their sexuality influenced by older homosexuals. Professor Kinberg proposed that homosexual acts should be punished according to the same criteria that were applied to “normal” sexuality.⁵³

The concern for homosexual seduction resulted in a new law on homosexual behavior that prescribed three different age limits, 15, 18, and 21, with penalties growing more severe the lower the age of the sexual partner. The proposed law was no longer seen only as granting equal rights to homosexuals, but, more importantly, as a way of protecting youths against the evil influence of perverted adults. As one Member of Parliament put it during the debate in 1944: “I must greet with satisfaction the ambition to protect children and youths as far as possible against homosexual influences.”⁵⁴

Thus, homosexuality and young people had become more explicitly linked together. The changes in legislation concerning child care and the protection of youths in the 1920s and 1930s were a reaction to the changes in the frameworks of youths – from the local, well-integrated groupings in villages to the more threatening, less controllable bands in cities. Society felt the need to be protected against the evil doings of a limited number of juvenile delinquents, and eventually these delinquents themselves needed to be protected from the immoral

influence of homosexuals and other seducers of youths. In that process, the heterosexual threat to young girls was downplayed and a more threatening picture was painted of the young man who was dragged into sin and perversion, in the long run himself becoming a threat to society.

From homophobia to integration 1944-78

In many countries the 1950s epitomizes an era of ruthless persecutions of homosexuals. In the United States, the authorities persecuted both communists and homosexuals, which resulted in the dismissal of hundreds of civil servants on the grounds of homosexuality. A wave of homophobia, sparked by the Kinsey report and fueled by the political climate during the Cold War, made itself felt also in Europe.⁵⁵

In Sweden too the 1950s were marked by homophobia. Not only conservatives, but also large segments of the political left demanded higher morals for public officials, and they helped create a gloomy picture of a morally corrupt society. Political players like the anarcho-syndicalist newspaper *Arbetaren* and leftist writer Vilhelm Moberg formed an unholy alliance with bodies like the Association of Swedish Mothers and other conservative and Christian lobbyist groups. According to these new moralists, homosexuals could ruin the lives of young boys without risking any punishment, since a homosexual freemasonry protected the interests of its members and obstructed the due course of justice. Traditionally, the political right is the main source of opposition to homosexual emancipation, but in Sweden during this time of moral panic the whole political spectrum cooperated to fight what was called the "rot of justice" (*rättsrötan*). A common leftist conceptualization of homosexuality as an upper-class phenomenon, or even as an integrated part of fascism, was not altogether new and represented a theoretical notion with little ground in reality.⁵⁶ What made the Swedish case special was the evidence from two major scandals in the early 1950s. The widespread prejudice that homosexuality was a sign of degeneracy prevalent among the upper classes was fueled by a scandal involving the Royal Court that surfaced in 1951. A former restaurant owner named Haijby revealed that the Court had paid him over 100,000 crowns between 1934 and 1947 to silence his claims that he had had a homosexual affair with King Gustaf V, who died in 1950. There was never any concrete evidence of a sexual affair between the two men but rumors about the King's homosexuality had circulated widely. And apparently the Court was sufficiently disturbed by the rumors to buy Mr. Haijby's silence for a sum that corresponded to thirty years' salary of a manual worker. Moreover, when Haijby went public in 1951, he was first committed to a mental hospital and then sentenced to eight years in prison for extortion. In order to understand the homophobic stance of the political left during the 1950s,

one must bear in mind their belief that the authorities had tried to protect the King and other high-ranking officials from being exposed as homosexuals.⁵⁷

The Haijby affair was only the culmination of a long series of homosexual affairs, fed by growing anxieties that were fanned by the media. During the legal debate on homosexuality in the 1940s, those who opposed or were reluctant to support decriminalization voiced mainly two worries: It could lead to more open manifestations of homosexual behavior, which would offend a general sense of decency, or it could encourage homosexuals to become more active and hence ruin the lives of many young people. One activity seemed to combine the worst fears of the homophobes, and that was boy prostitution. Already in 1947 there were a number of articles reporting the swelling numbers of young boys selling sex to homosexuals, and the publication of the Kinsey report, translated into Swedish in 1949, resulted in increased preoccupation with the issue.⁵⁸

In March 1950, Birger Sjöden, principal of a reformatory school for boys near Stockholm, published an article in *Dagens Nyheter* which warned of the effects of homosexual prostitution. Many boys from his school, he wrote, escaped and went to Stockholm from time to time. In Stockholm they had an easy way of making money by selling sex to homosexuals, but it was a way that led to disaster. Through this activity, their sexual life became permanently damaged, and they were also introduced to drugs and criminality. Boy prostitution was a growing social scourge, and society must take firm action against it.⁵⁹

Shortly after Sjöden's article, the so-called Kejne affair became public. A pastor, engaged in social work, accused a colleague of sexually exploiting young boys. He complained that the police investigation of the matter took an unreasonably long time, and accused the judicial system of being corrupted by homosexuals in high positions. The affair grew and public indignation over what was perceived to be a homosexual conspiracy soon forced the Government to appoint a commission to look into the matter. Next, four members of the commission were publicly accused of being homosexual and the Chancellor of Justice (*justitiekanslern*) had to investigate their sexual orientation. They were officially declared heterosexual and the commission went on with its work. After a period of rumors and accusations, its report was published. Parts of it were declared classified and are not declassified to this day. The most spectacular result of the Kejne Report, however, was that the Minister of Ecclesiastic Affairs, Nils Quensel, had to resign because of accusations of odd sexual habits.⁶⁰

The 1950s moral panic around homosexuality gave rise to commissions, sensational headlines in the press, political meetings, and a sharp increase in the number of prosecutions for homosexual acts with persons under 18 years. It did not, however, result in any changes in the law – only in tightened control of homosexual activities. In July 1950 the then Governor of Stockholm (*överståthållaren*), Johan Hagander, invited representatives of the police and social services to discuss the problem of boy prostitution. The committee proposed a number

of measures, which for the most part were not carried out. What it did result in was the setting up of a register of homosexual persons. Later, the police were also accused of photographing homosexual men at their meeting places, something which they denied.⁶¹

When the general ban on homosexual acts was lifted in 1944, there was a consensus about the need of a higher age of consent for homosexual acts than for heterosexual acts. The new law stipulated an absolute prohibition of homosexual acts with persons under 18 years and a conditional prohibition of such acts with persons under 21. In the event that one party was in a position of dependency on the other, the latter was to be punished. These age limits were called in question in 1951 by a private member's motion presented to Parliament by Social Democrat Ture Nerman, perhaps best known for his fiercely anti-nazi publication *Trots allt!*, published during World War Two. In view of what he perceived to be a mounting problem of boy prostitution, he proposed raising the absolute ban for homosexual intercourse to 21 years, and extending the conditional restriction to apply regardless of age. His suggestion was rejected with the motivation that a committee was already working on a revision of the Penal Code.⁶²

The proposal for a new Penal Code retained the age limits of 18 and 21 years. More importantly, it introduced something not included in the Swedish law before, namely a prohibition of buying "temporary sexual liaisons" from a person younger than 18 years in the context of heterosexual prostitution, or younger than 21 if it was a homosexual contact. In the ensuing debate in the Riksdag, this new provision (Brottsbalken, chapter 6, section 8) was one of a handful of matters that were discussed more thoroughly. Lisa Mattsson, who had been a social-democratic member of the Penal Code Commission, expressed her dissenting opinion in an appendix to its report, and the proposed law was criticized in both chambers of the then bicameral *Riksdag*. Elisabet Sjövall, social-democratic member in the second chamber, said that by adopting the law "we give these antisocial boys a possibility to live on blackmail for another three years." Several other members of Parliament, from both the political left and the political right, spoke out against the bill. It was passed by a feeble majority of 6 votes in the second chamber and a more comfortable majority of 53 votes in the first chamber.⁶³ The new crime was called "seduction of youth":

A person who, by promising or giving compensation, obtains or tries to obtain a temporary sexual relation with someone under eighteen years of age or, if he is of the same sex, under twenty-one years, shall be sentenced for *seduction of youth* to pay a fine or to imprisonment for not more than six months.⁶⁴

This law was severely criticized before it even came into effect in 1965. The controversy over sexual permissiveness and free love that swept Sweden during the first half of the 1960s also brought about many disapproving comments that the new law would only make worse the already difficult situation of homosexuals.

It was readily compared to the Danish “Ugly Law” which was in force only between 1961 and 1965, and which gained a bad reputation for providing a convenient tool for blackmailers.⁶⁵ Unlike the Danish law, however, its Swedish counterpart was never actively enforced. Between 1965 and 1977, the period during which the law stipulated a higher age limit for homosexual prostitution, only 36 persons were sentenced under it.⁶⁶ It is an open question why the Swedish authorities chose to use the law so seldom, compared to how it was administered in Denmark. The Professor of Criminal Law Nils Jareborg also wondered about this in his commentary on the new Penal Code of 1965: “For some reason, the Swedish police have refrained from fighting street prostitution among young people with the help of 6:10.”⁶⁷

In 1969 the general age of legal majority was lowered from 21 to 20 years, and parallel amendments were made to the age limit for illegal homosexual prostitution and for homosexual acts with a person in a dependent position. No attempts were made at this point to abolish or further lower the unequal age limit for homosexual affairs, although Minister of Justice Herman Kling anticipated such an approach when he wrote in the Government’s proposal to lower the general age of majority: “In my opinion it is questionable whether there will be any reason in the future to keep the distinction between homosexual and heterosexual acts in the Penal Code.”⁶⁸

The first initiative toward eliminating unequal ages of consent was taken in 1971 by the Conservative member of the *Riksdag* Alf Wennerfors in a private member’s motion. He said he was troubled by the suffering that the higher age of consent inflicted on a social group which had already suffered a lot and that he had discussed the motion with members of the lesbian and gay association. In a liberal spirit, the Conservative Party had advertised that the general public was invited to come up with suggestions of possible bills that their representatives could present to the *Riksdag*. The RFSL had then contacted Wennerfors for an appointment and apparently made a favorable impression on him. When his motion was discussed in the *Riksdag*, he revealed that several colleagues in Parliament had told him it would be political suicide to promote such a bill. He was also aware, he said, that it would lead to “strange and also for me personally unpleasant reactions.” Nevertheless, he wanted to do this for the many homosexuals in society. The *Riksdag* rejected his motion, but it was a first attempt at the final abolition of the partial criminalization of homosexuality that still prevailed in Sweden.⁶⁹

Though it may seem odd that this first effort came from a Conservative politician, it demonstrates how political action dealing with homosexuality sometimes depends on personal beliefs rather than on a party line or a conscious ideology. The overall picture, however, is that from the 1970s onward, the political left and the liberals have taken the initiative in these matters. During the 1970s, when the last remnants of anti-gay legislation were done away with, it

was the Communist Party and its representative Jörn Svensson who most actively fought for homosexual legal emancipation in the *Riksdag*.

In a party bill, the Communists argued in 1973 that the proposed new Marriage Act would only perpetuate stale and petit bourgeois structures. Marriage ought to be replaced by an act of civil registration, open for heterosexual couples as well as for groups of people who wanted to live together. "It should also enable the sexually deviant to use registered cohabitation as a legal form of a relationship between two people" was one of their demands.⁷⁰ The Parliament's Law Committee rejected the motion, but they added a clause in their report to the Chamber, which would become a pivotal issue in future strivings for legal equality: "The Committee nevertheless wants to emphasize that from society's point of view, a relationship between two persons of the same sex is a fully acceptable form of living together." This statement was accepted with 271 votes in favor, while a minority of 34 voted for a wording according to which society "did not object" to such living arrangements – a sea change in the political outlook compared with the 1950s!⁷¹

The sexual and political radicalism of the 1960s resulted in extensive social reforms during the 1970s. Perhaps as an outgrowth of this vigorous reform drive, a government commission assigned to recommend changes to the chapter on moral offences in the Penal Code of 1965 put forward a proposal that was too radical to be viable in the parliamentary process. Its chairman, Björn Kjellin, proposed the decriminalization of incest as well as the removal of all laws referring to homosexuality. Moreover, rape should not be considered an independent crime, but judged under the laws of battery. This part of the proposal provoked an outcry, and the feminist movement put aside their internal differences and united in a battle against the law. The protests against the proposal grew so strong that it was finally withdrawn.⁷²

The controversial proposal was presented in 1976, when Sweden for the first time since 1932 had a non-socialist government, formed by Conservative, Liberal, and Agrarian parties. The Minister of Justice was a nonpolitical retired judge, Sven Romanus, and he appointed a new commission, which presented a less controversial proposal that excluded some of the more provocative suggestions. It did not, however, write off the proposal to lower the age of consent for homosexual relations to 15, and in the Parliament only a handful of speakers opposed it. To compensate for this, they often used a rather acerbic language when discussing the matter. "The heterosexual harbors life, development, and future. The homosexual harbors sterility, barrenness, and death," said Gunde Raneskog from the Agrarian Party, one of the most vehement opponents of the equal age of consent. Despite the opposition, the abolition of the higher age of consent for homosexual acts was carried by a vote of 210 for and 37 against.⁷³

On April 1, 1978, the age of consent for homosexual relations was lowered to 15, the same as for heterosexual intercourse. It marked the end of an era of le-

gal penalization and partial prohibition of homosexual acts. In January of the same year the government appointed a commission to “compile and give an account of available scientific documentation about homosexuality” and to “propose measures which are needed in order to remove any remaining discrimination of homosexuals.”⁷⁴ Eventually, its suggestions resulted in a law against discrimination and defamation of homosexuals and also a homosexual cohabitation law, both adopted in 1987. Subsequently, Sweden has, like other Scandinavian countries, adopted a number of laws intended to facilitate the integration of homosexual citizens in society: a law on registered partnership (1995); a law against discrimination in the labor market (1999); the creation of an ombudsman against discrimination on grounds of sexual orientation (HomO, 1999); a law on adoption by homosexual couples (2002); a constitutional amendment imposing sanctions on hate crimes against homosexuals (2002); and the possibility for lesbian women to be granted assisted reproduction (2005). The amending of the marriage law to include same-sex couples is currently under debate.⁷⁵

Conclusion

The hundred years that lie between the “invention of modern homosexuality” and its integration in Swedish society as a variety of sexual expression worthy of respect encompass a dramatic development, much of which has taken place within the judicial system. The first step in this development consisted of leaving behind the ecclesiastical definition of same-sex acts as a sin and an abomination. The redefinition of “unnatural fornication” so that it signified only sexual activity between persons of the same sex – and not “unnatural” sex between men and women as well – is perhaps the most crucial point of this phase. Gradually the concept of “homosexuality” gained ground in public discourse, especially after the Santeson affair in 1907.

The first decades of the twentieth century witnessed a comprehensive medicalization of society on the whole. Almost all social phenomena lent themselves to medical explanation and medical scientists inspired extraordinary public confidence. Unsurprisingly, homosexual activity was also increasingly viewed as a medical condition, by doctors and jurists alike.

In this context it is significant that sexual acts with animals were *not* medicalized. These acts were not ascribed to an innate sexual orientation, and the perpetrators of bestiality were not defined as belonging to a medical category of “zoophiles.” Instead, the juridical discourse around bestiality continued to be deployed in a thoroughly traditional manner in rural society, where the courts treated this crime just as it had been treated for centuries – except, of course, that the perpetrators were imprisoned instead of being buried alive. The punishments became shorter, and many of the perpetrators were declared imbeciles, as

opposed to the homosexuals, whose aberrations were explained by a sexual deviance in its own right.

In the 1930s a dramatic shift in emphasis took place in Swedish courts, away from punishing homosexuals and toward endorsing medical treatment. The new Insanity Act of 1929 authorized the examining doctor to decide whether an “insane” criminal was to be committed or not. During the decade there was a sharp increase in the number of prosecutions under chapter 18, section 10. Yet at the same time the percentage of those defendants declared insane rose from 6 percent to 34 percent. Out of these, about 75 percent were committed to an asylum.

On younger persons accused of violating chapter 18, section 10, the procedure of suspending sentences became more and more common. This reflected the belief that adult homosexual men preferred to have sex not with each other but with younger male prostitutes who were in fact heterosexual, and who obviously did not need any medical treatment. Neither did they deserve to go to jail, but what they really needed was a period under close surveillance by a probation officer.

All these developments reflect reactions to the problem of how to accommodate homosexuality in a modern society. Since homosexual acts were no longer seen as a sin, and not as a proper crime either, but rather as the effect of an inborn predisposition, it was irrational to deal with them solely from a criminological point of view. On the other hand, lawmakers increasingly emphasized that society needed efficient protection against unacceptable manifestations of this predisposition. Therefore new measures were devised to deal with people who trespassed the redefined limits of acceptable behavior. In the 1930s the police intensified their interventions in homosexual networks in smaller towns and in gay cruising in parks in larger urban areas. Courts and doctors cooperated in committing gay men to mental asylums. Social and judicial authorities developed new ways of controlling young men who indulged in homosexual behavior. And in 1944 the law on castration was enacted at the same time and in the same context as the lifting of the ban on homosexual acts between adults.

These measures were all taken in a spirit of political consensus. Parties from the left to the right agreed on the necessity of controlling unwanted sexual behavior, and the few homosexuals who expressed an opinion were also in favor of it, eager to distance themselves from the image of the asocial and dangerous homosexual man.

The historical roots of the far-reaching institutional integration and assimilation of sexual differences in Swedish society go back a long way before the gay and lesbian emancipation movement of the 1970s. In a small society like the Swedish, with effective local patterns of control inherited from its Lutheran church, the assimilation of “deviant” behavior has been powerful and uncontroversial.

Notes

1 “Kallær *mapher* man bykkiuhælþ [hvar] ær. þæt sighthir. han þu koþ hæen. Iak skyrskutæ þy at þu kallæþe mik vkuæþins orþ. þæt ær sextanörtoghæ sak i hvan lot. han skal hanum þing uisæ [ok] skyrskutæ vittni latæ bæææ at endagha ok vitæ mæþ tylptær eþe. biþi sva sær guþ holl. ok vattum sinum at þu kallæþe mik. vkuæþins orþ. ok þu æst sandær at sak þerri. ær iak giuær þær Sva skal vkuæþins orþ sökia ok firnær orþ. §. 1. kallær *mapher* annæn frælsgivæ. þæn ætboren ær ællær sigir iak. sa at þu rant en firi enom ok hafþi spyut a baki. þæt ær vkuæþins orþ. þrænni sextanörtoghæ sak. §. 2. Iak sa at *mapher* sarþ þik hvar ær þæt. þu koþ han. Iak skyrskutæ þy at þu kallæþe mik vkuæþins orþ. ok firnær orþ. þæt ær sextanörtoghæ sak. i hvan þriþiung. §. 3. Iak sa at þu atti þin vilia. viþ ko ællær mææ. þæt ær firnær orþ. þrannisaxtanörtogæ sak. þæt skal sökia a hændær hanum. kumbær eigh ne viþ. §. 4. Iac sa at þv atti moþor þina. þæt ær firnær orþ. ok þrennisextanörtoghæ sak ok kombær eigh ne viþ. §. 5. Þættæ aru vkuæþins orþ kono. Iak sa at þu reet a quigggrindu lösharæþ. ok i trols ham þa alt var iamrift nat ok daghér. kallar hanæ kunna firigæræ kono ællær. ko. þæt ær. vkuæþins ord. Kallær kono hortutu. þæt ær vkuæþins ord. kallar kono haua at faþur sin ællær strukit hava barn sit fra sær allær hava myrt sit barn. þættæ æru firnær orþ. §. 6. All þassi synda mal skal fyrst uip præst sin talæ ok eigh braþæ vp mæþ awnd ællær vrez uilia num han sæki sik at þrim *markum* hete þrer ok æru tuar.” Äldre Västgöotalagen. Rättslösa Balk. Kapitel V. Quoted from Collin and Schlyter 1827, 38. The translation is made with the help of Ötman 1883, 20-55; Holmbäck and Wessén 1946, 110, 124-28.

2 Almquist 1926, 6.

3 “Tu skalt icke liggia när Drängar såsom när enne qwinno, Ty thet är een styggelse. Och the skola bådhen dödhen döö, theras blodh ware öfwer them.” Kristoffers Landslag. Karl IX:s addendum. Quoted from Almquist 1940, 30. Cf. Liliequist 1991a.

4 Liliequist 1995. Cf. Rydström 1998, 2000.

5 Minutes of the Law Commission, November 17, 1699. Quoted in Sjögren 1900, 160. Sveriges Rikes Lag 1734. Missgärningsbalk X. A small number of women were prosecuted for bestiality in Sweden in the seventeenth and eighteenth centuries, though no such cases are known from Finland, where no systematic research on sodomy in early modern times has been undertaken. Rydström 2003, 34, 36, 341 n17; Liliequist 1991a, 196-221; cf. 1991b. For a discussion of the “politics of silence” in Swedish legislation concerning bestiality and same-sex sexuality, see Träskman 1990; Liliequist 1995; Österberg 1996.

6 “Övar någon med annan person otukt, som emot naturen är, eller övar någon otukt med djur; varde dömd till straffarbete i högst två år.” 18 kap. 10 § Strafflagen 1864 [Chapter 18, section 10, Swedish Penal Code of 1864].

7 *Nytt Juridiskt Arkiv* (NJA) 1894, p. 397; 1918, p. 410.

8 During the first half of the twentieth century, the law on suspended sentence of 1906 (Lag om villkorlig straffdom. *Svensk Författnings-Samling* [Swedish Law Journal], SFS 1906:51) was amended twice, in 1918 (SFS 1918:531) and 1939 (SFS 1939:314). In 1918 the system of parole officers was introduced, and from 1939 on it was possible for a court to suspend a sentence of imprisonment without specifying the length of the prison term, leaving that to the court to determine if the suspension was revoked during the probationary period.

9 “Homosexualiteten ett oerhört utbredd fält för utpressare,” *Dagens Nyheter*, June 3, 1932.

10 Riksdagen. AK mot. 1933:1; First Law Committee 1933:15; Proceedings of the lower chamber, AK 1933:18.6; Proceedings of the upper chamber, FK 1933: 17.5. *Statens offentliga*

utredningar [Government Commissions of Investigation], 1935, no. 68 (hereafter cited as SOU, with year and number according to the pattern SOU 1935:68).

11 Rydström 2003, 165-73; Riksdagen. Royal proposal, Prop. 1937:187.

12 SOU 1941:3; SOU 1941:32.

13 During World War Two Sweden had a national coalition government consisting of all parties represented in the *Riksdag* with the exception of the Communist Party. Bergquist replaced Westman in this government when Westman stepped down for health reasons in September 1943. In order to speed up the law reform, Vilhelm Lundstedt presented a private member's motion in 1943, and finally the Government presented a proposition in 1944. Riksdagen. Private member's motion, Mot. AK 1943:130; Royal proposition 1944:13.

14 18 kap. 10-10a §§, Strafflagen 1864 [chapter 18, sections 10-10a, Swedish Penal Code of 1864], amendment in force July 1, 1944. SFS 1944:168.

15 For the sake of brevity I use this highly problematic label, meaning legislation based on the assumption that homosexuality is an acceptable form of sexual expression. The contents of such legislation can vary considerably between liberalistic and regulating measures.

16 According to a 1975 article by Allan Hellman, who was one of the founders of the Swedish gay and lesbian association RFSL, Vilhelm Lundstedt had a gay brother who contacted Hellman in the 1950s and told him that he was the direct inspiration behind Lundstedt's move for the decriminalization of homosexuality. According to Hellman, Lundstedt's brother described to him how he had been harassed by a band of young boys in a tram and in the house where he lived in Göteborg, exposing him to his neighbors. After the incidents he went to Uppsala to ask his well-known brother to work for decriminalization in the Riksdag. This account is uncorroborated, and I have not seen any reference to Lundstedt's brother in any other sources. But he did in fact have an older brother, Daniel, who was born in 1879, lived in Göteborg, and remained unmarried until his death in 1968. In January 1932, Daniel Lundstedt moved from his home in central Göteborg to another part of town. This was possibly after having been harassed, and six months later Vilhelm Lundstedt declared publicly that he was preparing a private member's motion to decriminalize homosexuality. Hellman 1975; cf. Nilsson 1998, 88; Söderström 1999a, 357, n. 2. The data on Daniel Lundstedt was collected from civic and clerical registers by Malin Söderback at Göteborg Regional Archive.

17 Gade 1986. The word *tidelag* stems from an Old Swedish word, *tidhas*, which means "to copulate" and was used about animals. Hellquist 1966.

18 Kulturhistoriska undersökningar, Specialfrågelista Sp 226., 1998. KU 18122. Nordiska Muséets Arkiv (NMA). See Rydström 1999.

19 Special Session (*Urtima Ting*), August 11, 1920, Case no. 1, District Court of Skön (*Sköns tingslags häradsrätt*), Härnösand Provincial Archives (HLA); Konceptserie B1A, no. 1906/2962, and no. 1904/4276. Outgoing mail (*Utgående handlingar*). Medicinalstyrelsen 1878-1914 (MSÄ). Riksarkivet, Stockholm (RAS).

20 Krafft-Ebing 1886, 101-2. Zooreastie is to be distinguished, according to later editions, from Zoophilie which is a kind of animal fetishism. Krafft-Ebing 1918, 211, 397-403.

21 "imbecilitas," "bristande psykisk utveckling," "dementia senilis," "ålderdomssvagheter," "psykisk undermålighet," "oligophrenia." All diagnoses are taken from the register of the Central Archive of Forensic Psychiatry (RCA).

22 "zoofilii." 35-416. RCA. Cf. Wiklund and Lidberg 1988.

23 "en allmän borgerlig ordning och goda seder synnerligen kränkande gärning." *Förslag till allmän Criminallag. Motiver.* Stockholm 1832, 68.

- 24 "Samtliga i detta kap. omtalade brott äro att anse som *delicta publica*, d. v. s. det är i första hand samhällets intresse att motverka ett undergrävande av den allmänna sedlighet- en inom folket, icke kränkandet av enskildes sedliga känsla, som utgör grunden för straffs inträde." Stjernberg 1922, 22.
- 25 "en skada *inbyggd* i handlingen." (Emphasis in original.) Leijonhufvud and Wennberg 1997, 35.
- 26 SOU 1935:68.
- 27 NJA 1914, p. 122; NJA 1918, p. 410; NJA 1894, p. 327.
- 28 Stjernberg 1922, 47-48; Stjernberg 1941, 13-14.
- 29 "Övar man otukt med kvinna, som ej fyllt tolv år." Strafflagen 18 kap. 7 § (Lag 20/6 1918); "Övar man otukt med kvinna, som fyllt tolv, men ej femton år." Strafflagen 18 kap. 8 § (Lag 20/6 1918).
- 30 Stjernberg 1930, 69, n. 3; Geill 1921, 52-53.
- 31 "Övar någon, i annat fall än i 7 § sägs, otukt med barn, som ej fyllt femton år." Straffla- gen 18 kap. 8 § (Lag 21/5 1937); Stjernberg 1941, 13-14.
- 32 The farmhand got 18 months of hard labor. NJA 1901, p. 440. Cf. Rydström 2003, 98-107.
- 33 "låter bruka sig till onaturlig otukt." NJA 1938, p. 332.
- 34 "Vi hålla på att knulla." Case no. 205, August 26, 1897. Stockholm Town Court, 5th Di- vision. Stockholms Stadsarkiv (SSA).
- 35 Svenson 1907.
- 36 Eman, 1999; Lovén 1996.
- 37 "att om honom taga wård, så att han ej må blifwa wädlig för allmänna säkerheten." SFS 1826:33.
- 38 Lekselius 1998; Rydström 2000a.
- 39 Sondén 1935; Kinberg 1936.
- 40 "Kan någon med skäl antagas komma att på grund av sin könsdrift begå brott som medför allvarlig fara eller skada för annan, må han kastreras enligt denna lag, såvida han samtyckt därtill. // Samma lag vare, där någon på grund av könsdriftens abnorma riktning eller styrka åsamkas svårt själsligt lidande eller annan allvarlig olägenhet." SFS 1944:133.
- 41 Rydström 2003, 275-77, 284-92; *Sveriges Officiella Statistik* 1944-79. According to avail- able statistics, no person has been castrated for criminal reasons after 1970. The statistics ceased to be published after 1979. SOU 1941:25.
- 42 Stockholm Town Court, 7th division. Case no. 142, 1934. SSA. NJA 1934, p. 642.
- 43 Boye 1934; Krusenstjerna 1930-35; Cf. Faderman 1981, 285-88; Hall 1932.
- 44 Rydström 2003, 305; 2005.
- 45 Case no. 5. Spring Session February 25, 1941. Rural District Court of Arvidsjaur. Härnösand Provincial Archives (HLA) It was not unusual for such young girls to be steril- ized at this time. Later, in the 1950s, the Royal Medical Board became reluctant to sterilize very young women. The question whether the Sami were subject to harder treatment than ethnic Swedes is difficult to answer. They were certainly treated with disdain and prejudice, but so were most victims of the sterilization campaigns. A small number of Sami were ster- ilized, but it did not seem to be done on a larger scale. Bukowska-Jacobsson 2000. On the Swedish sterilization politics, see Broberg and Tydén 1996, Runcis 1998, Tydén 2002.
- 46 "varför konstaplarna fingo den uppfattningen, att de voro perversa." The younger wom- en were sentenced to two months of hard labor and the older woman to four months, all suspended sentences. The court ordered that the woman who called the police should be subject to a forensic psychiatric examination, but she died of tuberculosis before she could

be sentenced. Case no. 334, Classified Cases, 1943. Stockholm Town Court, 4th Division. SSA. Cf. Silverstolpe 1999.

47 “en djupt abnorm, amoralisk och asocial hysterika.” Case no. 719, 1945. Verdict 17 April 1946. Stockholm Town Court, 5th Division.

48 “har ett något grovt och kantigt ansikte med en viss maskulin anstrykning. Hennes kroppsbyggnad är feminin med normalt utvecklade sekundära könskaraktärer. Hennes yttre habitus och allmänna uppträdande ger ett feminint intryck.” Forensic Psychiatric Report (*Rättspsykiatriskt utlåtande*) 1948, no. 48/838. RCA; Case no. B129, 6 December 1948. Stockholm Town Court, 7th Division. SSA.

49 Law of June 13, 1902 on the education of depraved and morally neglected children [Lag den 13 juni 1902 angående uppfostran åt vanartade och i sedligt afseende försummade barn], SFS 1902:67; Law of June 6, 1924 on social child care [Lag den 6 juni 1924 om samhällets barnavård], SFS 1924:361.

50 Section 1, Law of June 12, 1885 on the treatment of vagrants [1§ Lag den 12 juni 1885 angående lösdrifvares behandling], SFS 1885:27.

51 Section 22, Law of June 6, 1924 on social child care [22 § Lag den 6 juni 1924 om samhällets barnavård], SFS 1924:361.

52 “ett oordentligt, lättjefullt eller lastbart levnadssätt.” Law on social child care and the protection of youth (Child Care Act) [Lag om samhällets barnavård och ungdomsskydd (barnavårdslag)], SFS 1934:204.

53 “själva bottensatsen av de parasiterande och kriminella element som alltid samlas i större städer.” Quoted from “Homosexualiteten ett oerhört utbredd fält för utpressare,” *Dagens Nyheter*, June 3, 1932.

54 “måste jag med tillfredsställelse hälsa den strävan att i görligaste mån bereda skydd åt barn och ungdom mot inflytelser av homosexuell art.” Riksdagen. Proceedings of the lower chamber, AK 1944: 10, p. 81.

55 Johnson 2004; Girard 1981; Weeks 1977; Stümke and Finkler 1981; Warmerdam and Koeners 1987.

56 Halle 1995.

57 According to the memoirs of the then Prime Minister Tage Erlander, the delicate matter was presented to the Government in December 1947 by the Minister of the Interior, who bluntly declared: “The King is a homosexual!” In the astounded silence that followed, the meek voice of Minister of Finance Wigforss was heard saying, “At his age. . . how vigorous?!” The King was at that time 89. Erlander 1974, 207. For a detailed account of the Haijby affair, see Söderström 1999b.

58 “Ungdom på farliga vägar i Stockholm,” *Expressen*, 7 February 1947; “Hälften av alla män bryter mot sexuallagarna.” *Mellersta Skåne*, 3 December 1947; “95 procent av USA:s män bryter mot sexuallagarna.” *Morgon-Tidningen*, 21 December 1947; “De homosexuella och deras offer,” *Örebro Dagblad*, 17 January 1948; “Homosexuella trafiken i Humlegården tilltar,” *Afton-Tidningen*, 10 March 1948.

59 Sjödén 1950.

60 Heuman 1978, 48; Torbacke 1976. SOU 1951:21. Cf. Kejne 1950; Collinder 1951a, 1951b; Haijby 1947. For a discussion of the homophobic campaigns in Sweden in the 1950s, see Silverstolpe et al. 1999, 412-501.

61 The register existed as late as 1964, but has since vanished. Petersson 1983, 35-59; “Tumult på sexkonferens. ‘Polisen smygfotograferar homosexuella!’” *Expressen*, 11 October 1964. It appears that homosexuality has been registered by the security police until very recently, if it is not still done. The report of the commission of inquiry concerning the security ser-

vices (*säkerhetstjänstkommissionen*) has established that, from 1963, not only political views, but “personal circumstances like, for example, drug abuse, homosexuality, conspicuously poor economy, long periods abroad, and the kinship of or close acquaintance with a foreigner” were recorded in the central register of the state police. A limited number of employees of the state-owned radio and television are still registered on the grounds of their “criminality, homosexuality, or their abuse of alcohol or narcotics.” SOU 2002:87, 263-79, 612-16; the quotations are on 267 and 614. Cf. Eliasson 2002; Hjort 2002a, 2002b.

62 Riksdagen. Private member’s motion, Mot.1951:4; Report of the First Law Committee, FLU 1951:35; Proceedings of the upper chamber, FK 1951:32, 21; Proceedings of the lower chamber, AK 1951:32, 36; Petersson 1983, 35-59.

63 “ger vi dessa asociala pojkar möjlighet att ytterligare under tre år leva på utpressning.” Riksdagen. Proceedings of the lower chamber, AK 1962:33, 64.

64 “Den som genom att utlova eller giva ersättning skaffar eller söker skaffa sig tillfällig könsförbindelse med någon som är under aderton år eller, om han är av samma kön, under tjuogoett år, dömes för *förförelse av ungdom* till böter eller fängelse i högst sex månader.” Chapter 6, section 8 of the Swedish Penal Code of 1965 (from 1984 on, section 10). English translation in *The Swedish Penal Code*, 1972. (In 1969 the higher age limit stipulated for same-sex prostitution was lowered from 21 to 20 in conjunction with the lowering of the age of legal majority.)

65 Nelson 1965; Pallesen 1964; Lennerhed 1994, 160-61. Cf. Christensen 1961, and Chapter 2 in this volume.

66 Number of persons convicted for violation of chapter 6, section 8, Swedish Penal Code of 1965: 1965:1, 1966:5, 1967:5, 1968:3, 1969:3, 1970:3, 1971:0, 1972:1, 1973:1, 1974:4, 1975:8, 1976:1, 1977:1. (Sources: 1965-66, *Sveriges Officiella Statistik* [SOS], Brottsligheten; 1967-73, SOS, Kriminalstatistik. Del 2. Domstols- och åklagarstatistik; 1974-82, *Rättsstatistiks årsbok 1975-78*.)

67 Jareborg 1984, 318.

68 “Enligt min mening kan det ifrågasättas om det i fortsättningen finns anledning att i brottsbalken skilja mellan homosexuella och heterosexuella handlingar.” Riksdagen. Royal proposition 1969:25, 79.

69 “märkliga och även för mig personligen obehagliga reaktioner.” Riksdagen. Proceedings 1971:121, 124. Cf. Petersson 2000.

70 “Även de sexuellt avvikande bör ges möjlighet att använda den registrerade samlevnaden som en rättslig form för en tvåpartsrelation.” Riksdagen. Party motion Mot. 1973:1793, 2.

71 “Utskottet vill dock betona att en samlevnad mellan två parter av samma kön är från samhällets synpunkt en fullt acceptabel samlevnadsform . . . har intet att erinra.” Riksdagen. Report of the Law Committee, LU 1973:20, 116.

72 SOU 1976:9. For an account of the feminist mobilization against the law, see Thomsson 2000.

73 “Det heterosexuella har livet, utvecklingen och framtiden inbyggda i sig självt. Det homosexuella har steriliteten, ofruksamheten och döden i sig.” Riksdagen. Proceedings 1977/78:93, 52, 83.

74 “sammanställa och redovisa tillgänglig vetenskaplig dokumentation om homosexualitet . . . föreslå åtgärder som behövs för att undanröja kvarvarande diskriminering av homosexuella.” SOU 1984:63, 30.

75 For a discussion of recent developments, see Rydström 2005b.

Finland 1889-1999: A Turbulent Past¹

by Kati Mustola

Finland differs from other Nordic countries in many respects, linguistically, culturally, and with regard to its history.² Since the days of the East-West schism that divided Latin Western Catholicism from Eastern Orthodoxy, Finland has stood as the northernmost borderland where both of these churches and their religious cultures have met. Following the protestant reformation, most of the country turned to Lutheran Protestantism, but in the eastern part Orthodox religion and culture lived on. Today Finland has two national churches: the Evangelical Lutheran Church, with a membership of 83 percent of the population, and the Finnish Orthodox Church, which is under the patriarch of Constantinople, and where 1 percent of the population are members.³

Industrialization and urban growth took place relatively late in Finland. At the outbreak of the World War Two, half of Finland's population still got its livelihood from agriculture.⁴ Common features shared with other Nordic countries are Lutheran Protestantism and a social policy based on the Nordic welfare state model.

Finland belonged to the Kingdom of Sweden until the Finnish War between Sweden and Russia brought about a fundamental change in that Finland became an autonomous Grand Duchy as part of the Russian Empire in 1809. During the latter part of the nineteenth century nationalist and independence movements gained momentum, spurred by a "Russification" policy at the turn of the century. Finland proclaimed independence in 1917.

Especially the two world wars and their ramifications separate Finnish history from that of the other Nordic countries. The nation attained independence during the turmoil of World War One, but in early 1918 a bloody civil war broke out that was fought between the leftist "Reds," consisting of workers and propertyless peasantry, and the "Whites," made up of right-wing bourgeoisie and wealthier peasantry. The Whites won the war that left a deep scar on the national psyche.

During World War Two the other Nordic countries were either occupied by Germany, controlled by American or British troops, or managed to retain their neutrality.⁵ Finland became a theatre of war when the Soviet Union attacked the country in the end of November 1939. Finland was not allied with any other

country, and received practically no military assistance apart from a small number of volunteers from Sweden and Norway. The Winter War ended in March 1940 after the Soviet army had eventually worn down the under-equipped Finnish defence, though it did not overrun the whole country. In the Moscow Peace Treaty, Finland lost ten percent of its territory. Twelve percent of the entire population were displaced and resettled within the new borders.

Finland was drawn into a second war against the USSR in the summer of 1941, when Germany launched an attack on the Soviet Union with the help of troops deployed in Finnish Lapland. Though Finland steered clear of a *de jure* alliance with Germany, as no formal treaty was signed between the two countries, it had *de facto* committed itself to an alliance with Germany, which supplied Finland with arms and other resources in return for military cooperation. The Continuation War lasted from June 1941 to September 1944. In the summer of 1944 the Soviet Army launched a massive offensive in the Karelian Isthmus and broke through the Finnish defence for the second time. Finland had to comply with harsh armistice demands that included the surrender of the Pechenga area in Lapland in addition to the territories already surrendered after the Winter War, but the nation retained its independence. The armistice agreement obliged Finland to break off relations with Germany and demanded the expulsion of German troops from Northern Finland, which led to the Lapland War between Germany and Finland (September 1944-April 1945).⁶

The lost wars against Soviet Union and the third war against former brothers-in-arms had a strong impact on national mentality and especially on the idea of masculinity. The increased homophobia apparent in postwar Finland was common also in many other countries in the tense Cold War atmosphere. In Finland it was linked to a feeling of bitterness toward the Swedes who had managed to stay outside the war. Finns had of old an inferiority complex against the Swedes and after the war derisive talk of Swedish men being “like that,” in other words, homosexual, increased. They were popularly labelled as wimps, unable to fight, which was established as the measure of heteronormative masculinity in Finland. In colloquial speech, the “Swedish disease” served as a euphemism for homosexuality, and its epidemic spread was feared in Finland. Talk of the Swedish disease referred to men only, since women in both Sweden and Finland for some reason were beyond the reach of this popular ridicule.⁷

Before World War Two Finland had close cultural, political, military and economic ties with Germany, but after the war a reorientation toward the Nordic countries took place in the cultural, political, and economical sphere.

The birth of the Finnish Penal Code and § 20:12

The Penal Code of Finland was originally adopted in 1889. During the era of Swedish rule in Finland, Swedish law had been applied, and the old Swedish

system of law, the form of government and legislation were retained even after Finland became an autonomous Grand Duchy within the Russian Empire in 1809. Finland was granted a legislative assembly of its own, the Diet, which was based on the Swedish constitution of 1772. Russian law was never implemented in Finland despite attempts in that direction, which accounts for the slow development of Finnish legislation during the first half of the nineteenth century.⁸ In consequence, the Swedish constitution, the antiquated four estate Diet, and Swedish laws dating back to The Law of the Swedish Realm (*Sveriges Rikes Lag*) of 1734 survived much longer in Finland than in Sweden.⁹ In 1906, the Finnish four estate Diet was replaced by a modern, unicameral parliament. When Finland declared its separation from Russia and proclaimed itself an independent state in 1917, the Penal Code from the time of autonomy remained in force and continued to serve as the criminal law of independent Finland.

During the reign of the liberal tsar Alexander II (1855-81), who as Grand Duke of Finland pursued a reformist policy, changes were undertaken in the penal practice and active legislative work for a new penal code began. The Swedish Criminal Code from 1864 as well as the German one from 1871 served as models for criminal law reform. After several delays the work was completed in 1889, when the Diet promulgated the Penal Code of the Grand Duchy of Finland. It took effect with the signature of the tsar in 1894.¹⁰

Sveriges Rikes Lag from 1734 had not explicitly sanctioned any other sins of Sodom than bestiality, but, as explained in chapter 1 of this book, the prevailing legal practice allowed also “other sodomitical sins” to be tried under the same provision.¹¹ No research exists on nineteenth century Finnish sodomy trials under the old Swedish law that would show whether they included any cases of same-sex sodomy. Jonas Lilieqvist has studied sodomy trials in seventeenth and eighteenth century Sweden, and has brought to light one such case from Finland. The offenders, two church farmhands from Tövsala (Taivassalo) in South-Western Finland were sentenced to decapitation by ax and burning at the stake in 1665.¹²

Nineteenth century penal ideology adopted a more stringent approach to the legality principle, according to which a person cannot be convicted for any other crimes than those clearly specified in the law. From 1889 onward, same-sex sexual acts were thus explicitly mentioned in chapter 20, section 12 of the Finnish Code:

If someone commits fornication with another person of the same sex; both shall be punished with imprisonment for at most two years. If someone is guilty of bestiality or of attempting it; the punishment is imprisonment for at most two years.¹³
The law applied to both sexes and was kept on the statute books until 1971.

Women and same-sex fornication

The gender-neutral wording of the law does not in itself reveal whether the legislators intentionally included women in its scope or only meant to criminalize sex between men but adopted a formulation that could be applied to women too. In the course of the Penal Code's preparation three bills were drafted, 1875, 1884 and 1888, of which the two first proposed to criminalize sexual acts between men only as well as bestiality. But when the four estates of the Diet gathered in 1888, the Penal Code Committee modified the bill so that it included sexual acts between women.¹⁴ A memorandum of the Committee reveals that it passed a resolution stating that the section "is to be extended so that unnatural fornication is to be punishable also when committed by a person of the female sex with another person of the same sex."¹⁵ The records contain no evidence of any further discussion on the topic within the Committee.¹⁶ Several explanations have been put forward as to why sex between women became criminalized in Finland in 1888-89.¹⁷ In my opinion the contributing factors were twofold. First, the influence of modern medicine, sexology and psychiatry played an important role. Second, other elite discourses, especially fiction and Scandinavian debates on sexual morals, made the legislators more inclined to include women in the new law.

Within the European medical discourse on sexual inversion in the late nineteenth century, several of the published case histories on this new diagnosis were about female patients. At least some of the members of the Finnish committee on criminal law were familiar with European sexological theories presented by writers like the German psychiatrist Carl von Westphal, who in 1869 published the first case history of sexual inversion concerning a woman, and the German neurologist Richard von Krafft-Ebing, who authored the groundbreaking sexological "Bible," *Psychopathia sexualis* (1886) as well as earlier sexological studies. Carl von Westphal had been appointed an honorary member of the Finnish Medical Society in 1881, which suggests that he was well-known among Finnish physicians.¹⁸

Another fact indicating familiarity with European sexological discourse on sexual inversion among the learned professions is the first Finnish case history, which was published as early as 1882. It dealt with a female patient of Johan Backman, an assistant physician in the Helsinki mental hospital, and was printed in a Swedish-language medical journal. Swedish was the language of the upper classes at the time, a legacy from the period of Swedish rule. In his article Backman referred to Westphal, Krafft-Ebing and to ten other European sexologists who by that time had published altogether seventeen case studies on sexual inversion. He proudly added an eighteenth case history, of Miss X.Y.Z., to this international body of knowledge.¹⁹ Backman also referred to the pioneering German homosexual-rights activist Karl Heinrich Ulrichs, and was upset about

his proposal of introducing same-sex marriage and other rights for “uranians,” which was Ulrichs’s term for homosexuals.

The most influential figure behind the Finnish Penal Code of 1889, who has been called the father of the new code, was Jaakko Forsman, Professor of Criminal Justice at the University of Helsinki and the chairman of the Penal Code Committee. Forsman ordered Krafft-Ebing’s book *Psychopathia sexualis* for the Library of the University of Helsinki in the spring of 1887.²⁰

Literary discourse

Besides scientific texts Forsman was also interested in the Scandinavian debates on radical sexual morals that were stirred up by August Strindberg’s collection of short stories *Getting married (Giftas)*, published in two volumes in 1884 and 1886 in Sweden. When the first volume had been published, Forsman wrote a letter and asked a friend to lend him the book, as he wanted to see what was “too much even for the Swedish tastes nowadays.”²¹ *Getting married* was debated and discussed widely in Scandinavia.²²

The first volume of *Getting married* includes a short story on an intensive and romantic friendship between two women, though evidently a non-sexual one, titled “A doll’s house” (*Ett dockhem*). The title intertextually signals the story’s mocking relationship to the Norwegian author Henrik Ibsen’s play bearing the same name (*Et dukkehjem* 1879). Strindberg strongly disagreed with Ibsen and his sympathetic attitude to women’s rights.

The second volume of *Getting married* includes a short story explicit on male homosexuality, “The criminal nature” (*Den brottsliga naturen*). Female homosexuality is also mentioned in one sentence. Strindberg wrote in a letter to his publisher that this short story “deals with pederasty and tribade.”²³

In nineteenth century French poetry and fiction, representations of lesbian women were popular.²⁴ August Strindberg, who wanted to gain literary reputation in France and wrote several works in French, was well acquainted with French fiction. It is likely that lesbian themes first became familiar in Scandinavia through his works. Strindberg was obsessed with homosexuality, especially the female one, and the lesbian motif comes up repeatedly in his works. Strindberg did not use modern medical vocabulary like “sexual inversion” or “homosexuality” in his texts. In the short story “The criminal nature” he used poetic euphemisms like “shady sides to a sailor’s life that are decidedly not healthy.” In his autobiographic novel *A madman’s defence (Le plaidoyer d’un fou)* Strindberg used expressions like “sexual perversity,” “unnatural vice” and “forbidden love.” He referred to homosexual women with the terms “tribade,” “virago,” “man-woman,” and “lesbian.”²⁵

The first Finnish fictional portrayals of homosexual men appeared early. Adolf Paul’s play *People say that... (Man säger att...)*, written in Swedish, was pub-

lished in 1892, Elvira Willman's play *In the cellar* (*Friendship Kellarikerroksessa*), written in Finnish, was published in 1907. Aino Malmberg's short story "Ystävyyttä", written in Finnish and published in 1903, is the earliest Finnish instance of fiction representing lesbian women. Representations of lesbians and homosexual men in these works are rather "Strindbergian," which gives the impression that the Finnish authors knew Strindberg's works. This is definitely the case with Adolf Paul, who was a personal friend of Strindberg.

All these works of Finnish literature were printed after 1889 when the decision on the penal law was made, so they could not have influenced it directly. But they show that the debate on sexual morals and homosexuality was vibrant, and had probably been going in the previous decades.

Parallel to the pre-modern concept of the male pederast a new concept and discourse began to emerge, that of the modern homosexual. The modern homosexual was mostly described as male but in some cases, especially in medicine and fiction, this new species could also be female.²⁶

These new medical and fictional discourses may well have influenced the Finnish Penal Code Committee to extend the law to also include women.²⁷

Women's rights

Jan Löfström has argued for yet another explanation for the criminalization of sexual relations between women in Finland besides the new impulses presented by medical and other educated discourses. He contends that the reason is to be found in the Finnish gender system, which was premodern in the sense that the polarization of male and female gender roles was weak. Women and men were not considered radically different from each other in their potential for sexual subjectivity and autonomous sexual desire; nor was there yet a strict separation between the public sphere of the man and the private sphere of the woman. As a result, it was not difficult for male legislators to present women with a kind of sexual citizenship, in other words, to consider women having autonomous sexuality not dependent on men.²⁸

Apart from sexual subjectivity women were also granted political citizenship in Finland at the turn of the twentieth century. Through the parliamentary reform of 1906 that introduced universal suffrage, Finnish women became the first in Europe to gain voting rights, and also the first women permitted to stand for election to parliament. As a consequence of women's participation and visibility in the public sphere, their autonomous sexuality was largely taken for granted.²⁹

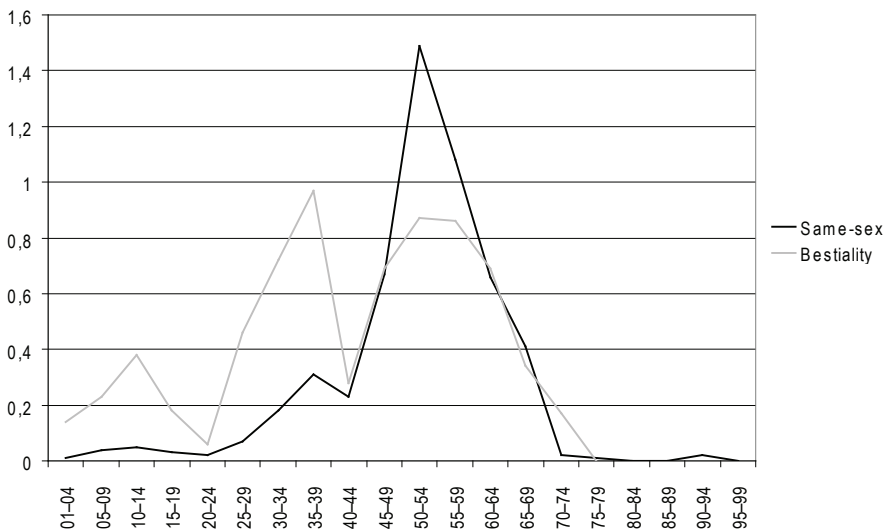
Löfström's argument concerning the Finnish gender system might explain the franchise and the political rights of women in Finland, but in my opinion it does not explain the change in the Penal Code in 1889. In the earlier bills, from 1875 to 1888, the intention was to criminalize only sexual acts between men be-

sides bestiality, but in 1888 the Estates' Law Committee extended the bill to include sexual acts between women. A premodern gender system cannot explain the change in the lawmakers' minds in the course of one year. I would rather emphasize the significance of modern sexological thought and of the new ideas within elite discourses like literature and the debate on sexual morals in changing the Committee's view on women having sex with each other.³⁰

Convictions for same-sex fornication and bestiality between 1894 and 1970.

During the time when Chapter 20, section 12 of the Penal Code was in force, from 1894 to 1970, there were altogether 1,026 men and 51 women convicted in courts of first instance for same-sex sexual acts between adults (subsection 1), and 1,233 men and 3 women convicted for bestiality (subsection 2).³¹ Sexual acts with minors, with both same-sex and opposite-sex partners, were ruled under a different paragraph (Chapter 20, section 7). The majority of the sentences during the first five decades of the new law concerned bestiality. The first sentence for same-sex sexual acts was pronounced in 1904, ten years after the Code came

Figure 5. Convictions for same-sex sexuality and bestiality per 100,000 inhabitants in Finland, 1901–1999. Yearly averages in five-year intervals.



Sources: Bidrag till Finlands officiella statistik. Fångvården 1901–23; Bidrag till Finlands officiella statistik. Rättsväsen 1924–70; Suomen virallinen tilasto / Finlands officiella statistik. Rikollisuus / Brottslighet 1970–99

Note: 1901–70 chapter 20, section 12, subsection 1 (fornication with a person of the same sex) and subsection 2 (bestiality); 1971–99 chapter 20, section 5, second part (fornication with person of the same sex who has reached 16, but not 18 years of age) of the Finnish Penal Code of 1889.

into force. The number of sentences for same-sex fornication did not surpass that of sentences for bestiality until 1950.

During the first three decades of the twentieth century only a few sentences were passed annually for same-sex sexual acts, but in the 1930s the numbers began to rise. In the period 1930-1934 the average number of sentences was 6,4 per year, in the period 1935-1939 it had increased to 11,4. With the exception of the Continuation War period (1941-44), when the rate of convictions in the civilian courts dropped to 6,5 annually, the upward trend continued in the postwar years. In the years 1945-1949 the number of sentences surged to an average of 27,8 per year and in 1950-1954 to 60,8. From 1955 to 1959 the average yearly rate of convictions went down to 46,4, dropping further to 27,4 in 1960-1964, and to 16,0 in 1965-1970.

The year 1951 marked a peak, with 87 individuals convicted, of whom twelve were women. Throughout the 1950s the number of convictions remained relatively high. In the 1960s the number of convictions started to decrease slowly until the law was repealed in 1970. It is noteworthy that during the liberal 1960s, when the western world, including Finland, was experiencing a liberalization of sexual norms, there were still relatively many convictions for homosexual acts.

From 1912 onward there were also women among the convicted although they were only a small minority, 4,7 percent of a total of 1,077 cases resulting in conviction while the law was in force. Compared to Sweden both the total number of conviction and the proportion of women are high, since in Sweden only six women were convicted, which equals to 0,8 percent of the 788 persons sentenced for same-sex sexual acts with persons 15 years old or older between 1880 and 1944 (see table 1 in the Introduction).

From the mid-1920s the numbers of convictions for bestiality also began to rise, achieving a peak in 1949 with 51 convictions. All those convicted for bestiality were men, except in 1951, 1958 and 1967, when there was one woman in each year. The 1930s to 1950s were the top decades for bestiality convictions, and during the 1960s the figures remained at the same level as in the 1920s. The number for convictions for bestiality, which could be interpreted as an agrarian and premodern crime, are astonishingly high,³² but one must take into consideration that Finland was an agrarian country until the mid 1970s and this shows both in the mentality of the people and in actual access to animals.

Wartime mobile society and sexuality

The war years, in Finland 1939-45, marked a major drop in the conviction rates for all sex offences, including same-sex sexual acts.³³ Statistics from civilian courts alone do not give a full picture of what was going on during the war, as much of the population was mobilized, and those serving in the military were tried under military law. The majority of all those sentenced to imprisonment

for any crime during the war were sentenced for violations of the military penal code.³⁴ The military law contained no express provision regarding “fornication with a person of the same sex,” but there was a paragraph for offences against military discipline.³⁵ Some cases are known when it was used to punish for homosexual acts,³⁶ but no systematic research has been done on the actual number of criminal proceedings or convictions for same-sex sexual offences in wartime courts-martial. Some officers were discharged from military service on the grounds of their homosexuality, but it is unlikely that many such cases would have been tried in military courts.

Homosexual activity did not diminish during the war, but rather the opposite. Interviews of Finnish homosexual war veterans,³⁷ as well as the biography³⁸ and interviews³⁹ with the artist Touko Laaksonen, better known by his pseudonym Tom of Finland, indicate that the exceptional circumstances of the war created also an exceptional atmosphere for sexual expression. The darkened streets of Helsinki were an ideal open cruising area for men who were seeking sex with other men, and the city centre turned into one big “dark room.” Laaksonen was stationed in Helsinki anti-aircraft defence for most of the war time, and being an officer, he had leave almost every other night.

Every night there was a blackout. Ah, if you never experienced one of the big cities with all the streets in total darkness, you really can't imagine what it was like! For some reason it aroused me sexually - maybe it was just because I was young - but I would go out, night after night, and cruise the pitch-black streets and look for sex. I was not the only one turned on. I got all the sex I wanted. There were a lot of soldiers and sailors prowling in the dark.⁴⁰

It was sex that got me there to pick up men. Nobody knew if they were going to be alive the next day or if the next morning would arrive at all. So we lived like every day was the last day of our lives. We made the most of it. It was really wild!⁴¹

According to Touko Laaksonen, controlling of homosexuality tightened after the war, “but things were the opposite during the war, there were bigger problems and nobody really cared about gays, it was a very liberal period.”⁴² American, Canadian, Australian and British studies on the experiences of gay servicemen and women in World War Two⁴³ also testify to the exceptional wartime permissiveness toward homosexuality.

Heterosexual extramarital sexual activity also increased during the war. A clear statistical indicator of this is the rise in births outside of wedlock and in the number of convictions for illegal abortions.⁴⁴ The incidence of sexually transmitted diseases was also on the rise, but sex between men may have been partly responsible for this - although it is commonly read as an indicator of heterosexual contacts only.

War put people on the move, in more ways than one. In prewar Finland few people could afford to travel, a settled way of life characterized the agrarian cul-

ture. From small farms men had of course gone to work in logging and timber floating, and women had gone to work as farm maids and servants. From Northern Finland people had traveled to the shores of the Arctic Sea for the fish. The population's mobility reached an entirely new level, however, when entire age-cohorts of men were sent to the front or to non-military service like defence construction or farming. Women, too, participated in the war effort, not in combat but in the voluntary workforces organized through the women's organization *Lotta Svärd*,⁴⁵ the Red Cross, and the armed forces, where they were engaged especially with nursing, provisions, communications, and maintenance tasks.⁴⁶ Women's mobility affected their position in society as well. The traditional gender system broke down when women took over men's jobs on the home front, which also earned women the right to wear trousers.

The civilian population was evacuated from the battle zone and people fled the bombings of the cities to the countryside. Ideas and experiences travel with people. Removed from their accustomed surroundings, people came across things they had never heard of in their own village or town. Many people first heard of homosexuality during the war, were themselves homosexually approached or otherwise came in contact with the phenomenon.⁴⁷

There was a flow of foreigners into Finland. At its height, the number of German troops fighting in Finland grew to 200,000 men during the Continuation War. From Estonia, Sweden, Norway and other countries there came volunteers to fight on Finnish fronts. Homosexuality was not imported during the war years in any simple sense, yet the war did create extensive single-sex environments where both men and women were accommodated in cramped quarters in tents, dugouts and barracks.

Ships at sea, prisons, logging camps, military bases - places where there is a large concentration of men and limited opportunities to heterosexual sex - are typical environments where situational same-sex sexual activity is known to be widespread. For homosexually oriented men the situation during the war was in that sense favorable. For homosexually oriented women, too, the war time meant better chances to meet similarly inclined partners or soulmates in comparison with the stable social and gender system of peacetime.⁴⁸

The war and the vicinity of death brought special overtones to the relations between men. Fear made men seek comfort from each other. "It was so frightening, everybody wanted to hold on to something, to be close."⁴⁹ "I was the youngest and soft to cuddle, a substitute for a woman in a sense. I understand it that way because there was so much tenderness in those situations - lots of hugging and kissing. It didn't always mean going down to the private parts."⁵⁰

A gay veteran, to whom I refer as Paavo, had served in the infantry as combat messenger and rifleman on the Karelian Isthmus and in East Karelia during the Continuation War. He told in interviews that he had many sexual contacts with men at the front, including a relationship that lasted over two years. His whole

unit was aware of this relationship, and Paavo and his boyfriend were treated with good-natured banter.⁵¹

Comradeship and gay-bashing

Thomas Kühne has studied war and masculinity and argued that comradeship is the force that makes men endure in war - it acts as the social cement that bonds men together and enables them to carry on in the extreme war conditions. The comradely ideal makes a man risk his own life in order to rescue a wounded fellow soldier. In Finland this ideal found expression in the battlefield slogan "Never leave a mate behind" that continues to live on as a proverb in today's Finnish culture. Comradeship at the front is both heroic and emotional, combining the masculine and the feminine virtues, the toughness required in a combat situation with the motherly and affectionate caring for a wounded comrade.⁵²

Comradeship meant mutual care for men who were cut off from women's caring and who depended upon each other for survival. It allowed them to form intimate bonds more easily than in peacetime. Partly it was only a short step from comradeship to love and from love to sex - or the other way round.

Both Paavo and Touko Laaksonen had sexual contacts with Finnish as well as German soldiers. After the signing of armistice an Allied Control Commission came to Finland, which brought a number of Russian soldiers to Helsinki, so Laaksonen had sexual encounters with the former enemies, too. Politics was not an issue when men were searching male partners for sex.

The exceptional circumstances of the war opened up situations, or pockets, where the controlling of homosexuality relaxed. Permissive space was not everywhere equally present, and not for everyone. The military was not always as tolerant of relationships between men as in Paavo's unit. Officers' conduct in particular was kept under close watch. Laaksonen was an officer, and kept his sexuality secret in his own anti-aircraft unit. According to Tapio Turpeinen, a few officers were discharged from service on account of "unbecoming conduct for an officer," in other words homosexuality.⁵³

It seems that at the front the punitive action seldom followed the judicial disciplinary procedures and more commonly took the form of arbitrary and unlawful beatings. This is indicated both in the information obtained through the oral history project on homosexuality carried out by Finnish Literature Society and in a letter to the editor published in a men's magazine in the 1950s. In the latter the writer tells how two soldiers had been caught having sex together in sauna on the front, with the result that they were beaten up and then sent to separate units.⁵⁴ A similar history is provided by an oral history respondent. Two men were caught "on the job," but in this case they were not beaten. One of the men was transferred to a different detachment.⁵⁵



Living conditions at the front were intimate and hygiene was poor. Lice inspection at the front. Unknown photographer, source: private collection of "Paavo," in the possession of Kati Mustola.

War experiences had a strong impact on the artistic vision of Touko Laaksonen/Tom of Finland. In his own view, his fetishization of uniforms was intensified because in wartime only men in uniform were considered genuine men, those in civilian clothes were taken to be somehow second-rate.

In many of his drawings Tom portrays sadomasochistic gay sex scenes with an appearance of violence. For his work he had, however, strict limits and ethical standards: the sadomasochism he portrayed was always playful and based on mutual consent. Occasionally he was commissioned to draw images of mutilation and outright sadism. Tom commented that he had seen enough of maiming and mutilation of human bodies in the war, and was neither able nor willing to draw it. He firmly refused to depict aggression which involved suffering. Tom's sadomasochistic images look rough but he was careful always to make it evident that the scenes involve pleasure, and the one whose turn is to be the "victim" participates in that pleasure.⁵⁶

Wartime relationships between women

A woman interviewee, whom I call simply Lotta because she was a member of the voluntary women's organization *Lotta Svärd*, had worked in provisioning and nursing on the Karelian Isthmus, in Eastern Karelia and Northern Finland during the Winter and Continuation Wars. When I asked whether the exceptional wartime situation gave rise to erotic relationships between women, she

laughed and said, "With me it did immediately." She doubted, however, that sexual relationships among women would have been frequent at the front. They were also difficult to distinguish, "because homosexuality between women was not considered that serious, because it is quite usual that women are hugging and touching each other."⁵⁷

It was easy for women to disguise their relationship because paradoxically lesbianism was so invisible that it could be shown openly. The Lottas lived and worked together. In challenging circumstances friendship and comradeship was a source of strength. Friendship was a defensive wall behind which lesbian affections could flourish openly yet still remain unseen. In the words of our Lotta: "It doesn't show, as the one said to me: you have nothing to worry about, you can even go to the same toilet together."

Theatre director Vivica Bandler is the only Lotta, who has written about her relationships with women at the front in her memoirs. Another Lotta called Vuokko had taken fancy to Vivica, and suggested that Vivica could share a bed with her and her husband. Bandler also recounts with plainspoken subtlety her affair with a fellow Lotta, Heta Husgafvel.⁵⁸

It is possible to come across stories of women couples who have already passed away, and they often begin with the phrase: "they had met during the war when they were both Lottas." It seems though that either the relatives have passed over in silence the personal histories, love letters, diaries and photos testifying of such affections, or the women have done it themselves, because no such material has surfaced.

At the home front women moved into "male" areas of work and gained new liberties like the wearing of trousers. The gendered norms of dress were strict, and apart from ski trousers, the male garment had been barred to women. Sanni, a lesbian interviewee who had worn trousers since the early 1940s when she was 16, explains: "My mother was a conservative, righteous Christian, who didn't approve of women wearing trousers at all, but she made an exception for me and my trousers." Sanni's father had died earlier and after the older brother who had supported the family was killed in the war, Sanni took over. "I started providing for my family and my mother followed me till her death. Being the family provider gave me these freedoms."

This novel opportunity to wear trousers was not lost on heterosexual women either but it was particularly welcome to butch lesbians pursuing a masculine style and manner, like Sanni. For a long time, however, trousers on women remained unacceptable in restaurants; restaurant dress codes were not eased before late 1960s.⁵⁹

The war shifted many things to new and different tracks, and dislodged not only a large proportion of the population but social norms too. Traditional mechanisms of control changed, thus opening new possibilities. Fear and terror as well as the need for safety and comfort drove men to intimate contact with

each other, women found kindred spirits and bosom friends from among their fellow Lottas or other women.

After the war, restoring society to a heteronormative path became a strong trend. The construction of a negative public image of homosexuality began. The transition to peace was a period not only of economic reconstruction but equally of cultural reconstruction of Finnish identity, masculinity and heteronormativity.⁶⁰

Return to peace

The restoration of order and normality made itself felt in several areas of society. In criminal statistics this readjustment expressed itself as increase in criminality. The records show an overall rise in crime immediately after the war, and a fall during the 1950s.⁶¹ Sexual crimes also jumped after the war but for most categories of sex offence the figures continued to rise throughout the 1950s. This means that the peak in postwar tightening of control over sex crime occurred only in the 1950s.⁶²

There was a moral panic⁶³ about sexual abuse of minors in the late 1940s and early 1950s. This public concern resulted in two law amendments, made in 1952 and 1954, which redefined the age of minority and imposed harsher sentences for sex involving minors.⁶⁴ The moral panic did not focus primarily on homosexuality but on crimes against children, irrespective of the child's sex. Critics voiced their concern about "child rapists". The perpetrators were assumed to be exclusively men.⁶⁵

The number of convictions for unlawful sexual intercourse and other lewdness with persons under seventeen (section 20:7, 1-3 of the penal code) started to rise after 1945 and continued to grow until 1961. Since both homo- and heterosexual sexual contact with minors was charged under the same paragraph, it is not possible to know the proportion of homosexual cases on the basis of statistics. In 1956 Inkeri Anttila published a detailed study of sexual offences against minors, in which she examined a total of 406 cases tried between 1951 and 1954. Of those cases 60 (15 percent) were homosexual offences against boys under seventeen years of age.

According to Anttila the most plausible explanation for the postwar rise in sex offences against minors is that hidden figures became visible. This was due to an increased concern for child welfare and the new view that the need to safeguard children from abuse overrides the concern to protect the public reputation of the child or the family in cases of incest and other forms of abuse.⁶⁶

The men's magazine *Kalle* attempted to initiate a moral panic also on the issue of adult homosexual contacts by reporting in two successive issues in 1951 on male homosexuality in Finland, Sweden and Denmark, where it warned of the spreading of the vice.⁶⁷ Other papers or magazines, however, did not engage in

this sort of sensationalism. The homosexual scandals in Sweden during the early 1950s were reported in occasional articles in Finnish papers, yet the debate did not reach the scale of a moral panic.⁶⁸

The 1950s was a peak era of homosexual convictions (see Figure 5). Media coverage of criminal trials and convictions also increased, and cases with exceptional circumstances received more public attention. The more newsworthy cases involved perpetrators who held a respected position in society through their professional status, for instance as a cleric, or who through their occupation were closely connected with young people, like youth workers. Media reports on offenders involved with young people through their work reflected the moral panic concerning sexual abuse of children.⁶⁹

A trial that began in 1951 and where almost all of the female personnel of an orphanage in Eastern Finland faced criminal charges of sexual acts between women attracted particular attention in the media. A desire to protect the children living in the house was an important reason for taking the case to court, but while accusations were raised against the women of having sexual relations with underage orphans, they could not be proven.

The personnel of the organization belonged to a Christian sect where one of the religious rituals consisted of oil anointment extending to the genital area. In the court the anointment rituals and religious gestures of affection between the women were interpreted as sexual acts, and eight members of the personnel in the orphan house were found guilty of “fornication with a member of the same sex.” They were given prison sentences ranging from six months to two years. The trial was so unique that it received considerable media coverage not only in the local newspapers but also in the national press.⁷⁰

After the war there was a moral panic concerning sexual abuse of children, irrespective of the gender of the child, and in that sense the panic also covered homosexual child molesting. This even strengthened the old prejudice that homosexuality equals pederasty. There were also alarmist articles concerning homosexuality between adults, but this debate in the media did not reach the scale of a moral panic. Nevertheless, it contributed to a very negative public image of homosexuality as something criminal, pathological and disgusting.

Playing cat and mouse with the police

Oral history informants⁷¹ have provided vivid accounts of the gay male scene of restaurants, public toilets and cruising parks in postwar Helsinki. One of the informants states that there was no police surveillance in the cruising areas of gay men, at least not during the 1940s: “I think nobody was afraid of the police really. They would sometimes pass by in a car but they would not interfere.”⁷² But other informants mention interrogations, trials and police harassment of homo-



"Alina" was one of the women convicted of "fornication with a person of the same sex in the 1950s." She worked in men's jobs on a farm and wore long trousers which was quite rare in the 1950s. Unknown photographer, source: private collection of Antu Sorainen.

sexuals especially in the 1950s. One informant was once arrested and interrogated by the police, but not prosecuted:

We called public toilets bunkers, and each of them had a nickname too. [...] The police raided them quite often - sometimes in civilian clothes and sometimes in uniform. Most of the time they came in civilian clothes and they didn't handle us too gently. They always wrote down our personal data and some of us were taken in for further interrogation. If you were caught in the act you were in for interrogation for certain. Some were actually convicted for being physically involved with a person of the same sex. But they weren't sentenced for long periods of time - only six to twelve months and often the sentence was suspended. The police didn't have that much work to do in those days. And the policemen were sometimes really irritating. They actually even showed their own equipment in the toilets so you were lured into making advances with them.⁷³

Sanni was denounced to the vice squad for homosexuality in the early 1950s in the southeastern town of Lahti. She managed to get herself acquitted by using a clever tactic at the interrogation, asking the police officers questions in return and evading their questioning tactics. She worked in a factory and lived in a Salvation Army shelter for working women where she shared a room with her little son and her female lover. There was still severe housing shortage after the war. The women had put their beds side by side, and this was given as evidence of homosexual acts in the anonymous report to the vice squad. Sanni was picked

up by two female police officers in a cafe at the local bus station that was frequented by young female factory workers, or “girls,” as she called them.⁷⁴

At the interrogation she asked the female police officers what they would have done if they had two grown-ups and a small child in a room with only two beds. Would the officers not have done the same thing as their suspects had done - push the two beds together, so the child could sleep there too? The officers had to agree, and were disarmed by this counter-attack. She was told by the police officers not to go to that cafe any more. “But, I said, of course I’ll go back there, it’s where all my friends are, and also my son, and they don’t even know where I went, when I was picked up when coming out of the bathroom,” she said in the interview.⁷⁵

Questioning and harassment by the police seem to have been much more common than prosecutions for homosexual contacts. Either there was not enough evidence to warrant prosecution, or the aim of the police was simply to intimidate and to disturb homosexual activities. Police harassment, though, has never kept gay men from cruising. One of the male informants even found the atmosphere thrilling:

If you were looking to meet other people out of doors, especially before the decriminalization, the police would have a hostile attitude to gay people - there was always a degree of excitement in the air and an awareness of certain risks, like that of blackmail. Such experiences and the thrill they gave cannot be experienced in today’s decidedly open gay bars and meeting-places.⁷⁶

Jan Löfström has studied sixteen cases tried in the Helsinki City Court in 1950, in which 22 men were convicted for same-sex fornication. One of the sixteen court cases resulted from the police raiding a public toilet with the apparent motive of exposing homosexual activity. Six cases were brought by private citizens, in three of which the informant had been the victim of a sexual ‘assault.’ Other cases came up when police raided public toilets for suspected bootlegging or through other police work.⁷⁷

Löfström concludes that “there was no witch-hunt in the sense of the police deliberately and systematically tracking down homosexuals. Mostly the police came across homosexual encounters accidentally or through people who were involved in a homosexual encounter themselves.”⁷⁸ Antu Sorainen also argues on the basis of four court cases in which altogether fifteen women were convicted in the countryside in the 1950s, that it was more or less accidental who got caught and prosecuted for the crime of same-sex fornication.⁷⁹

Criminal statistics, however, indicate that although no straightforward anti-homosexual witch-hunt took place in Finland, there was a heteronormative restoration of order with concomitant sanctions. The loosened sexual morals of the wartime were to be brought under control and the judicial system was one means to re-establish the heterosexual order.

There were other efforts to bring the postwar society back to “normalcy” as well. In 1945 distinguished political figures started a campaign to literally “straighten up the people”: they established an organization called “The Civic Posture” (*Kansalaisryhti*) to teach the Finns good manners and to civilize Finnish drinking habits. During its annual theme weeks the organization launched a “propaganda attack” aimed at eradicating one type of bad manners. For example, there was a week for kindness and one for proper restaurant manners. In the field of temperance, which formed the other cornerstone of the organization’s pursuits, the slogan was “a true Finnish man is not to be seen drunk, and a true Finnish woman does not suffer the company of a drunk”⁸⁰

The 1952 Olympic Games of Helsinki marked a significant challenge for the civic posture movement. The state-owned alcohol monopoly, *Alko*, wanted to expand the retailing of alcoholic beverages on the grounds that the foreign tourists were used to having alcohol constantly available in their home countries. While *Alko* increased the supply of alcohol under the cover of the Olympics, the civic posture movement was to prepare the Finns to meet the foreign tourists with proper manners.⁸¹

In the light of homosexual crime statistics it seems that the nation was not only preoccupied with drinking customs and good manners but equally with the sexual morals of the population that were in need of straightening up.

The birth of the first gay bar

Finland had been to a large extent an agricultural country up to World War Two. In the predominantly rural culture homosexual behavior was often met with ridicule but it seldom led to involving the police, though the law offered that possibility. There was no need for it. In village communities and small towns people knew each other and also the village fools would fit in, people who were either mentally ill or otherwise behaved eccentrically. They included persons who dressed in the clothes of the opposite sex or made passes at members of their own sex. In today’s terminology they would be described as transgendered or homosexual.

When Finland was modernized and urbanized, forms of social control changed. In growing towns the control exercised by the community did not function any longer so one had to resort to police control. This is reflected in criminal statistics. The high rate of homosexual convictions during the 1950s and 1960s is a sign not only of urbanization and changing forms of social control but also of a change in the regulation of gender and sexuality, and of an increasing interest in policing their limits.

Urbanization created the basis for male homosexual – and later also lesbian – communities and culture. Urban areas with their parks and restaurants provided better opportunities for men to find others seeking male sexual partners

than the sparsely populated countryside. Openly gay bars could not emerge in Finland because homosexuality was prohibited by the law. However, certain restaurants had begun to attract male homosexual clientele. The staff in these restaurants was aware of flirting between men, but did not intervene as long as it did not disturb heterosexual patrons, who were either oblivious or indifferent to the homosexual customers. Restaurants were mostly frequented by men because they had more money to spend than women, but also because women were not allowed into restaurants without male escort. The regulation was aimed at curbing prostitution, but at the same time it effectively prevented the development of lesbian bars.

The alcohol monopoly *Alko* also held a tight control on restaurants. It was prohibited to sell liquor without serving food, and restaurants were to enforce a “dignified” dress code requiring a jacket, dress shirt, and tie for men, skirt or dress for women. Jeans were not accepted either on men or women. In the latter half of the 1960s these regulations were toned down or revoked.

Homosexual men and heterosexual women were a driving force for change in Finnish restaurants gender policy. Gay men in Helsinki were utterly bored with furtive flirtation in straight restaurants, so when word spread among the men who were frequenting restaurant Hansa in the New Student House that a new place was being planned for the basement of the neighboring Old Student House, they decided to take it over. *Vanhan kellari* (The Old Cellar) opened in 1964 and gay men immediately made it their own place. Heterosexual women, on the other hand, were fed up with the discriminating door policy of restaurants. After a debate in the press and protests organized by “Association nine” (*Yhdistys yhdeksän*) - established in 1966 to promote gender equality - *Alko* agreed not to lower a restaurant’s license rating if its inspectors found women without male company in its premises.

The lesbian bar became possible in Finland when restaurant doors opened to women without male company. Women’s dress code also changed when the style of the sixties made long trousers for women a fashion item and acceptable even in restaurants. As the sixties turned to the seventies, the changing alcohol culture and gender system and a new awareness of sexual identity brought also homosexual women to *Vanhan kellari*, where a room known as “The Bear Cabinet” (*Karhukabinetti*) developed into the first lesbian bar in Finland. The emergence of more or less openly gay and lesbian restaurant space was an important step in the development of communal feeling and in the formation of a community that would provide the basis for organized movements.

Rise of gay and lesbian consciousness

Organized efforts to defend homosexuals’ rights and to repeal anti-homosexual laws had started in Germany and England in the late nineteenth century,

and in Holland and Austria in the first decades of the twentieth century. These movements were terminated by the Nazis' rise to power and the Second World War.⁸² After the war, the homosexual activism revived in Western Europe and got underway in the United States. In Denmark, Sweden, and Norway the earliest homosexual - or homophile, to use the terminology of the time - organizations were founded at the turn of the 1940s and 1950s. Inspired by the example of other Nordic countries, a few activists took steps to set up a homosexual association in Finland in the early 1950s. To this end, dozens of men gathered in a cabinet of a cafe in Helsinki, but the plan fell through because the prospective members did not dare to sign up their names and addresses for the membership register for the fear of it getting into wrong hands.

Finland's second official language being Swedish, the Danish and Swedish homosexual magazines were accessible to many Finnish readers who subscribed and circulated them. The magazines were eagerly followed, and contributed to a homophile self-awareness among Finnish homosexuals.⁸³

During the 1960s sexuality and the question of freeing it from narrow-minded attitudes and legal constraints were debated everywhere in the Western world. The debate encompassed also the issue of attitudes to and decriminalization of homosexuality, especially in those countries where the law still prohibited homosexual contacts between adults. Other topics included the liberalization of abortion laws, getting sex education and information of contraception into the school curriculum, and accepting sex outside marriage, especially premarital sex. The arrival of the Pill meant a revolution in heterosexual women's life: sex without fear of pregnancy became possible.

In Sweden the big sex debate began in 1962, in Finland in 1965. Two books dealing with homosexuality came out in Sweden in 1964, "The Erotic Minorities" (*Erotiska minoriteter*) by Lars Ullerstam and "The Deviants" (*De avvikande*) by Henning Pallesen. They had many readers also in Finland and a Finnish translation of Ullerstam's book, *Sukupuoliset vähemmistöt*, was published in 1968. An important contribution was made by a 1966 pamphlet edited by Ilkka Taipale, "Unsexual Finland - Sober Information on Sex Issues" (*Sukupuoleton Suomi - Asiallista tietoa seksuaalikäsymyksistä*), which drew together the strands of the Finnish sex debate and expanded its themes, among which the decriminalization of homosexuality figured as a central one.⁸⁴

In the latter half of the 1960s several works of fiction were translated into Finnish that portrayed homosexuality openly and mostly in a positive light,⁸⁵ and popular magazines began to address the subject.⁸⁶ Encyclopedia entries and medical guidebooks that gave prominence to the idea of homosexuality as a disorder were no longer the only source of information.

The magazine *Hymy* (Smile) carried the largest number of articles on homosexuality. Its circulation was at its peak in the late 1960s and the magazine could boast having the capacity to shape public opinion.⁸⁷ Its style of writing was often

sensationalistic, the stories hinted at the homosexuality or lesbianism of well-known figures, and discussed the subject in a disparaging or alienating tone. Yet what was radically new about *Hymy's* journalism, was that through its interviews of queer people and in its letters to the editor it gave voice to gays, lesbians and transgendered people, and at times the texts were matter-of-fact and informative. *Hymy* spread information about the concept of homosexuality, homosexual subculture, and the activism both in Finland and in other countries, thus promoting the emergence of a minority aware of its identity.

The most outrageous article was published in *Iltasanomat*, at the time the only and widely read afternoon paper. In the summer of 1966 it ran a story titled "Homosexual nest in Helsinki" for which the reporter had infiltrated into a private party held at the home of a homosexual man. The sensationalized report warned that particularly soldiers and young men were at risk of being seduced by older homosexual men. Its abusive style, which infringed upon the homosexual men's personal rights, gave rise to the first resistance movement. A large number of prominent figures from the field of culture and academic professions, mostly heterosexuals themselves, published an appeal objecting to the paper's junk journalism and calling for a repeal of the anti-homosexual law that offended human rights. Homosexual men and women were not able to come out to defend their rights and thus needed the support of heterosexuals. Thus, heterosexual sympathizers largely accomplished the repeal of the ban on homosexuality, the repeal being connected to the growing liberalism in the period's cultural and political climate.⁸⁸

Criminal law reform

At the end of 1966 the government of Finland appointed a committee to prepare a reform of the sex crime legislation. In its report the following year, the committee stated that the regulations concerning sex in the 1889 law were based on so-called absolute sexual morals that viewed all sexual acts outside marriage punishable. In the course of the twentieth century this absolute norm had been gradually abandoned. In 1926 illicit sex, or heterosexual intercourse between unmarried persons, was removed from the penal code. The penalty for adultery, in other words a married person having sex with someone else than his or her legal spouse, was abolished in 1948. These changes were justified at the time by the argument that the penal code was not the correct means to control sexual behavior between adults. On the same grounds the committee now suggested that homosexual contact between adult persons should be decriminalized. The committee also proposed other changes of the provisions on sex offences in criminal law.⁸⁹ Another argument for the reform proposals was the striving to harmonize Nordic laws. In 1962 the Nordic countries had signed the 'Helsinki agreement' where they agreed to standardize their legislations and legal sanctions.⁹⁰

As was typical of the time period, the committee ended up recommending a higher protective age limit for sexual contact between same-sex partners, eighteen years, than for contact between members of different sex, which was to be set at fifteen. In the course of the bill's preparation, the age limit for heterosexual sex was lifted to sixteen but the Finnish Parliament agreed with the proposed age limit for homosexual contact, which was thus set at eighteen. If there was a relationship of dependency or of power and trust between those involved, for instance custody or a teacher-and-student relationship, the age limit for heterosexual intercourse was eighteen years and for homosexual intercourse twenty-one years.

Decriminalization of homosexuality between adults met with strong opposition in the Parliament, and the government's proposal could only be passed by means of a compromise: there was no penalty for adults to engage in homosexual activity but to "publicly encourage indecent behavior between members of the same sex" became a punishable offence.⁹¹ The rationale behind prohibiting encouragement was to protect the general public and especially young people from becoming aware of and acquiring information about homosexuality. In legal terms the situation was rather strange: it was illegal to encourage behavior that itself was legal. But the paragraph was a means to an end, the price that had to be paid to the conservatives for the adoption of the act.⁹²

In Nordic comparison the decriminalization of homosexuality in Finland took place late but in European comparison it was a fairly average achievement. Other European countries that decriminalized homosexuality during the 1960s or early 1970s were Czechoslovakia and Hungary (1961), Great Britain (1967), the German Democratic Republic and Bulgaria (1968), the Federal Republic of Germany (1969), Austria (1971) and Norway (1972) - though in Norway the ban on homosexuality was in effect lifted already in 1905. The last wave of decriminalization started after the collapse of the Soviet Union with Estonia and Latvia modernizing their penal statutes concerning homosexuality in 1992, followed by Lithuania and Russia (1993) and Romania (1994).⁹³

Gay and lesbian movements

The 1960s saw an upsurge in student radicalism and other social movements, and the forward march of liberal values. Finland's earliest gay organization, *Toisen säteen ryhmä* (The group of the second ray), was set up in 1967. Its name was inspired by Indian philosophy which reflects the hippie spirit of the founders. *Toisen säteen ryhmä* was a radical non-profit association that embraced homosexuality as an ideology, like any other ism of the time. Its aim was to propagate homosexuality and to challenge all forms of oppression and discrimination under the slogan "Homosexuality is not the problem, discrimination is."

The Registry of Associations had doubts about the legality of the association's homosexualist statutes and requested the opinion of Helsinki City Court. For tactical reasons the registration motion was withdrawn and the activities were transferred under the auspices of *Marraskuun liike* (November movement). Primarily through the effort of heterosexuals, a new section called *Työryhmä 13* (Task force 13) had been set up within the organization to promote the cause of "the sexually deviant." *Marraskuun liike* was a typical 1960s multipronged movement, it advocated for the prisoners, reform school youth, alcoholics, and other socially marginalized groups.⁹⁴

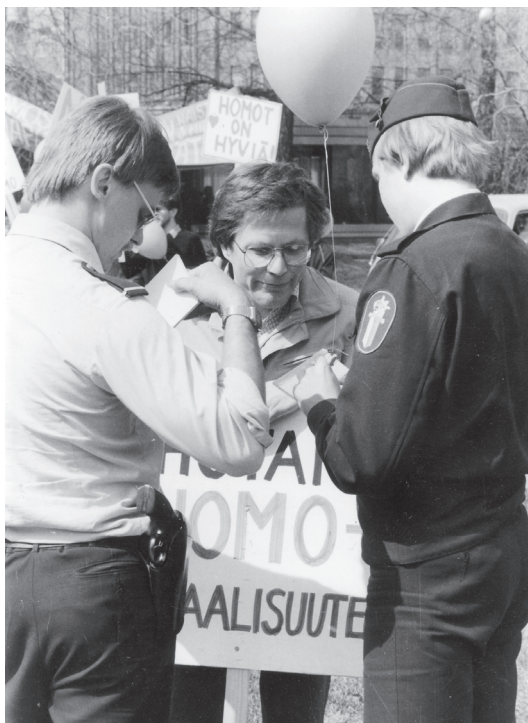
Toisen säteen ryhmä published two issues of Finland's first homosexual magazine, *Ihminen ja yhteiskunta - Homo et Societas* (Human and Society) in 1968. It was advertised with a small message in the personals section in *Helsingin Sanomat*, the leading newspaper, and as it turned out there was an obvious social demand for the magazine. Copies of it were sold in the thousands.

Some of the members of the gay group did not feel themselves at home under the guardianship of the heterosexually dominated *Marraskuun liike*, and saw their aim to be to founding of a separate organization with a homosexual focus. New people joined the group and in the autumn of 1968 a new association was being set up under the name of *Keskusteluseura Psyke - Diskussionsklubben Psyke* (Discussion club Psyche). Its by-laws were formulated in so broad terms that they were approved by the Registry for Associations and the association acquired a legal status.

The income from the mimeographed *Ihminen ja yhteiskunta* magazine allowed Psyke to start publishing a printed magazine called *96*. Running a telephone helpline service was another important form of activity. The volunteers were flooded with calls, there was a great demand for a telephone support service among gays and lesbians and those near them. Local branches of Psyke soon started in several southern and western cities and towns.

Seksuaalinen tasavertaisuus - Sexuellt likaberättigande SETA (Sexual Equality) was founded in Helsinki in 1974 after some members of *Psyke* were disappointed with its shift of focus to non-political activity and began to call for more active engagement with the society surrounding homosexuals. SETA took its inspiration from the new gay movements that had sprung up in the United States, Holland, and Denmark. It called attention to the position of homosexuals as a discriminated minority and to the anti-sex attitudes of society as a cause of the discrimination. Since 1975 SETA has published a magazine that was also named *SETA*, in 1996 it was renamed *Z-lehti* (Z Magazine).

SETA began to push for repeal of the ban on public encouragement of homosexuality, for equal age of consent and declassification of homosexuality as a mental illness. After energetic lobbying, Finland's Board of Medicine declassified homosexuality as a mental disorder in 1981.⁹⁵ For the repeal of the prohi-



Police confiscate a placard "We encourage homosexuality" at the 1981 Liberation Days arranged by SETA. Photo: Hannu Vierula, source: SETA magazine photograph collection.

bition on public encouragement and higher age limits SETA had to fight for a quarter of a century before they would eventually be achieved in 1999.

The encouragement ban

The ban on public encouragement of homosexuality made the state-controlled Finnish Broadcasting Company (YLE) very cautious. It scarcely dared to transmit any programs on the radio or TV which dealt with homosexuality because it could mean facing legal charges. In the company such programs were rejected and those already made were shelved. At least twice during the 1970s a program was reported to the police for alleged violation of the law.⁹⁶ The first complaint was made in 1975 concerning a BBC television documentary on a gay church in the USA. The charges were, however, dropped when the company agreed to issue a warning to the responsible editor about the program which "could be viewed as presenting a positive image of homosexuality." In 1976 another report was made, this time leading to criminal charges, on the basis of a radio program on job discrimination of homosexuals in Finland. In the program a psychiatrist and a lawyer were interviewed who both held a positive view of homosexuals. According to the summons the program "had sought to promote the position of homosexuality in society." The case was heard in the Helsinki City

Court and later the person behind the report took it to the Helsinki Court of Appeal. Though the responsible editor was acquitted by both courts, fear of new charges led to self-censorship within YLE.⁹⁷

The prohibition on public encouragement did not directly obstruct the operation of SETA. For instance, no reports were made against *SETA* magazine, perhaps because it was considered too marginal a publication. Yet the encouragement ban effectively forestalled the dissemination of information to the wider public. As late as in 1982 the Swedish-language radio station in YLE referred to the encouragement prohibition when it forbade the editor and SETA activist Ulf Månsson to prepare a program where he was to interview the openly gay Swedish musician Jan Hammarlund and play his homosexual love songs. The censorship was condemned on the pages of the leading Swedish-language daily paper *Hufvudstadsbladet* which published an appeal signed by about forty prominent figures and representatives of cultural life. The Swedish-language television did broadcast an occasional gay affirmative documentary during the early 1980s.⁹⁸

A complaint was submitted to the United Nations Human Rights Committee in 1979, contending that the prohibition of encouragement and its implementation violated the freedom of speech guaranteed in article 19 of the UN Covenant on Civil and Political Rights. The claimants included five individuals represented by SETA, including a lawyer interviewed for the above-mentioned radioprogram on job discrimination. Another claimant was a homosexual man who participated in the same radio talk show that was shelved. The other three were editors from the television and the radio, whose programs YLE had refused to broadcast. The respondent was the State of Finland.⁹⁹

In its decision in 1982 the Human Rights Committee was of the opinion that public morals differ widely between different countries and the responsible national authorities ought to be granted a margin of discretion in its interpretation. Therefore the Committee did not question YLE's decisions. It also added that it has only been entrusted with the mandate of examining whether an individual has suffered an actual violation of one's rights, and that it cannot review in the abstract whether national legislation is in breach of the Covenant, although such legislation may have adverse effects affecting the individual. It seems that since nobody had been punished on the ground of the law against encouragement the criterion of violation of the rights of an individual was not met.¹⁰⁰

The decision of the UN Committee on Human Rights was a backlash for the defenders of freedom of speech. The International Commission of Jurists stated in its publication *The Review* that it was unfortunate that the Committee did not even examine the programs in question and instead gave YLE free hands to censor information on homosexuality.¹⁰¹



Newly elected MP Tarja Halonen gives a speech at SETA's 1979 Liberation Days demonstration. Photo: Paula Kukkonen, source: SETA magazine photograph collection.

During the 1970s and 1980s several Members of Parliament initiated Members' bills and debates in order to get the encouragement ban abolished. One of them was Tarja Halonen who also served in 1981 as the chair of SETA. Later Halonen became a Government Minister and in 2000 the President of Finland.¹⁰² Appeals to the Government did not lead to results and SETA had to think of more radical methods to call attention to the issue. SETA resorted to civil disobedience.

At the demonstration of the 1981 Liberation Days, as the gay pride event was called at the time, one protester carried a placard with the statement "we encourage to homosexuality." Many other people were shouting the same slogan. The police confiscated the placard. The demonstrators collected names for a joint confession where the signatories admitted to committing public encouragement to homosexuality. A list of twenty-four names was handed to the police, who soon began interviewing the alleged offenders. Not all of them were from Helsinki where the demonstration was held, so the case caused work for other police departments as well. After four months the suspects were informed of a decision not to prosecute. The offence was considered of minor significance and a result of excusable thoughtlessness so that no charges were brought in the matter.¹⁰³

In the course of the 1980s SETA activists did their best to provoke the judiciary to look into their intentional violations of the encouragement law, but

in vain. In 1990 the Liberation Days were arranged for the first time outside of Helsinki, in the south-western city of Turku. During the main event held in the central market square four gay and lesbian activists, four men and one woman, called out to people through loudspeakers encouraging them to homosexuality. The police failed to react to the breach of law so the activists notified the police of their offence themselves. After 1981 the police in Helsinki had ignored similar self-reported cases by local activists, but in Turku the matter was taken up by the judiciary for the first time. The offence was investigated by the police and the offenders were later summoned to court. To the disappointment of SETA's activists the case was heard behind closed doors; they had intended to utilize the trial as a media event to draw public attention to the ridiculous law. The judgment too was a disappointment because instead of a sentence of imprisonment or fines Turku City Court decided to acquit the accused on the grounds of the law's outdatedness and because the offence was regarded as excusable thoughtlessness. The accused appealed to the court of second instance, which upheld the decision of the City Court.¹⁰⁴

The prohibition of public encouragement to homosexuality lost its significance during the 1980s and except for the trial in Turku it became a dead letter. One factor in this development was AIDS. Both health authorities and gay organizations were taken by surprise by the epidemic during the early 1980s. Grassroots demand forced homosexual organizations to respond quickly because in its initial stage the epidemic affected predominantly men who had sex with men. Since official action was slow in coming SETA started its own AIDS support center, and took upon itself the task of spreading information and providing help and counseling to those who had contracted HIV. Gradually the support services started by SETA began to receive public funding. Through its AIDS activism SETA became an important social actor, and the organization's image in the eyes of both officials and the general public changed from that of a club for freaks to a responsible civic organization among other civic organizations.

Age of consent

When Finnish legislators were drawing up the new laws concerning homosexuality at the turn of the decade in the late 1960s and early 1970s, they subscribed to the so-called seduction theory. Especially adolescents with an unstable sexual identity were considered susceptible to homosexual seduction.¹⁰⁵ In international discussions, the seduction theory had already been shown to be untenable, but these documents and their arguments were not brought to the debate in Finland.¹⁰⁶ Higher age limits were introduced for homosexual sex in Finland at the same time as the trend in other Nordic countries already shifted toward repealing special age limits.

The unequal age limits led to an anomalous situation where it was a less serious crime according to the criminal law if an 18-year-old employed physical violence on a 17-year-old of the same sex than if the two had sex by mutual consent.¹⁰⁷ The total number of cases tried while the provision was in force amounted only to twelve, with ten convictions and two acquittals. The first four trials were held in the years 1971, 1974, 1975 and 1976. In each year one person was convicted. In the years 1977-89 there were no convictions and it was generally believed within SETA that the section had become a dead letter like the prohibition on encouragement. However, criminal statistics show that during the 1990s the section was revived, and charges were again brought for the offence in altogether eight cases, six of which resulted in conviction.¹⁰⁸

Since 1972 a comprehensive reform of Finnish criminal legislation had been in progress. The 1889 Penal Code had been amended piece by piece in the course of years but a more fundamental overhaul of the law was eventually seen necessary. This explains why the Ministers of Justice were unwilling to undertake partial reforms in spite of SETA's and the parliamentarians' efforts. Tarja Halonen was since 1987 a member of the Government, holding also the post of the Minister of Justice in 1990-91. Hopes were high within SETA that she would initiate repeal of the ban on encouragement and equalizing of the age of consent. However, she was as reluctant to open the Penal Code reform package as her predecessors had been and as her successors would be. By the early 1990s it was already clear that these and other outdated sections would be abolished from the new criminal legislation. The comprehensive reform was completed in the summer of 1998 and as a result the last two discriminating sections were removed from the Finnish Penal Code. The last part of the revised Penal Code became effective January 1, 1999.

Civil law reform and the role of Tarja Halonen

During her term as the Minister of Justice Halonen did not undertake the partial reforms to the Penal Code as SETA wished she would, yet she did set up a Family Committee to investigate notions of family employed in legislation and the need for unifying them.¹⁰⁹ One representative of SETA was appointed to the Committee, which reflects both Halonen's policy and the development of SETA's status in the eyes of state administration. The 1992 report of the Family Committee was the first state document acknowledging the need of legislation on same-sex partnerships. Changes take place slowly in Finland, and it took another Advisory Board¹¹⁰ and ten years of lobbying and public debating before the Parliament was prepared to adopt the Act on Registered Partnerships in 2001. The Act came into force on March 1, 2002. In Nordic comparison Finland was again among the latecomers in the sense that in other Nordic countries partnership legislation was introduced already years before, and they

were about to open the adoption of children for same-sex couples, or had already done so, whereas the new Finnish Act excluded adoption. In European comparison Finland made it into the “above average” class, as with decriminalizing homosexuality.¹¹¹

The name of Finland’s current president Tarja Halonen is often connected with the struggle for homosexual law reforms during the 1980s and 1990s. Halonen is a lawyer by profession and interested in human rights issues. In 1979 she was elected a Member of Parliament, and in the same year she was invited as a guest speaker at the Liberation Days arranged by SETA. In the late 1970s and early 1980s SETA was keen to have influential heterosexual figures as its chair. Among them was Leo Hertzberg, a lawyer, who was the first signatory in the above mentioned complaint to the UN Human Rights Committee. Tarja Halonen was the chairwoman of SETA in 1981. She also wrote one of the earliest academic texts on homosexual rights in Finland. Halonen’s review was published in the journal *Oikeus* (Justice) and in it she outlines all the pertinent shortcomings in the legislation at the time that needed to be addressed. In addition to the questions of prohibition on encouragement and the higher age limits she paid attention to the discrimination against homosexuals at work and to the unequal treatment of same-sex couples in family law and in laws on inheritance and taxation. She expressed hopes that the reforms could be achieved in the course of the 1980s. In that assessment she was too optimistic, but at the time of writing this, twenty-five years later, all the legal reforms Halonen took up have been accomplished.¹¹²

The legal status of children in same-sex families was a question that surfaced seldom in the 1980s, and neither did Halonen approach it in her review. It is an area that is next in line for legal regulation in Finland.

Postscript

Up until 1971 homosexuality was wholly criminalized in Finland, and until 1999 it still carried sanctions in certain circumstances, but at the turn of the millennium the legislation took another direction entirely. As earlier in other Nordic countries, laws were enacted in Finland to protect homosexuals from discrimination on the basis of sexual orientation.

The reformed Constitution Act of Finland, effective since 1995, and the Constitution dating from the year 2000 underline the principle of equality of all citizens. Similarly, the reformed Penal Code and the Employment Contracts Act, effective from 1995 and 2001 respectively, contain prohibitions of discrimination in the workplace and upon recruitment on the grounds of sexual orientation. The Non-Discrimination Act from 2004 extends and sharpens the protection of sexual minorities from discrimination in the labor market and calls for a more active role from the employer in preventing discrimination.¹¹³

The most recent piece of legislation that affects many lesbians and homosexuals is the 2006 Fertility Treatment Act. It states that women seeking treatment are not to be discriminated in terms of sexual orientation or family status but the service is equally available for single women and women couples.¹¹⁴ The passage of the law was anything but easy. The legislative process continued for two decades, yet it was difficult to come to an understanding on the eligibility of single women and lesbian couples for assisted reproduction services. While the lawmakers and lobbyists argued, a system became established in Finland whereby several private infertility clinics provided services also for other people than heterosexual couples. It is difficult to later criminalize a well-functioning medical practice so the settled practice eventually gained the force of the law.¹¹⁵

Under the period of 110 years covered in this article, Finnish homosexual men and women first emerged from the fringes of society, branded as sinners, criminals, or mentally ill, and by the 1970s they were seen as a minority to be pitied but tolerated. During the last two decades of the twentieth century gays and lesbians have become almost equal citizens with heterosexuals even in Finland.

In this story on Finnish lesbians and gays there are many similarities to the developments in other Nordic countries but also many differences. The brutal civil war and World War Two left their mark in the Finnish conception of masculinity that made a heteronormative “straightening up” through law more accentuated here than in other Scandinavian countries. In terms of legislative development Finland has more often belonged to the Nordic periphery together with Iceland, Greenland and the Faroe Islands, whereas Denmark, Sweden and Norway have paved the way for a more liberal and gay affirmative politics. This politics has been aimed at integrating homosexual citizens into the building of civic society and offering them the benefits of the welfare society on an equal basis with other citizens.

The only common denominator that loosely binds together the heterogeneous group of identities and individuals routinely referred to as “lesbians and gays” is that they are not heterosexuals. Yet from a legislative point of view the construction of clear-cut social groups is unavoidable in order to define unambiguously to whom a law applies - or does not apply. The legal perspective is also inescapably normative because the law in itself is normative by definition. The struggle is about how heteronormative the legal norms are, whether they exclude all or some non-heterosexual ways of living either by criminalizing or ignoring them, or whether the law is inclusive, allowing and protecting other kinds of preferences in life outside the heteronormative boundaries.

Notes

- 1 I want to thank Jens Rydström for both the pleasurable cooperation on this project and for support and valuable suggestions for this chapter. I am also grateful to Virva Hepolampi for her informed comments and for translating this chapter from Finnish into English.
- 2 Finnish as well as the Sami languages, spoken by the Sami people in Lapland, belong to a Finno-Ugric language group of the Uralic language family whereas the languages in other Nordic countries – with the exception of Greenlandic Inuit – are Germanic languages within the Indo-European family. Finland's official languages are Finnish, the native language of 91,6 percent of population, and Swedish, spoken by 5,5 percent of the Finns.
- 3 Additionally, 1 percent belongs to other official religious communities and 15 percent have no official religious affiliation. Source: Population structure of Finland by end of the year 2005. http://www.stat.fi/tup/suoluk/suoluk_vaesto_en.html. For a general history of Finland see for instance Lavery 2006 or Singleton 1989.
- 4 In Sweden the socio-economic development passed this stage in the 1910s and in Norway already in the late nineteenth century. Finland became industrialized and urbanized in an exceptionally short time. By the mid-1970s only 12 percent of the population worked in agriculture and forestry, and in 1979 60 percent lived in urban areas. Valkonen et al. 1980, 104, 205.
- 5 Denmark and Norway were invaded by German forces in April 1940. Iceland, Greenland, and the Faroe Islands were under American or British control. Sweden managed to remain formally impartial.
- 6 Jokisipilä 2004; Vehviläinen 2002; Meinander 1999a, 1999b.
- 7 Juvonen 2002, 83-104; 2006.
- 8 Kekkonen 1991.
- 9 Wrede 1934.
- 10 Kekkonen 1991.
- 11 Träskman 1990, 257.
- 12 Lilieqvist 1995.
- 13 “Öfvar någon otukt med annan af samma kön; straffes hvardera med fängelse i högst två år. Gör sig någon skyldig till tidelag eller försök dertill; straffes med fängelse i högst två år.” Finnish Penal Code 1889, chapter 20, section 12.
- 14 Träskman 1990, 263.
- 15 “böra utvidgas sålunda, att naturvidrig otukt äfven då den utöfvas af person utaf qvinkön med annan person af samma kön varder straffbar.” Strafflagsutskottets betänkande n: 01, 58.
- 16 Löfström 1991a, 17-18; Löfström 1991b, 18; Löfström 1998, 56.
- 17 Löfström 1991b, Löfström 1998.
- 18 Löfström 1991b, 20; Löfström 1998, 58; Uimonen 2000.
- 19 Backman 1882, Uimonen 2000.
- 20 Löfström 1991b, 20; Löfström 1994, 118.
- 21 Löfström 1994, 118; Löfström 1998, 58.
- 22 Boëthius 1982, 331, 346.
- 23 Boëthius 1982, 340.
- 24 Classical depictions of lesbian women in nineteenth century French belles-lettres include Denis Diderot's *La Religieuse* (1796), Honoré de Balzac's *La fille aux yeux d'or* (1835), Théophile Gautier's *Mademoiselle de Maupin* (1835), Charles Baudelaire's *Les fleurs du mal* (1857), Émile Zola's *Nana* (1880), Guy de Maupassant's *La femme de Paul* (1881). See Lützen

1986/1990 or Waelti-Walters 2000. Adolphe Belot's novel *Mademoiselle Giraud, ma femme* (1870) was a huge success at its time and a possible inspiration for Strindberg: mademoiselle Giraud never lets his husband touch her because she is committed to another married woman, who has similarly driven her husband out of his wits and out of the home with her tribadism.

25 Strindberg wrote *A madman's defence* originally in French in 1887-88, but it was published first in German in 1893, then in French in 1895. A Swedish translation was published officially in 1914, but a pirate version of the novel had been printed in a journal already in 1893-94. Aurell 1962; Levander 1976; Meyer 1982; Roy 2001a; 2001b; Strindberg 1968; 1972.

26 According to Walter Benjamin's interpretation of Charles Baudelaire's poetry, the lesbian woman actually belongs to the *flâneurs*, to the heroes of modernity. Benjamin 1969, 163; Wilson 1992, 106.

27 Löffström 1991a, 56-59.

28 Löffström 1998.

29 Löffström 1994, 120; Löffström 1998.

30 In his earlier work Löffström has himself stressed the importance of the medical discourse and the influence of Strindberg's works, see Löffström 1991a, 1991b, 1994; 2000.

31 Before 1924 the number of convictions for homosexual fornication and bestiality under Chapter 20, section 12 of the Penal Code were not counted separately in criminal statistics. It is, however, possible to retrieve the number of sentences according to subsections 1 and 2 quite reliably from prison statistics. Suspended sentences were introduced only in 1918 and thus all those convicted before that year were in effect registered in the prison statistics. *Bidrag till Finlands statistik. Rättsväsen 1894-1970. Bidrag till Finlands officiella statistik. Fångvärd 1894-1923*. Cf. also Löffström 1998, 73, 75; Löffström 1994, 121, Appendix C. Data for the year 1959 is missing in the official statistics. The number for same-sex fornication is therefore counted by hand from the person cards, which are the basis of criminal statistics and kept in the Archives of Statistics Finland. The number of convictions in bestiality for 1959 has not been counted by hand and is therefore missing. Person cards from the Criminal Records Statistics Finland Archives.

32 In Britain there was a similar rise in prosecutions for bestiality in the early 1950s. Weeks 1989, 239.

33 Mustola 2000a.

34 Jaakkola and Tham 1989, 62.

35 *Sotaväen rikoslaki* (Military Penal Code) 1919, 17:144.

36 Turpeinen 1995, 12, 141, 157-58.

37 I interviewed "Paavo," a war veteran, in 1998. He was also interviewed in 1999 by Kalle-Ville Lahtinen for *Z-lehti*. The interviewee chose the code name Paavo, which I shall also adopt here. Interviews with other gay veterans in Turunen 1988a, 11; 1988b, 30-31; Anonymous 1988, 19.

38 Hooven 1993.

39 Pertti Korpinen and the late Leeku Kimmel interviewed Touko Laaksonen aka Tom of Finland in the spring of 1990. I am indebted to them for the use of the interview tapes. Kai Kalin also interviewed Tom for his article, Kalin 1990.

40 Hooven 1993, 27.

41 Kalin 1990, 108.

42 Arell & Mustola 2006, 21.

43 Bérubé 1991; Jackson 2004; Wotherspoon 1995; Vickers 2006.

44 Kontula 1996, 23.

45 *Lotta Svärd* was a Finnish voluntary women's auxiliary. The name comes from a poem about a woman by that name in the Finnish War 1809, written by the Finnish national poet Johan Ludvig Runeberg. By 1944 the organisation included 242,000 volunteers while the total population of Finland was under four million. Proportionally it was the largest voluntary organisation in the world. During the war some 100,000 men whose jobs were taken over by Lottas, were freed for military service. The Lottas also worked in hospitals, air-raid signalling and in other auxiliary tasks in the armed forces. The Lottas, however, were officially unarmed. The Finnish *Lotta Svärd* organisation has inspired similar organisations in other countries and there is still a *Lotta Svärd* organisation in Sweden (*Lottorna*), the same model is also used in Denmark and Norway. Source: http://en.wikipedia.org/wiki/Lotta_Sv%C3%A4rd.

46 Lähteenmäki 2002; Raitis and Haavio-Mannila 1993.

47 In 1973, the Finnish Literature Society's (SKS) Folklore Archives collected oral history accounts from ex-servicemen's life in the dugouts. The material also includes memories on homosexuality at the front. In 1993 the SKS distributed a questionnaire on homosexuality to its regular respondent network. Wartime emerged in many respondents' memories as the period when they had first heard of homosexuality. Juvonen 2002, 48, 145-49, 157; Juvonen 2000; 2006.

48 Bérubé 1991; Juvonen 2002 145 - 157.

49 Interview of Paavo 1998.

50 Lahtinen 1999.

51 Interview of Paavo 1998; Mustola 2006; Lahtinen 1999.

52 Kühne 1996.

53 Turpeinen 1995, 12, 141, 157.

54 *Kalle 7/1951*, 12. On the front the Finnish soldiers would build a sauna if the unit remained for a longer period on the same spot.

55 Juvonen 2002, 147-148, 154.

56 Arell & Mustola 2006, 33-35, 48-49.

57 Interview of Lotta 1998.

58 Bandler 1992, 95-96, 105-107.

59 Interview of Sanni 1985; Mustola 2004, 327.

60 Juvonen 2000; 2006.

61 Aho 1981, 250.

62 For details, see Mustola 2000a.

63 British sociologist Stanley Cohen defines the concept of moral panic as follows: "Societies appear to be subject, every now and then, to periods of moral panic. A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right thinking people; socially accredited experts pronounce their diagnoses and solutions [...] Sometimes the object of the panic is quite novel, and at other times it is something which has been in existence long enough, but suddenly appears in the limelight. Sometimes the panic is passed over and is forgotten except in folklore and collective memory; at other times it has more serious and long lasting repercussions and might produce such changes as those in legal and social policy or even the way society conceives itself." Cohen 1972, 28, quoted in Jenkins 1992, 6-7.

64 The amendment in 1952 introduced three age categories for sex offences against minors: under 12, 12 to 14, and 15 to 16. From 1926 to 1952 the law had had only one age limit for mi-

nors, under 17 years of age. The age of responsibility in criminal cases has remained fifteen since 1889. In Inkeri Anttila's study on sex crimes against minors 17 offenders (4 percent of all offenders) were 15- to 17-year-old adolescents. Anttila 1956, 112.

65 Anttila 1956, 26-28.

66 Anttila 1956, 21.

67 *Kalle* 1951, no. 7 and 8; Juvonen 2002, 85-94.

68 For the Swedish homosexual scandals see Rydström's article in this volume and Söderström 1999b. Juvonen 2002, 86.

69 Kautto 1959.

70 Hirvonen and Sorainen 1994; Sorainen 1995; 1996; 1998, 2005; 2006.

71 The oral histories referred to here include two interviews conducted by Vesa Turunen (published in *SETÄ*-lehti 1988, no. 2 and 3), a written memoir by an anonymous informant, Anonymous 1988, Hooven 1993 and an interview with Touko Laaksonen in 1990. Additionally, I have personally interviewed ten elderly homosexual men, most of whom had many recollections from gay cruising grounds in Helsinki after the war.

72 Turunen 1988a, 12.

73 Turunen 1988b, 29.

74 Interview of Sanni 1985.

75 Interview of Sanni 1985.

76 Anonymous 1988, 21.

77 Löfström 1994, 191-192.

78 Löfström 1994, 192-193.

79 Sorainen 1995.

80 Peltonen 2006.

81 Peltonen 1991.

82 Lauritsen and Thorstad 1995, Weeks 1977.

83 Turunen 1988a, 15.

84 Lennerhed 1994; Ullerstam 1964/1968; Pallesen 1964; Taipale 1966.

85 Translated novels included Annakarin Svedberg's *Sinun* 1968 (*Din egen* 1966), Violette Leduc's *Therese ja Isabelle*, 1968 (*Thérèse et Isabelle* 1966) and *Äpärä* 1969 (*La bâtarde* 1964), James Baldwin's *Huone Pariisissa* 1964 (*Giovanni's room* 1956) and *Toinen maa* 1968 (*Another country* 1962).

86 Magazines that ran articles on homosexuality included *Kauneus ja Terveys* (*Beauty and Health*) no. 2, 1958; no. 9, 1963; no. 9, 1964; no. 2, 1965; no. 1, 1966; no. 11, 1967; no. 4, 1968; no. 6 and 11, 1969; no. 12, 1970; no. 4, 1972; no. 6, 1973, and *Me Naiset* (*We Women*) no. 40, 1969; no. 13, 1970.

87 Aho 2003, 319, 332; *Hymy* no. 6 and 10, 1967; no. 4, 5, 6, and 8, 1968; no. 5, 6, and 9, 1969; no. 7, 1970; no. 1, 3, 9, and 12, 1971; no. 1, 1972; no. 2 and 8, 1973.

88 "Homopesä Helsingissä," *Iltasanomat* August 8, 1966; "Ändra homosexlagen," *Hufvudstadsbladet* August 13, 1966.

89 *Seksuuaalirikoskomitean mietintö* (Sex Crime Committee Report) 1967.

90 *Seksuuaalirikoskomitean mietintö* (Sex Crime Committee Report) 1967, 10; *Hallituksen esitys* (Government proposal) HE 52/1970.

91 Finnish Penal Code, Chapter 20, Section 9,2 (1971-99). "Anyone who publicly encourages indecent behaviour between persons of the same sex shall be sentenced for encouragement to indecent behaviour between members of the same sex as decreed in subsection 1." The penalty was imprisonment for at most six months or a fine.

92 Suominen 1999.

- 93 Isaksson 1994; Waaldijk 1994; 2003/2006.
- 94 "Jotain sellaista radikaalia..." 1997.
- 95 Stålstöm 1997, 328-38. In Sweden the National Board of Health and Welfare (*Socialstyrelsen*) officially removed homosexuality from the Swedish classification of illnesses in 1979. Stålstöm 1997, 335. Page numbers in Stålstöm 1997 refer to the pdf-version.
- 96 In both cases the suspected crime was reported by Asser Stenbäck, a professor of psychiatry and ordained pastor, later a Member of the Parliament (Finnish Christian Coalition). He advocated what later became known as reparative therapy, seeking to heal homosexuals through medical treatment. Stålstöm 2003.
- 97 "Asser Stenbäck, professori, psykiatri, pappi, homoseksuaalien vihollinen." *Iltasanomat* March 25, 1977; "Homo-ohjelmat pääsivät pannasta." *Iltasanomat* April 1, 1977; "Hymy hyytyi" *SETA* 4/1978; "YLE: asiaohjelmat tapetin ja seinän välissä" *SETA* 1/1979; Stålstöm 1997, 369-74; Månsson 1983, 45; Månsson 1984, 341-42
- 98 "Miksi YLE sensuroi?", "Censorship" *SETA* 4/1982, 26, 31.
- 99 Månsson 1984, 342; Stålstöm 1997, 374-78.
- 100 *Hertzberg et al v. Finland* 1982.
- 101 "Freedom of Expression" *The Review* 28/1982, 44-46, quoted in. Månsson 1984, 343, Stålstöm 1997, 377-78.
- 102 Member of Parliament Pirkko Työläjärvi submitted in 1977 an initiative for the repeal of the subparagraph on encouragement to indecent behavior between members of the same sex. *Iltasanomat* April 1, 1977. In 1981 Tarja Halonen together with a group of other parliamentarians made an inquiry concerning the Government's plans for abolishing the ban on encouragement. They also inquired about the Government's measures to investigate the discrimination of homosexuals and to combat discrimination. Isaksson 2000.
- 103 "Vapautuspäivät!" *SETA* 3/1981, 5; "Tunnustamme... Voimakas kehotus homoseksuaalisuuteen" *SETA* 6/1981, 10-13.
- 104 Hautanen 2005, 71-73.
- 105 *Seksuaalirikoskomitean mietintö* (Sex Crime Committee Report) 1967, 23.
- 106 One thorough investigation has been made into homosexuality and youth, which concluded that seduction into homosexuality is impossible. On the ground of this study many countries removed higher age limits for homosexual acts. This study was the Dutch *Speijer Report* from 1969. Weeks 1989, 239; Halonen 1982, 194; Stålstöm 1997, 371; Suominen 1999, 46-55.
- 107 The punishment for assault could be a fine and at most two years imprisonment (Penal Code of Finland 21:5.1), same-sex contacts with a person under 18 years were always punishable by imprisonment for a term not exceeding three years (Penal Code of Finland 20:5.2). Månsson 1984, 331.
- 108 *Suomen virallinen tilasto*. Rikollisuus 1971-99. (Official Statistics of Finland, Criminality).
- 109 *Perhekomitean mietintö* (Family Committee Report) 1992, 1.
- 110 *Laki ja samaa sukupuolta olevien parisuhteet* (The law and same-sex partnerships) 1999.
- 111 Waaldijk 2003/2006.
- 112 Halonen 1982.
- 113 The purpose of the Non-Discrimination Act is to foster and safeguard equality as well as to prohibit discrimination on the grounds of age, origin, language, religion, conviction, opinion, state of health, disability, sexual orientation or any other reason related to the person. The Non-Discrimination Act was adopted to comply with the Council of the European Union, Directive 2000/43/EC, which concerns the principle of equal treatment be-

tween persons irrespective of racial or ethnic origin (the Race Equality Directive), as well as the Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (the Employment Equality Directive). Discrimination against trans people is considered to be gender discrimination according to the rulings of the European Court of Justice (C-13/94). In Finland protection of trans people against discrimination does not fall within the sphere of the Non-Discrimination Act, its realisation being secured on the basis of the Act on Equality between Women and Men.

114 *Laki hedelmöityshoidoista* (Fertility Treatment Act) 1237/2006. The law becomes effective on September 1, 2007

115 The only change to the previous practice is that upon reaching the age of 18, a donor-conceived child has the right to learn the donor's identity. After September 2007 the use of anonymous gametes is no longer allowed, which can lead to a shortage of sperm or at least to an increase in the price of the service because registered sperm bought from abroad is more expensive than nonregistered sperm.

Nordic Laws Relevant to Same-Sex Sexuality 1683-1999

by Jens Rydström

This book has amply demonstrated that lawmaking is an ever-changing way of describing reality, and that the process of defining and delineating the limits of acceptable behavior can tell us how differently crime and morality have been perceived in different societies.¹ The shifting ways in which the laws on sexual crimes are constructed reveal how each society has redefined sexual practices over time. In this particular area, sexual taboos and the politics of silence render the legislator's task even more delicate than usual, since forbidden act has to be described without being explicit. This might have been the case with many crimes, but naming same-sex acts was especially difficult, since it concerned the kind of crime, which was not to be mentioned among Christians.

The legislators in the Danish-Norwegian double monarchy solved the problem by being vague, prohibiting "intercourse against nature" (*Omgjængelse imod Naturen*) in King Christian the Fifth's Danish and Norwegian Laws. The word *omgjængelse* literally means "going about." It is as vague in Danish as in English, but in connection with the words "against nature" the crime description hearkened back to the *crimen contra natura* of canonical law, and indicated to the educated that it covered a variety of sexual practices condemned by church and worldly powers. In Sweden and Finland, the problem was treated differently. In the Law of the Swedish Realm (*Sveriges Rikes Lag*) from 1734, same-sex practices were not mentioned at all. According to the minutes of the law commission, one of its members suggested that all three sodomitic sins would be included in the new law, but his proposal was rejected with the motivation that it was better to remain silent on the issue than to spread knowledge about such abominable deeds.² The result was that the only sin of Sodom mentioned in the new law was bestiality, punished by burning at the stake.

The vague concept of "intercourse against nature" was inherited by both the Norwegian Criminal Law of 1842 and the Danish Penal Code of 1866. The 1869 Icelandic version of it translated the word *omgjængelse* with *samræði*, which could designate both heterosexual coitus and penetrative sexual acts between persons of the same sex. The Swedish Penal Code of 1864 used the word *otukt* to describe the crime. According to the Dictionary of the Swedish Academy, *otukt*

means “such sexual intercourse which is considered prohibited or immoral,” and could cover a wide arrange of sexual acts. Here it has been translated to “fornication.” True to its traditions the new Swedish law described bestiality as a separate crime, in that it distinguished between “fornication with animals” and “fornication against nature.” The latter expression covered both same-sex sexual acts and “unnatural” sex between men and women.

A quarter of a century later, the Finnish Penal Code of 1889 excluded that possibility, calling the crime “fornication with another person of the same sex” (*otukt med annan av samma kön / haureus toisen samaa sukupuolta olevan kanssa*).³ In the same year, a revision of the Norwegian law also resulted in increased precision as it described the prohibited deed as “physical intercourse between persons of the male sex” (*legemlig Omgjængelse mellem Personer af Mandkjøn*). The argument for this change was the need for more clarity and explicit language. As in the Finnish law the new Norwegian clause distinguished between same-sex sexual acts and sexual acts with animals, which both had been covered by the older “unnatural” crime. Unlike the Finnish law, however, the Norwegian new wording restricted the use of the law to same-sex sexual acts between men, which was a result of court practice as it had developed in Norway.

The law texts thus evolved from the crude and rather blunt rules of the seventeenth century to the elaborate and nuanced, if perhaps less appealing, language of the late twentieth century. This demonstrates the development of legislative techniques, and in particular changes in the way discursive power refers to different sexual activities.

Each jurisdiction in the Nordic area developed its own distinct way of speaking about the unspeakable, both in terms of legal language and of the technical construction of their legislative frameworks. In Norway, the new Penal Code of 1902 combined the words *utugt* and *omgjængelse*, into *utugtig omgjængelse*, which has been translated here as “immoral sexual intercourse.” This description of the deed is used in different clauses of the law, designating a wide array of sexual acts, heterosexual, homosexual, and with animals. Twenty-five years later, the Danish legislation chose a different method. While the Danish law retained its unclear language and its conflation of bestiality and same-sex sexuality until 1933, the new Penal Code decriminalized bestiality and built a system of interrelated sections connecting same-sex sexual crimes with different-sex sexual crimes and established higher age limits to what had now become known as homosexual acts with minors. With the new rules, sex between women was included in the law, which reflected the development of sexological discourse.

The Danish Penal Code later influenced the Icelandic and Greenlandic codes of 1940 and 1954, respectively, where we find similar cross-references to other sections in the law. In fact, the Icelandic Penal Code of 1940 was an almost literal translation of Danish law, just as its 1869 code had been. And in the new Icelandic code, just as in the Danish code of 1930, there was a conceptual divide

between heterosexual coitus and same-sex sexual acts. The law used *samræði* in clauses where the Danish law had used *samleje*, but *kynferðismök* for the wider concept, here translated with “sexual acts.”

The Greenlandic Criminal Code, written a decade later, was the first law that was binding for both Greenlanders and Danes living in Greenland alike. It was a novelty in that it aimed to combine European legal tradition with indigenous Greenlandic concepts of justice. For that reason it did not prescribe a fixed sentence for each crime, but left it to the second part of the code to describe possible consequences of criminal behavior.⁴ Many crime descriptions were taken from the older customary laws. The chapter on sexual crimes, however, was explicitly formulated closer to Danish sexual morality, since some of the traditional Greenlandic “permissiveness” was unacceptable to the legislators. The Greenlandic code distinguished between *samleje* (coitus) and *anden kønslig omgang* (other sexual acts), the first concept being exclusively used for heterosexual acts.

On the one hand the legal language became more explicit, but on the other the definition of the crime became wider. According to premodern court practice, penetration and ejaculation must have taken place in order for the deed to be criminal. When sexology defined homosexuality as a condition inherent in some people, same-sex sexual acts were increasingly seen as a symptom of disease. The new situation required a wider definition, including non-penetrative sex.

In older legislation, intercourse or fornication “against nature” could comprise forbidden sexual practices between men and women, between humans and animals, and between persons of the same sex, but it was not to be confounded with penile penetration of a vagina—hence the insistence on its “unnatural” character. When the natural/unnatural distinction gave way to a different distinction between the normal and the abnormal, this resulted in new concepts entering the law. In Danish, Norwegian, and Swedish, the words *samleje*, *samleie*, and *samlag*, were reserved for heterosexual coition, whereas the Icelandic word *samræði* was also used for same-sex penetrative sex.

In many countries, questions of age and sexual maturity have been central to the regulation of sexual crimes in the twentieth century, and in the Nordic law texts we can see how absolute and relative age limits were constructed differently in different times. Before, it was primarily the woman’s marital status and honor that determined the nature of the crime. Adultery and fornication with unmarried virgins were severely punished, whereas the law did not explicitly establish any age limits. In the twentieth century, however, there was a growing concern for the possible damage inflicted to children who were sexually abused, and the sections of the law dealing with age limits were rewritten on several occasions. The Danish law of 1930 prohibited the misuse of age and experience to seduce younger persons, and the inclusion in 1965 of stepchildren in the clause

against seduction of minors was a result of the removal of another section, prohibiting all incestuous relationships with stepchildren. Instead of kinship being the determining factor, it was now age that defined what was regarded as criminal. In Sweden, the law against sex with minors was made gender neutral in 1937, explicitly in order to protect underage boys from sexual advances from adult women. Later, the emphasis shifted to the age of the children rather than their sex or that of the perpetrator. Different states of dependency were defined, sometimes combined with different age limits. Same-sex acts stand out by consistently being subject to higher age limits, but the legal regulation of sex with young people and minors is rather similar in the different Nordic countries.

In Finnish legislation there was an unusually high age limit for heterosexual acts, and the higher 18-year limit was closely connected to an idea of sexual purity. Until 1971 chapter 20, section 7 of the Finnish Penal Code explicitly stated that the higher age of consent of 18 years was only applicable if the person concerned did not engage in “lewdness” (*siveettömyys / osedlighet*), a relic from a time when the virginity of a young woman was essential to the definition of a crime. Chapter 20, section 7, which first prohibited fornication with underage girls, was made gender neutral in 1926, which implied that homosexual acts with young persons could also be prosecuted under that law. The section was rewritten twice in the 1950s (in 1952 and 1954), which reflects a general anxiety for sex with children during that time. The term *sekaantuminen / lägersmål* (illicit sexual intercourse) was reserved for heterosexual intercourse. The amendment of section 7 in 1926 mentioned *sekaantuminen / lägersmål* as a special case of *muu hauraus / annan otukt* (other fornication), but did not differentiate between the two in stating the punishment. The two amendments in the 1950s implicitly covered same-sex sexual acts. In 1952 the two deeds, “illicit sexual intercourse” and “other fornication,” were separately mentioned and “other fornication” was used as the wider concept, not necessarily involving heterosexual penetration. In 1956, the maximum punishment for both “illicit sexual intercourse” and “other fornication” with persons between 15 and 17 years rose dramatically, from two years of prison to three years of penal servitude.

To conclude, criminal legislation in the Nordic countries largely followed the same trends, but with some differences. The inclusion of women in the anti-homosexual legislative framework in Denmark in 1935 (and Iceland in 1940) had few practical consequences, since the vast majority of prosecutions concerned men who had sex with men. The criminalization of female homosexuality rather mirrored the ways in which lesbian sexuality was gradually being incorporated in the general discourse on sexuality during the twentieth century. In Norway, this incorporation never took place, and its 1902 Penal Code survived the redefinition of sexuality in the twentieth century remarkably unchanged. The sections regulating heterosexual child abuse were amended twice, but the bans on physical intercourse between men and on bestiality remained unchanged until 1972.

Sweden abolished its general prohibition of “unnatural fornication” and “fornication with animals” in 1944, replacing it with a number of age limits applied to different kinds of “homosexual fornication,” but Finland retained its total ban on same-sex sexual acts and bestiality until 1971. With the exception of Norway, all Nordic countries had periods of higher age limits for same-sex practices. Denmark was first to abolish it in 1976, but it was not until 1981 that the first section of clause 225 was amended, so that homo- and heterosexual crimes were given the same sentences. Previously, the maximum sentence for all kinds of homosexual crimes had been six years. Sweden repealed its law on a higher age of consent soon after Denmark, in 1978, and in the following year Greenland abolished the higher age limit, which only had been in force since 1963. Then it took another ten years, until 1988, before the Faroe Islands made homo- and heterosexuality equal before the law, and Iceland followed soon after, in 1992.

That Finland waited as long as until 1999 to abolish the higher age limit was to some extent the result of conservative resistance to a law reform, but also of the fact that the amendment had to wait for a total revision of the chapter on sexual crimes. During the period 1971–99, very few people were prosecuted under the law on higher age limits.

The debate about the definition and regulation of sexuality continues in all the Nordic countries to this day, but since this book is primarily interested in the regulation of same-sex sexuality, the law texts below cover only the period when same-sex sexuality was either prohibited or subject to higher ages of consent. For this reason, contemporary public debate about age limits, rape, and sexual coercion, while of utmost importance in our societies today, falls outside the scope of this book.

The following survey presents laws relevant to same-sex sexual acts in Nordic legislation from the seventeenth century until the complete decriminalization of same-sex sexuality. It also includes the texts of other laws that are intertwined with those regulating same-sex sexuality. Only those statutes which directly regulate same-sex sexual acts and some of the regulations of ages of consent have been presented together with all their amendments. The other law texts are presented in their original form. To facilitate reading, all regulations directly referring to same-sex sexual acts are set in italics.

Rendering these law texts in English has not been without its problems. The translations below have been made in order to facilitate comparison between the law texts, and sometimes style has been sacrificed for clarity.

Notes

1 I wish to thank the other contributors to this book for useful comments, especially Thorgerdur Thorvaldsóttir for the translations from Icelandic and Kati Mustola for cor-

recting the Finnish quotes. Also, I want to express my gratitude to Robert Cumming for correcting my English.

2 *Förarbetena till Sveriges Rikes Lag 1686-1736*, 160.

3 Both language versions of the law are approved by the Finnish Parliament and have the same legal status. For practical reasons, however, the law text is first prepared in one language and translated to the other. Until the first decades of the twentieth century, the law was generally prepared in Swedish and translated to Finnish, but since then it is usually done the other way around. Wrede 1934, 427-28.

4 There was a wide range of possible penalties in the Greenland Criminal Code, such as fines, reparations and compensatory labor for the wronged party, banishment, or community service. Prison terms were only rarely to be applied, and the emphasis lay on rehabilitation of the criminal. A thorough revision of the Criminal Code is being prepared, which will result in a stricter penalty system. See *Betänkning om det grønlandske retsvæsen* 2004.

Denmark

1683

Kong Christian Den Femtis Danske Lov

Siette Bog. Om Misgjæringer

XIII. Capitel. Om Løssagtighed

15. Art. *Omgængelse, som er imod Naturen, straffis med Baal og Brand.*

1866

Almindelig borgerlig Straffelov

10. Februar 1866.

Sextende Kapitel. Forbrydelser mod Sædeligheden

§ 173. Bedriver nogen Utugt med et Pigebarn under 12 Aar, ansees han med Strafarbejde indtil 8 Aar, forsaavidt Gjærningen ikke efter sin øvrige Beskaffenhed medfører høiere Straf.

§ 174. Den, som til Utugt forfører et Pigebarn i en Alder af 12 indtil 16 Aar, straffes med Fængsel, ikke under 2 Maaneders simpelt Fængsel eller under skjærpænde Omstændigheder med Strafarbejde indtil 4 Aar. Tiltale finder dog kun Sted paa Forældres eller Værges Forlangende.

§ 177. *Omgængelse mod Naturen straffes med Forbedringshuusarbejde.*

§ 178. Naar Personer af forskjelligt Kjøen uagtet Øvrighedens Advarsel om at fjerne sig fra hinanden vedblive at føre et forargeligt Samliv, straffes de med Fængsel.

§ 185. Den som ved uteerligt Forhold krænker Blufærdigheden eller giver offentlig Forargelse, straffes med Fængsel paa Vand og Brød eller med Forbedringshuusarbejde.

1933

Borgerlig straffelov

Lov Nr. 215 af 24. juni 1930.

I kraft 1. januar 1933.

24. kap. Forbrydelser mod Kønssædeligheden

§ 216. Den, som tiltvinger sig Samleje med en Kvinde ved Vold, Frihedsberøvelse eller Fremkaldelse af Frygt for hendes eller hendes nærmestes Liv, Helbred eller Velfærd, straffes

1683

King Christian the Fifth's Danish Law

Sixth book. On felonies

13th chapter. On lewdness

15th article. *Intercourse which is against nature is punished by fire and flames.*

1866

Danish Penal Code

February 10, 1866.

Sixteenth chapter. Crimes against morality

§ 173. If anyone commits fornication with a girl under 12 years, he will be sentenced to hard labor up to 8 years, unless the deed, in view of its general character, entails a higher punishment.

§ 174. Anyone who seduces to fornication a girl aged from 12 up to 16 years, is punished by prison, no less than 2 months' simple prison or in aggravating circumstances by hard labor up to 4 years. However, prosecution will take place only on the parents' or a guardian's demand.

§ 177. *Intercourse against nature is punished by work in a house of correction.*

§ 178. When persons of different sex, in spite of the authorities' admonitions to separate, continue to lead an offensive life together, they are punished by prison.

§ 185. Anyone who violates decency or provokes public outrage by indecent behavior will be punished by prison on bread and water or work in a house of correction.

1933

Danish Penal Code

Law No. 215, June 24, 1930.

In force January 1, 1933.

24th chapter. Crimes against sexual morality

§ 216. Anyone who forcibly obtains sexual intercourse with a woman by violence, deprivation of freedom, or by inducing fear for the life, health and welfare of the woman or her next of kin, will

for Voldtægt med Fængsel fra 1 til 16 Aar, under særdeles skærpende Omstændigheder paa Livstid. Har Kvinden forud staaet i mere varigt kønsligt Forhold til Gerningsmanden, er Straffen Fængsel indtil 8 Aar.

§ 217. Stk. 1. Den, som udenfor Ægteskab skaffer sig Samleje med en Kvinde, der er sindssyg eller udpræget aandssvag, straffes med Fængsel fra 3 Maaneder til 8 Aar. Har Kvinden forud i normal Tilstand staaet i mere varigt kønsligt Forhold til Gerningsmanden, kan Straffen gaa ned til den laveste Grad af Fængsel.

Stk. 2. Paa samme Maade straffes den, der udenfor Ægteskab skaffer sig Samleje med en Kvinde, som befinder sig i en Tilstand, i hvilken hun er ude af Stand til at modsætte sig Gerningen eller forstaa dens Betydning. Har Gerningsmanden selv i den nævnte Hensigt bragt Kvinden i saadan Tilstand, straffes han som i § 216 bestemt.

Stk. 3. Med Fængsel indtil 1 Aar straffes den, som har Samleje udenfor Ægteskab med en Kvinde, der er optaget i Hospital eller Anstalt for sindssyge eller aandssvage, medens hun er under sammes Varetægt.

§ 218. Med Fængsel indtil 6 Aar straffes, for saa vidt Tilfældet ikke falder ind under § 216 eller § 217, Stk. 1 og 2, den, som ved Trussel om Vold, om Frihedsberøvelse eller om Sigtelse for strafbart eller ærerørigt Forhold skaffer sig Samleje med en Kvinde.

§ 219. Med Fængsel indtil 4 Aar anses den ved Fængsel, Fattighus, Opfostringshjem, Sindssygehospital, Aandssvageanstalt eller lignende Indretning ansatte eller tilsynsførende, som har Samleje med en der optagen Person.

§ 220. Den som ved groft Misbrug af en Kvindes tjenstlige eller økonomiske Afhængighed skaffer sig Samleje udenfor Ægteskab med hende, straffes med Fængsel indtil 1 Aar eller, saafremt hun er under 21 Aar, med Fængsel indtil 3 Aar.

§ 222. Stk. 1. Den, som har Samleje med et Barn under 15 Aar, straffes med Fængsel indtil 6 Aar.

Stk. 2. Har Barnet været under 12 Aar, eller har Gerningsmanden forskaffet sig Samlejet ved Tvang, der dog ikke falder ind under § 216, eller ved Frem sættelse af Trusler, kan Straffen stige til Fængsel indtil 12 Aar.

§ 223. Stk. 1. Den, som har Samleje med en Person under 18 Aar, der er den skyldiges Adoptivbarn eller Plejebarn eller er betroet den paagældende til Undervisning eller Opdragelse, straffes med Fængsel indtil 4 Aar.

be punished for rape with prison from 1 to 16 years, in especially aggravating circumstances for life. If the woman previously has been in a long-lasting sexual relationship with the perpetrator, the punishment will be prison up to 8 years.

§ 217. Subsection 1. Anyone who outside of marriage obtains sexual intercourse with a woman, who is insane or obviously feeble-minded, is punished by prison from 3 months to 8 years. If the woman previously, in a normal state of mind, has been in a stable sexual relationship with the perpetrator, the punishment may be reduced to the lowest degree of prison.

Subsection 2. In the same way will be punished anyone, who outside of marriage obtains sexual intercourse with a woman, who is in a state in which she is unable to resist the deed or understand its meaning. If the perpetrator intentionally has brought the woman to such a state he will be punished as stated in section 216.

Subsection 3. By prison up to one year will be punished anyone, who has intercourse outside of marriage with a woman who is an inmate of a hospital or an institution for mentally ill or feeble-minded, while she is in the custody of that person.

§ 218. By prison up to 6 years is punished, unless the deed falls under section 216 or section 217, 1st and 2nd subsections, anyone who by threats of violence, of deprivation of freedom or of reporting her for punishable or dishonorable circumstances, obtains sexual intercourse with a woman.

§ 219. By prison up to 4 years is punished anyone who is an employee or supervisor at a prison, poor house, reform school, mental hospital, asylum or similar institution, and who has intercourse with an inmate thereof.

§ 220. Anyone who by grossly exploiting a woman's professional or economic dependence obtains sexual intercourse outside marriage with her, is punished by prison up to 1 year or, if she is under 21, by prison up to 3 years.

§ 222. Subsection 1. Anyone who has intercourse with a child under 15 years is punished with prison up to 6 years.

Subsection 2. If the child was under 12 years, or did the culprit obtain the sexual intercourse by force that does not fall under section 216, or by threats, the punishment may be raised to up to 12 years in prison.

§ 223. Subsection 1. Anyone who has sexual intercourse with a person under 18 years, who is the perpetrator's adoptive child or foster child or is entrusted to the person in question for study or education, is punished by prison up to 4 years.

Stk. 2. Med samme Straf anses den, som under groft Misbrug af en paa Alder og Erfaring beroende Overlegenhed forfører en Person under 18 Aar til Samleje.

§ 223a (1999–). Den, der som kunde har samleje med en person under 18 år, der helt eller delvis ernærer sig ved prostitution, straffes med bøde eller fængsel indtil 2 år. (Indsat ved l. 141 17.3.1999)

§ 224. Har under de i §§ 216–223 angivne Betingelser anden kønslig omgængelse end Samleje fundet Sted, bliver en forholdsmæssig mindre Straf af Fængsel at anvende.

§ 225. Stk. 1 (1933–81). *Med Fængsel indtil 6 Aar straffes den, som øver kønslig Usædelighed med en Person af samme Køn under Omstændigheder, der svarer til de i §§ 216–220 og 222 angivne.*

Stk. 2 (1933–76). *Med Fængsel indtil 4 Aar anses den, der øver kønslig Usædelighed med en Person af samme Køn under 18 Aar. Straffen kan dog bortfalde, naar de paagældende er hinanden omtrent jævnbyrdige i Alder og Udvikling. (Ophævet ved l. 195 28.4.1976)*

Stk. 3 (1933–1967). *Med Fængsel indtil 3 Aar straffes den, der under Misbrug af en paa Alder og Erfaring beroende Overlegenhed forfører en Person af samme Køn under 21 Aar til kønslig Usædelighed med sig. (Ophævet ved l. 2448 9.6.1967)*

Stk. 4 (1961–65). *Den, der ved betaling eller løfte herom skaffer sig kønsligt forhold til en anden person af samme køn under 21 år, straffes med hæfte eller med fængsel indtil 1 år eller under formildende omstændigheder med bøde. (Indsat ved l. 163 31.5.1961, ophævet ved l. 212 4.6.1965)*

§ 225 (1981–). *Bestemmelserne i §§ 216–220 og 222–223a finder tilsvarende anvendelse med hensyn til kønslig omgængelse med en person af samme køn. (l. 256 27.5.1981)*

§ 230 (1933–67). *Modtager nogen Betaling for at øve kønslig Usædelighed med en Person af samme Køn, straffes han med Fængsel indtil 2 Aar. (Ophævet ved l. 248 9.6.1967)*

§ 232. Den, som ved uterligt Forhold krænker Blufærdigheden eller giver offentlig Forargelse, straffes med Fængsel indtil 4 Aar eller under formildende Omstændigheder med Hæfte eller Bøde.

Subsection 2. To the same punishment will be sentenced anyone who, by grossly exploiting an advantage resulting from age and experience, seduces a person under 18 to sexual intercourse.

§ 223a (1999–). Anyone, who as a customer has sexual intercourse with a person under 18 years, who in part or entirely makes a living on prostitution, is punished by a fine or prison up to 2 years. (Added by law 141, March 3, 1999)

§ 224. If other sexual acts than sexual intercourse have occurred under the circumstances described in sections 216–223, a proportionally lower punishment will be used.

§ 225. Subsection 1 (1933–81). *With prison up to 6 years will be punished anyone who engages in sexual immorality with a person of the same sex in circumstances corresponding to those indicated in sections 216–220 and 222.*

Subsection 2 (1933–76). *With prison up to 4 years will be punished anyone who engages in sexual immorality with a person of the same sex under 18. Charges can be dropped, however, if the persons in question are approximately equal in age and development. (Repealed by law 195, April 28, 1976)*

Subsection 3 (1933–67). *With prison up to 3 years will be punished anyone who by exploiting an advantage resulting from age and experience seduces a person of the same sex under 21 years to engage in sexual immorality with the perpetrator. (Repealed by law 2448, June 6, 1967)*

Subsection 4 (1961–65). *Anyone who obtains sexual relationship with another person under 21 years through payment or promise thereof, will be punished with custody or prison up to 1 year, or in attenuating circumstances with a fine. (Added by law 163, May 31, 1961, repealed by law 212, June 4, 1965)*

§ 225 (1981–). *The regulations in sections 216–220 and 222–223a are applied correspondingly in cases of sexual acts with a person of the same sex. (Law 256, May 27, 1981)*

§ 230 (1933–67). *If anyone receives payment for engaging in sexual immorality with a person of the same sex, he will be punished by prison up to 2 years. (Repealed by law 248, June 9, 1967)*

§ 232. Anyone who violates decency or provokes public outrage by lewd behavior will be punished by prison up to 4 years or in attenuating circumstances with custody or a fine.

Norway

1687

Kong Christian Den Femtis Norske Lov
15. April 1687.

Siette Bog. Om Misgjærninger

13. Cap. Om Løsagtighed

15. Art. *Omgjængelse, som er imod Naturen, straffis med Baal og Brand.*

1842

Norsk Kriminallov
20. August 1842.

Attende Kapitel. Om Løsagtighed

§ 19 (1842–1904). Bedriver nogen Utugt med Kvinde, som er over tolv, men yngre end femten Aar, ansees han med Strafarbeide i femte Grad eller Fængsel. Utugt med Kvinde, som er yngre end tolv Aar, betragtes som forøvet med Vold, om hun end i Gjærningen har samtykket.

§ 21 (1842–89). *Omgjængelse, som er imod Naturen, belægges med Strafarbeide i femte Grad.*

§ 21 (1889–1904). *Finder legemlig Omgjængelse Sted mellem Personer af Mandkjøn, straffes de Skyldige med Strafarbeide i femte Grad eller Fængsel.*

Med samme Straf ansees den, der har legemlig Omgjængelse med Dyr. (Lov 29. Juni 1889.)

1905

Almindelig borgerlig Straffelov
Lov nr. 10, 22. Mai 1902.
I kraft 1. januar 1905.

19de Kapitel. Forbrydelser mod Sædeligheden

§ 191. Den, som ved Trusler bevæger nogen til utugtig Omgjængelse, eller som medvirker hertil, straffes med Fængsel indtil 5 Aar.

§ 192. Den, som ved Vold eller ved Fremkaldelse af Frygt for nogens Liv eller Helbred tvinger nogen til utugtig Omgjængelse, eller som medvirker hertil, straffes for Voldtægt med Fængsel indtil 10 Aar, men med Fængsel ikke under 1 Aar, saafremt der handles om Samleie.

Hvis den fornærmede paa Grund af Handlingen omkommer eller faar betydelig Skade paa Legeme eller Helbred, eller den skyldige tidligere

1687

King Christian the Fifth's Norwegian Law
April 15, 1687.

Sixth book. On felonies

13th chapter. On lewdness

15th article. *Intercourse which is against nature is punished by fire and flames.*

1842

Norwegian Criminal Law
August 20, 1842.

Eighteenth chapter. On lewdness

§ 19 (1842–1904). If anyone commits fornication with a woman who is over twelve, but younger than fifteen years, he will be sentenced to hard labor of the fifth degree or prison. Fornication with a woman who is younger than twelve years will be considered as committed with violence, even if she has given her consent.

§ 21 (1842–89). *Intercourse which is against nature is punished by hard labor of the fifth degree.*

§ 21 (1889–1904). *If physical intercourse takes place between persons of the male sex, the perpetrators will be punished by hard labor of the fifth degree or prison.*

The same punishment is given to anyone who has physical intercourse with animals. (Law June 29, 1889.)

1905

Norwegian Penal Code
Law no. 10, May 22, 1902.
In force January 1, 1905.

19th chapter. Crimes against morality

§ 191. Anyone who by threats makes someone concede to immoral sexual acts, or contributes to the deed, will be punished by prison up to 5 years.

§ 192. Anyone who by violence, or by inducing fear for someone's life or health, forces another person to immoral sexual acts, or contributes to the deed, is punished for rape with prison up to 10 years, but by prison no less than 1 year, it results in sexual intercourse.

If the wronged party dies or suffers severe injury of body or health because of the deed, or the perpetrator has been punished before for

er straffet efter denne Paragraf eller efter §§ 191, 193 eller 195, kan Fængsel indtil paa Livstid idømmes.

§ 193. Den, som har eller medvirker til, at en anden har utugtlig Omgjængelse med nogen, der er sindssyg, bevidstløs eller iøvrigt utilregnelig, straffes med Fængsel indtil 5 Aar, men indtil 8 Aar, saafremt der handles om Samleie.

Har den skyldige i Hensigt at fremme Forbrydelsen fremkaldt Utilregneligheden eller medvirket dertil, straffes han som i § 192 bestemt.

§ 195 (1905–27). Den, som har eller medvirker til, at nogen har utugtlig Omgjængelse med et Barn under 13 Aar, straffes som i § 192 bestemt.

§ 195 (1927–63). Den som har eller medvirker til at nogen har utuktig omgjængelse med et barn under 14 år, straffes med fængsel i minst 3 år. På samme måde straffes forsök.

Under særdeles formildende omstændigheder kan straffen nedsettes, dog ikke lavere enn til fængsel i 2 år, hvis fornærmede er under 12 år, og ellers ikke lavere enn til fængsel i 1 år.

Hvis fornærmede omkommer eller får betydelig skade på legeme eller helbred, eller den skyldige tidligere har været straffet efter denne paragraf eller efter §§ 191, 192, 193, 196 eller 212, er straffen fængsel fra 4 år inntil på livstid. Som betydelig skade på legeme eller helbred anses efter denne paragraf i alle tilfelle veneriske sykdommer.

Villfarelse med hensyn til alderen utelukker ikke straffeskylden. (Endret ved lov 4 juli 1927 nr. 9.)

§ 195 (1963–81). Den som har eller medvirker til at en annen har utuktig omgang med et barn under 14 år, straffes med fængsel inntil 10 år, men med fængsel i minst 1 år dersom den utuktige omgang var samleie.

Hvis den fornærmede som følge av handlingen omkommer eller får betydelig skade på legeme eller helse, eller den skyldige tidligere har vært straffet etter denne paragraf eller etter §192, kan fængsel inntil på livstid idømmes. Venerisk sykdom anses alltid som betydelig skade på legeme eller helse etter denne paragraf.

Villfarelse med hensyn til alderen utelukker ikke straffeskyld.

Straff etter denne bestemmelse kan falle bort eller settes under det lavmål som følger av første ledd dersom de som har hatt den utuktige om-

violation of this section or of sections 191, 193 or 195, then he may be sentenced to up to lifetime imprisonment.

§ 193. Anyone who engages in immoral sexual acts with someone who is mentally ill, unconscious, or helpless in any other way, or contributes to the deed, will be punished by prison up to 5 years, but up to 8 years if it results in sexual intercourse.

If the perpetrator has produced the state of helplessness with the intention to further the crime, or has contributed to the deed, he will be punished as stated in § 192.

§ 195. (1905-27). Anyone who engages in immoral sexual acts with a child under 13 years, or contributes to the deed, will be punished as stated in § 192.

§ 195 (1927-63). Anyone who engages in immoral sexual acts with a child under 14 years, or contributes to the deed, will be punished with prison no less than 3 years. Attempts will be punished in the same way.

In case of particularly attenuating circumstances the punishment may be lowered, but not to less than prison for 2 years, if the injured party is under 12 years old, and otherwise not to less than prison for 1 year.

If the injured party dies or suffers severe injury of body and health, or the perpetrator has been punished before according to this section or according to sections 191, 192, 193, 196 or 212, the punishment will be prison from 4 years up to life imprisonment. As severe injury of body or health according to this section are regarded all cases of venereal disease.

Mistakes regarding age do not preclude punishment. (Amended by law no. 9, July 4, 1927.)

§ 195 (1963–81). Anyone who engages in immoral sexual acts with a child under 14 years, or contributes to the deed, will be punished by prison up to 10 years, but to no less than 1 year's imprisonment if the immoral acts were sexual intercourse.

If the injured party as a result of the act dies or suffers severe injury of body or health, or the injured party has been punished before according to this section or according to section 192, the sentence may be life imprisonment. Venereal disease is always considered a severe injury of body or health according to this section.

Mistakes regarding age do not preclude punishment.

Punishment according to this law may be exempt or set below the lower limit stated by subsection 1, if those who have engaged in the

gang, er omtrent jevnbyrdige i alder og udvikling. (Endret ved lov 15 feb. 1963, nr 2.)

§ 196 (1905–27). Den, som har utugtlig Omgjængelse med et Barn under 16 Aar, straffes med Fængsel indtil 3 Aar.

§ 196 (1927–63). Den som har utuktig omgjøngelse med barn under 16 år, straffes med fængsel fra 6 måneder inntil 5 år.

Har den skyldige tidligere vært straffet efter denne paragraf eller efter §§ 191, 192, 193, 195 eller 212, er straffen fængsel i minst 2 år.

Villfarelse med hensyn til alderen utelukker ikke straffeskylden. (Endret ved lov 4 juli 1927 nr. 9.)

§ 196 (1963–81). Den som har eller medvirker til at en annen har utuktig omgang med noen som er under 16 år, straffes med fængsel inntil 5 år.

Villfarelse med hensyn til alderen utelukker ikke straffeskyld, med mindre ingen uaktsomhet kan legges gjerningsmannen til last i så måte.

Straff etter denne bestemmelse kan falle bort dersom de som har hatt den utuktige omgang, er omtrent jevnbyrdige i alder og utvikling. (Endret ved lov 15 feb. 1963, nr 2.)

§ 197. Med Fængsel indtil 6 Maaneder straffes den, som har utugtlig Omgjængelse med nogen Person under 18 Aar, der staar under hans Myndighed eller Opsigt. Vildfarelse med Hensyn til Alderen udelukker ikke straffskylden.

§ 198. Den, som ved særlig underfundig Adfærd eller ved misbrug af Afhængighedsforhold forfører nogen til utugtlig Omgjængelse, straffes med Fængsel indtil 6 Maaneder, men indtil 1 Aar, saafremt den forførte enten er under 18 Aar eller er under 21 Aar og staar under hans Myndighed eller Opsigt. Vildfarelse med Hensyn til Alderen udelukker ikke Straffskylden.

Offentlig Paatale finder alene Sted efter fornæmedes Begjæring.

§ 212. Med Bøder eller med Fængsel indtil 1 Aar straffes den, som ved utugtlig Adfærd i Handling eller Ord krænker Ærbarhed eller medvirker hertil, saafremt Krænkelsen er skeet

1. offentlig,
2. i Overvær af nogen, som deri ikke har samtykket, eller
3. i Overvær af Barn under 16 Aar.

Har den skyldige foretaget utugtlig Handling med Barn under 16 Aar eller forledet noget saadant til utugtlig Adfærd anvendes Fængsel indtil 3 Aar.

I det under 2 nævnte Tilfælde finder offentlig

immoral sexual acts are approximately equal in age and development. (Amended by law no. 2, February 15, 1963.)

§ 196 (1905–27). Anyone who engages in immoral sexual acts with a child under 16 years will be punished by prison up to 3 years.

§ 196 (1927–63). Anyone who engages in immoral sexual acts with a child under 16 years will be punished by prison from 6 months up to 5 years.

If the perpetrator has been punished before according to this section or according to sections 191, 192, 193, 195 or 212, the punishment will be prison for no less than 2 years.

Mistakes regarding age do not preclude punishment. (Amended by law no. 9, July 4, 1927.)

§ 196 (1963–81). Anyone who engages in immoral sexual acts with someone who is under 16 years, or contributes to the deed, will be punished by prison up to 5 years.

Mistakes regarding age do not preclude punishment, unless no carelessness can be held against the perpetrator in this regard.

Punishment according to this law can be exempt if those who have engaged in the immoral sexual acts are approximately equal in age and development. (Amended by law no. 2, February 15, 1963.)

§ 197. With prison up to 6 months will be punished anyone who engages in immoral sexual acts with a person under 18 years, who is under his custody or supervision. Mistakes concerning the age do not preclude punishment.

§ 198. Anyone who with particularly cunning behavior or by exploiting a situation of dependency seduces another person to immoral sexual acts, will be punished by prison up to 6 months, but up to 1 year, provided the seduced person is either under 18 years or under 21 years and under his custody or supervision. Mistakes concerning the age do not preclude punishment.

Public prosecution will occur only on the demand of the injured party.

§ 212. By a fine or by prison up to 1 year will be punished anyone who violates chastity by immoral behavior in deeds or words, or contributes thereto, if the violation has taken place

1. in public,
2. in the presence of anyone who did not consent, or
3. in the presence of a child under 16 years.

If the perpetrator has undertaken an immoral sexual act with a child under 16 years or entices such child to immoral sexual activity, prison up to 3 years will be applied.

In the case mentioned under 2, prosecution

Paatale alene Sted efter Begjæring af fornærmede.

§ 213 (1905–72). *Finder utugtig Omgjængelse Sted mellem personer af Mandkjøn, straffes de, der heri gjør sig skyldige, eller som medvirker dertil, med Fængsel indtil 1 Aar.*

Med samme Straf ansees den, som har utugtig Omgjængelse med Dyr, eller som medvirker dertil.

Paatale finder alene Sted, naar det paakreves af almene Hensyn. (Opphevet ved lov 21 april 1972 nr. 18.)

will occur only on the demand of the injured party.

§ 213 (1905–72). *If immoral sexual acts take place between persons of the male sex, those who are found guilty, or contribute to it, will be punished with prison up to one year.*

The same punishment will befall anyone who engages in immoral sexual acts with animals, or who contributes to it.

Prosecution will only take place when public interest so demands. (Repealed by Law no. 18, April 21, 1972.)

Iceland

1838

Kong Christian Den Femtis Danske Lov
Forordning 24. Januar 1838.

Siette Bog. Om Misgjæringer

XIII. Capitel. Om Løstgæthed

15. Art. *Omgængelse, som er imod Naturen, straffis med Baal og Brand*

1869

Almenn hegningarlög
25. juni 1869.

XXII kafli. Afbrot á móti skírlífi

174. grein. Fremji maður saurlífi með stúlku-barni, sem ekki er orðin 12 ára gömul, þá varðar það hegningarvinnu allt að 8 árum, ef að verkið ekki að öðru leyti er svo vaxið, að þyngri hegning liggi við því.

175. grein. Hver sem tælar stúlkubarn, sem er á aldurs skeiði frá 12 til 16 ára, til saurlífs, skal sæta fangelsi, ekki vægara en 2 mánaða einföldu fangelsi, eða hegningarvinnu allt að 4 árum ef miklar sakir eru. Opinbera málssókn skal samt því að eins hefja, að foreldrar eða forráðamaður krefjist þess.

178. grein. *Samræði gegn náttúrlegu eðli varðar betrunarhúsvinnu.*

179. grein. Ef að karlmaður og kvenmaður halda áfram hneyxlanlegri sambúð, þó að yfirvöldin hafi áminnt þau um að skilja, skulu þau sæta fangelsi.

186. grein. Hver, sem með sauruglegu athæfi særir blygðunarsemi manna eða er til almenns hneyxlis, skal sæta fangelsi við vatn og brauð eða betrunarhúsvinnu.

1838

King Christian the Fifth's Danish Law
Royal Decree January 24, 1838.

Sixth book. On felonies

13th chapter. On lewdness

15th article. *Intercourse which is against nature is punished by fire and flames.*

1869

Icelandic Penal Code
June 25, 1869.

22nd chapter. Crimes against chastity

Section 174. If a man commits fornication with a girl who is not yet 12 years old, he will be sentenced to hard labor up to 8 years, unless the deed for other reasons entails a higher punishment.

Section 175. Anyone who seduces to fornication a girl who is in the age span from 12 to 16 years, is punished by prison, no less than 2 months' simple prison or by hard labor up to 4 years if circumstances are aggravating. Prosecution will take place only if the parents or the guardian demand it.

Section 178. *Intercourse against nature is punished by work in a house of correction.*

Section 179. If a man and a woman continue to lead an offensive life together, in spite of the authorities' admonitions to separate, they will be imprisoned.

Section 186. Anyone who violates decency or provokes public outrage by indecent behavior shall be imprisoned on bread and water or work in a house of correction

1940

Almenn hegningarlög

Nr. 19. 12 febrúar 1940.

Tóku gildi 12 ágúst 1940.

XXII. kafli (1940–92). Skirlífisbrot.

194. gr. (1940–92). Ef kvenmanni er þröngvað til holdlegs samræðis með ofbeldi eða frelsis-sviptingu, eða með því að vekja henni ótta um líf, heilbrigði eða velferð hennar sjálfar eða náinna vandamanna hennar, þá varðar það fangelsi ekki skemur en 1 ár og allt að 16 árum eða æfilangt.

Sömu refsingu skal sá sæta, sem kemst yfir kvenmann með því að svipta hann sjálfræði sínu.

195. gr. (1940–92). Hver, sem hefir samræði utan hjónabands við kvenmann, sem er geðveik eða fáviti, eða þannig er ástatt um, að hún getur ekki spornað við samræðinu eða skilið þýðingu þess, skal sæta fangelsi allt að 8 árum.

196. gr. (1940–92). Ef maður neyðir kvenmann til holdlegs samræðis með því að hóta henni ofbeldi, frelsissviptingu, sakburði um refsiverða eða vansæmanði háttsemi hennar eða öðru verulegu óhagræði, þá skal hann sæta fangelsi allt að 6 árum, enda varði brotið ekki við 194. eða 195. gr.

197. gr. (1940–92). Ef umsjónarmaður eða starfsmaður í fangelsi, geðveikrahæli, fávítahæli, uppeldisstofnun eða annarri slíkri stofnun hefir samræði við kvenmann, sem komið hefir verið fyrir á hælinu eða stofnuninni, þá varðar það fangelsi allt að 4 árum.

198. gr. (1940–92). Hver, sem kemst yfir kvenmann utan hjónabands með því að misnota freklega þá aðstöðu sína, að kvenmaðurinn er háður honum fjárhagslega eða, í atvinnu sinni, þá varðar það fangelsi allt að 1 ári, eða sé kvenmaðurinn yngri en 21 árs, allt að 3 árum.

200. gr. (1940–92). Hver, sem á samræði við barn, yngra en 14 ára, skal sæta fangelsi allt að 12 árum.

Hver, sem tælir stúlkubarn, sem er á aldursskeiði frá 14–16 ára, til samræðis, skal sæta fangelsi allt að 4 árum.

201. gr. (1940–92). Ef maður hefir samræði við stúlku, yngri en 18 ára, sem er kjördóttir hans eða fósturdóttir, eða honum hefir verið trúað fyrir til kennslu eða uppeldis, þá varðar það varðhaldi eða fangelsi allt að 4 árum.

202. gr. (1940–92). Hafn nokkur, þegar svo er ástatt, sem í 194.–201. gr. segir, gerzt sekur um önnur kynferðismök en samræði, þá skal beita vægari hegningu að tiltölu.

1940

Icelandic Penal Code

Law no. 19, February 12, 1940.

In force August 12, 1940.

24th chapter (1940–92). Crimes against chastity

Section 194 (1940–92). If a woman is forced to have sexual intercourse, by means of violence, deprivation, or by inducing fear for the life, health or wellbeing of the woman, or her next of kin, the punishment will be imprisonment, no shorter than one year and no longer than 16 years or lifetime.

The same punishment will be given those, who get to be with a woman by depriving her of her mental faculties.

Section 195 (1940–92). Anyone who outside of marriage obtains sexual intercourse with a woman, who is insane or feebleminded, or who is in a state in which she is unable to resist the deed or understand its meaning, shall be imprisoned up to 8 years.

Section 196 (1940–92). If a man forces a woman to have sexual intercourse by threats of violence, of deprivation of freedom or of reporting her for punishable or dishonorable circumstances, he shall be imprisoned up to 6 years, unless the crime falls under 194 or 195.

Section 197 (1940–92). If a supervisor or an employee at a prison, mental hospital, asylum, reform school, or similar institution, has intercourse with a woman who is an inmate thereof, then he shall be imprisoned for 4 years.

Section 198 (1940–92). Anyone who obtains sexual intercourse with a woman, outside marriage, by grossly exploiting the fact, that the woman is dependent on him economically, or in her employment, is punished by prison up to 1 year or, if she is under 21, by prison up to 3 years.

Section 200 (1940–92). Anyone who has intercourse with a child under 14 years is punished with prison up to 12 years.

Anyone who seduces a girl aged 14–16, to have sexual intercourse, shall be in prison for up to 4 years.

Section 201 (1940–92). If a man has sexual intercourse with a girl, younger than 18 years, who is his adoptive child or foster child or he has been entrusted for teaching or upbringing, he is punished by custody or prison up to 4 years.

202 If anyone has, as in the situations described in 194–201, been guilty of other sexual deeds than intercourse, then a milder punishment shall be enforced.

203. gr. (1940–92). Það varðar fangelsi allt að 6 árum að hafa kynferðismök við persónu af sama kyni, þegar atvik að öðru leyti svara til þess, er í 194.–198. gr. og fyrri mgr. 200. gr. segir.

Eigi nokkur kynferðismök við persónu af sama kyni, yngri en 18 ára, þá varðar það fangelsi allt að 3 árum fyrir þann, sem eldri er en 18 ára. Ákveða má þó, að refsing skuli niður falla, ef báðir aðiljar eru á svipuðu aldurs- og þroskaskeiði.

Hver, sem hefir kynferðismök við persónu af sama kyni á aldrinum 18 til 21 árs, skal sæta varðhaldi eða fangelsi allt að 2 árum, ef hann hefir beitt yfirburðum aldurs og reynslu til þess að koma hinum til að taka þátt í mökunum. (203 gr. féll brott með lögum nr. 40/1992, 16. gr.)

207. gr. (1940–92). Hver, sem hefir kynferðismök við annan mann, sama kyns, fyrir borgun, skal sæta varðhaldi eða fangelsi allt að 2 árum. (207 gr. féll brott með lögum nr. 40/1992, 16 gr.)

209. gr. (1940–92). Hver, sem með lostugu athæfi særir blygðunarsemi manna eða er til opinbers hneykslis, skal sæta fangelsi allt að 3 árum, varðhaldi eða sektum.

Section 203 (1940–92). Subsection 1. With prison up to 6 years will be punished anyone who engages in sexual acts with a person of the same sex in circumstances corresponding to those indicated in sections 194–198 and the first part of 200.

Subsection 2. If anyone engages in sexual acts with a person of the same sex younger than 18 years, the punishment is up to three years of imprisonment for the person who is over 18. However, charges can be dropped if both persons are equal in age and maturity.

Subsection 3. Anyone, who engages in sexual acts with a person of the same sex, aged 18–21, shall be put in custody or be imprisoned up to two years if he had used the advantage of age and experience to persuade the younger party to participate in the sexual intercourse. (Sec. 203 repealed by law no. 40/1992, section 16.)

Section 207 (1940–92). Anyone who engages in sexual acts with another person of the same sex for payment shall be put in custody or imprisoned up to two years. (Sec. 207 repealed by law no. 40/1992, sec. 16.)

Section 209 (1940–92). Anyone who violates decency or provokes public outrage by indecent behavior shall be imprisoned up to 3 years, custody or a fine.

The Faroe Islands

1687

Kong Christian Den Femtis Norske Lov
I kraft i Færøerne 1687–1866.
Se Norge.

1866

Almindelig borgerlig Straffelov
10. Februar 1866.
I kraft i Færøerne 1866–1932.
Se Danmark.

1933

Borgerlig straffelov
Lov Nr. 215 af 24. juni 1930.
I kraft 1. januar 1933.
Fra 1948 kan den betragtes som en Færøisk Straffelov,
Revsilógin
da det Færøiske Lovting kan acceptere eller afvise lovændringer der er blevet besluttede af det Danske Folketing.

1687

King Christian the Fifth's Norwegian Law
In force in the Faroes 1687–1866.
See Norway.

1866

Danish Penal Code
February 10, 1866.
In force in the Faroes 1866–1932.
See Denmark.

1933

Danish Penal Code
Law no. 215, June 24, 1930.
In force January 1, 1933.
From 1948 it can be regarded as a

Faroese Penal Code

since the Faroese Parliament can accept or reject amendments to it decided by the Danish Parliament.

24. kap. Forbrydelser mod Kønssædeligheden

§ 225 (1933–88). *Stk. 1. Med Fængsel indtil 6 Aar straffes den, der øver kønslig Usædelighed med en Person af samme Køn under Omstændigheder, der svarer til de i §§ 216–220 og 222 angivne.*

Stk. 2. Med Fængsel indtil 4 Aar anses den, der øver kønslig usædelighed med en Person under 18 Aar. Straffen kan dog bortfalde, naar de paagældende er hinanden omtrent jævnbyrdige i Alder og Udvikling.

Stk. 3. Med Fængsel indtil 3 Aar straffes den, der under Misbrug af en paa Alder og Erfaring beroende Overlegenhed forfører en Person af samme Køn under 21 Aar til kønslig Usædelighed med sig. (l. 215 24.6.1930, i kraft i Færøerne 1. januar 1933)

§ 225 (1988–). *Bestemmelserne i §§ 216–220 og 222–223 finder tilsvarende anvendelse med hensyn til kønslig omgængelse med en person af samme køn. (l. 2448 9.6.1967, l. 195 28.4.1976 og l. 256 27.5.1981, i kraft i Færøerne 7. april 1988)*

§ 230 (1933–88). *Modtager nogen Betaling for at øve kønslig Usædelighed med en Person af samme Køn, straffes han med Fængsel indtil 2 Aar. (Ophævet ved l. 248 9.6.1967, i kraft i Færøerne 7. April 1988)*

24th chapter. Crimes against sexual morality

§ 225 (1933–88). *Subsection 1. With prison up to 6 years will be punished anyone who engages in sexual immorality with a person of the same sex in circumstances corresponding to those indicated in sections 216–220 and 222.*

Subsection 2. With prison up to 4 years will be punished anyone who engages in sexual immorality with a person of the same sex under 18. Charges can be dropped, however, if the persons in question are approximately equal in age and development.

Subsection 3. With prison up to 3 years will be punished anyone who by exploiting an advantage resulting from age and experience seduces a person of the same sex under 21 years to engage in sexual immorality with the perpetrator. (Law no. 215, June 24, 1930, in force in the Faroes January 1, 1933.)

§ 225 (1988–). *The regulations in sections 216–220 and 222–223a are applied correspondingly in cases of sexual acts with a person of the same sex. (Laws no. 2448, June 9, 1967; no. 195, April 28, 1976, and no. 256, May 27, 1981, in force in the Faroes April 7, 1988)*

§ 230 (1933–88). *If anyone receives payment for engaging in sexual immorality with a person of the same sex, he will be punished by prison up to 2 years. (Repealed by law no. 248, June 9, 1967, in force in the Faroes April 7, 1988.)*

Greenland

From 1781 to 1954, Danish colonists in Greenland were subject to Danish law (see Denmark).
Before 1954, Greenlanders were subject to Greenlandic laws that did not penalize same-sex sexuality.

1954**Kriminallov for Grønland**

Lov nr. 55, 5. marts 1954.

Kapitel 16. Forbrydelser mod kønssædeligheden

§ 51. *Stk. 1 For voldtægt dømmes den, som tiltvinger sig samleje eller anden kønslig omgang med en kvinde ved vold, frihedsberøvelse eller fremkaldelse af frygt for hendes eller hendes nærmestes liv, helbred eller velfærd, samt den, som udenfor ægteskab skaffer sig samleje med en kvinde, der er sindssyg eller udpræget åndssvag, eller som befinder sig i en tilstand, i hvilken*

1954**Criminal Law for Greenland**

Law no. 55, March 5, 1954.

Chapter 16. Crimes against sexual morality

§ 51. *Subsection 1. For rape will be sentenced anyone who forcibly obtains sexual intercourse or other sexual acts with a woman by violence, deprivation of freedom or by inducing fear for the life, health or welfare of her or her next of kin, and anyone who outside marriage obtains sexual intercourse with a woman who is mentally ill or obviously feeble-minded, or who is in a state in*

hun er ude af stand til at modsætte sig gerningen eller forstå dens betydning.

Stk. 2. Det samme gælder den, der, uden at forholdet falder ind under stk. 1, skaffer sig samleje eller anden kønslig omgang med en kvinde ved trusel om vold, frihedsberøvelse eller sigtelse for forbrydelse eller ærerørigt forhold.

§ 52. For kønslig udnyttelse dømmes den, som ved groft misbrug af en kvindes tjenstlige eller økonomiske afhængighed skaffer sig samleje eller anden kønslig omgang udenfor ægteskab med hende. Dette gælder også den, som på samme måde udenfor ægteskab har kønsligt forhold til en person, som er undergivet hans myndighed eller forsorg, eller med hvem han ifølge særlig beskikkelse fører tilsyn.

§ 52 a (1963–). *Bestemmelserne i §§ 51–52 finder tilsvarende anvendelse med hensyn til den, der har kønslig omgang med en person af samme køn.* (Indført ved lov nr. 105 27. marts 1963.)

§ 53. For kønsligt forhold til børn dømmes den, som har samleje eller anden kønslig omgang med et barn under 15 år, når han kendte barnets alder eller i så henseende har handlet uagtsomt.

Stk. 2 (1963–78). *Det samme gælder den, der har kønslig omgang med en person af samme køn under 18 år.* (Stk. 2 indført ved lov nr. 105 27. marts 1963, kundgjort 2. juli 1963, ophævet ved lov nr. 292 8. juni 1978, i kraft 1. januar 1, 1979)

§ 54 (1954–63). For forførelse dømmes den, som under groft misbrug af en på alder og erfaring beroende overlegenhed har samleje eller anden kønslig omgang med en person under 18 år, når han kendte den pågældendes alder eller i så henseende har handlet uagtsomt.

(1963–78). For forførelse dømmes den, som under groft misbrug af en på alder og erfaring beroende overlegenhed har samleje eller anden kønslig omgang med en person af modsat køn under 18 år eller en person af samme køn under 21 år, når han kendte den pågældendes alder eller i så henseende har handlet uagtsomt. (Ændret ved lov nr. 105 27. marts 1963, kundgjort 2. juli 1963)

(1979–). For forførelse dømmes den, som under groft misbrug af en på alder og erfaring beroende overlegenhed har samleje eller anden kønslig omgang med en person under 18 år, når han kendte den pågældendes alder eller i så henseende har handlet uagtsomt. (Ændret ved lov nr. 292 8. juni 1978, i kraft 1. januar 1979)

which she is unable to resist the deed or understand its meaning.

Subsection 2. The same applies to anyone who obtains sexual intercourse or other sexual acts with a woman, when the deed does not fall under subsection 1, by threatening with violence or deprivation of freedom or to report her for a crime or dishonorable circumstances.

§ 52. For sexual exploitation will be sentenced anyone who by grossly taking advantage of a woman's professional or economic dependency obtains sexual intercourse or other sexual acts outside of marriage with her. This also applies to anyone, who in the same way outside of marriage has a sexual relationship to a person who is under his authority or care, or whom he by appointment is supervising.

§ 52 a (1963–). *The regulations in sections 51–52 are applied correspondingly with regard to anyone who engages in sexual acts with a person of the same sex.* (Added by law no. 105, March 27, 1963.)

§ 53. For sexual relationship to children will be sentenced anyone who has sexual intercourse or other sexual activity with a child under 15 years, when he knew the age of the child or in that respect has acted carelessly.

Subsection 2 (1963–78). *The same applies to anyone who has sexual relations with a person of the same sex under 18 years.* (Subsection 2 added by law no. 105, March 27, 1963, repealed by law no. 292, June 8, 1978, in force January 1, 1979.)

§ 54 (1954–63). For seduction will be sentenced anyone who by grossly exploiting an advantage resulting from age and experience obtains sexual intercourse or other sexual acts with a person under 18 years, when he knew the age of the person in question or in that respect has acted carelessly.

(1963–78). For seduction will be sentenced anyone who by grossly exploiting an advantage resulting from age and experience obtains sexual intercourse or other sexual acts with a person under 18 years or a person of the same sex under 21 years, when he knew the age of the person in question or in that respect has acted carelessly. (Amended by law no. 105, March 27, 1963, announced July 2, 1963.)

(1979–). For seduction will be sentenced anyone who by grossly exploiting an advantage resulting from age and experience obtains sexual intercourse or other sexual acts with a person under 18 years, when he knew the age of the person in question or in that respect has acted carelessly. (Amended by law no. 292, June 8, 1978, in force January 1, 1979.)

Greenlandic version

For law texts in force until 1963 only the Danish version has been available. The translation is made from the Danish.

1954

pinerdlugtuliornernut Kalátlit-nunāne

inatsisit no. 55, 5. Marts 1954.

kap. 16. erKortumik angutip arnavdlo in-
ókatigíngnigssānut pinerdlugtuliorneK

§ 51. Stk. 1 perssuavdlune arnerissutut erKartūneKásaoK kinalūnīt arnamik nakūser-figingnigdlune, KanoK ilioriorsínaujungnaersit-sivdlune, imalūnīt arnap táussuma Kanigissarin-erpaussaisalūnīt inūnerānut, perKingnigssānut atugardlíungínigssānutdlūnīt navianautinik sujōrasārnermigut ersitsagtitsivdlune kujang-nigtoK avdlatutdlūnīt arnerissoK, āmalo kinalūnīt arnamik áparíngisaminik silángajártússumik malungnavigsumigdlūnīt silamigut amigauteK-artumik, imalūnīt sumik píssuteKardlune akiūsínāungitsumik taimailiortíneruvdlo KanoK kinguneKarsínauneranik pásisimassaKángitsumik kujangnigtoK.

ingm. 2. taimatútaoK pineKásaoK kinalūnīt ingm. 1-mut agtúmássuteKángikaluartunik nakūserniarnermik, KanoK ilioriorsínaujungn-aersitsinígssamik pinerdlugsimassututdlūnīt pasigdlínigssamik nikanarsautigssaussumigdlo sujōrasārivdlune kujangnigtoK imalūnīt avdlatut arnerivfigingnigtoK.

§ 52. pigínauneKarnine iluagtitdlogo kujangnigtut avdlatutdlūnīt arnerissutut erKartūneKásaoK kinalūnīt arnap kivfáussusianik inūtígssarsitumigutdlūnīt nálagarsiortugssauner-anik angnertūmik atonerdluivdlune nuliarinago kujangnigtoK avdlatutdlūnīt arnerivfigingnigtoK. taimatútaoK pineKásaoK kinalūnīt taimailiord-lune nuliaríngisaminik uvigingisaminigdlūnīt oKausigssaKarfigissarissaminik isumagissagss arissaminigdlūnīt imalūnīt ingminut ingmíkut nákutígssagssángortitausimassumik arnerivfig-ingnigtoK anguserivfigingnigtordlūnīt.

§ 52 a. (1963–) §§ 51–52-ime aulajangersagkat taimatut atorneKásáput angúmut arnamutdlūnīt anguteKáminik arnaKáminigdlūnīt pítaitdlióKatig-ingnigtumut (inats. nr. 105, 27. marts 1963)

§ 53. mérKanut arnerissutut anguserissututdlūnīt erKartūneKásaoK kinalūnīt mérKamik 15 inordlugit ukiulingmik kujaKateK-artoK imalūnīt avdlanut arnerivfigingnigtoK anguserivfigingnigtordlūnīt mérKap Kavsinik ukioKarnera ilisimaguniuk tamatumaniūnīt mian-erssuaiddliordlune iliorsimagune.

ingm. 2 (1963–79). taimatútaoK pineKásaoK inuk

1954

Criminal Law for Greenland

Law no. 55, March 5, 1954.

Chapter 16. Crimes against sexual morality

§ 51. Subsection 1. For rape will be sentenced anyone who forcibly obtains sexual intercourse or other sexual acts with a woman by violence, deprivation of freedom or by inducing fear for the life, health or welfare of her or her next of kin, and anyone who outside marriage obtains sexual intercourse with a woman who is mentally ill or obviously feeble-minded, or who is in a state in which she is unable to resist the deed or understand its meaning.

Subsection 2. The same applies to anyone who obtains sexual intercourse or other sexual acts with a woman, when the deed does not fall under subsection 1, by threatening with violence, deprivation of freedom or to report her for a crime or dishonorable circumstances.

§ 52. For sexual exploitation will be sentenced anyone who by grossly taking advantage of a woman's professional or economic dependency obtains sexual intercourse or other sexual acts outside of marriage with her. This also applies to anyone, who in the same way outside of marriage has a sexual relationship to a person who is under his authority or care, or whom he by appointment is supervising.

§ 52 a (1963–). *The regulations in sections 51–52 are applied correspondingly with regard to anyone who engages in sexual acts with a person of the same sex. (Added by law no. 105, March 27, 1963.)*

§ 53. For sexual relationship to children will be sentenced anyone who has sexual intercourse or other sexual activity with a child under 15 years, when he knew the age of the child or in that respect has acted carelessly.

Subsection 2 (1963–79). *The same applies to*

arnaKáminik anguteKáminigdlúnit 18 inordlugit ukiulingmik pítaitdlioKatigingnigtoK. (inats. nr. 105, 27. marts 1963, inats. nr. 292, 8. juni 1978)

§ 54. (1954–63) tavagtsinermut erKartüneKásaoK ukiumigut misigissamigutdlo inersimanagerunine angnertúmik atornerdlugdlugo inungmik 18 inordlugit ukiulingmik kujangnigtoK avdlatutdlúnit arnerivfigingnigdlunilúnit anguserivfigingnigtoK inûp táussuma ukiue nalúngikunigit tamatumúnákutdlúnit mianerssuaiddiorsimagune.

(1963–79) nakutitsivdlune arnerissutut anguserissututdlúnit erKartüneKásaoK kinalúnit utorKaunerunine misiligtagaKarnruninilo angnertúmik atornerdlugdlugit inungmik 18 inordlugit ukiulingmik anguteKatigingisaminik arnaKatigingisaminigdlúnit *imalúnit inungmik 21 inordlugit ukiulingmik arnaKáminik anguteKáminigdlúnit* kujateKartoK avdlatutdlúnit arnerivfigingnigtoK anguserivfigingnigtordlúnit kujatame avdlatutdlúnit arnerivfigissame anguserivfigissamilúnit Kavsiniuk ukioKarnera ilismaguniuk tamatumaniúnit mianerssuaiddiorsivdlune iliorsimagune (inats. nr. 105 27. marts 1963)

(1979–) tavagtsinermut erKartüneKásaoK ukiumigut misigissamigutdlo inersimanagerunine angnertúmik atornerdlugdlugo inungmik 18 inordlugit ukiulingmik kujangnigtoK avdlatutdlúnit arnerivfigingnigdlunilúnit anguserivfigingnigtoK inûp táussuma ukiue nalúngikunigit tamatumúnákutdlúnit mianerssuaiddiorsimagune. (inats. nr. 292, 8. juni 1978)

anyone who has sexual relations with a person of the same sex under 18 years. (Added by law no. 105, March 27, 1963, repealed by law no. 292, June 8, 1978, in force January 1, 1979.)

§ 54 (1954–63). For seduction will be sentenced anyone who by grossly exploiting an advantage resulting from age and experience obtains sexual intercourse or other sexual acts with a person under 18 years, when he knew the age of the person in question or in that respect has acted carelessly.

(1963–79). For seduction will be sentenced anyone who by grossly exploiting an advantage resulting from age and experience obtains sexual intercourse or other sexual acts with a person under 18 years or a person of the same sex under 21 years, when he knew the age of the person in question or in that respect has acted carelessly. (Amended by law no. 105, March 27, 1963, announced July 2, 1963.)

(1979–). For seduction will be sentenced anyone who by grossly exploiting an advantage resulting from age and experience obtains sexual intercourse or other sexual acts with a person under 18 years, when he knew the age of the person in question or in that respect has acted carelessly. (Amended by law no. 292, June 8, 1978, in force January 1, 1979.)

Sweden

Sveriges Rikes Lag

1734

Missgjernings balk

10. Cap. Om tidelag

1. §. Hwar som hafwer tidelag med fä, eller andra oskiälliga diur; then skal halshuggas, och i båle brännas, warde ock samma diur tillika dödadt och brändt.

2. §. Nu kan någor ej bindas til sielfwa gierning-en; men finnes hafwa haft fullt upsåt, och warit beredd en sådan styggelse at fullborda: tå skal han arbeta i halsjern halft åhr eller mera, efter sakens omständigheter.

Law of the Swedish Realm

1734

Felony code

10th chapter. On bestiality

1 §. Anyone who commits bestiality with cattle or other dumb animals; shall be beheaded and burnt at a stake, and the animal likewise killed and burnt.

2 §. Now someone cannot be bound to the deed; but is found to have had full intention and been prepared to consummate such abomination: then he shall work in neck iron half a year or more, according to the circumstances of the crime.

1864
Strafflag

18 kap. Om sedlighetsbrott

7 § (1864–1937). Öfwar man otukt med qwinna, som ej fyllt tolf år; dömes till straffarbete från och med fyra till och med åtta år och, om hon af gerningen fick swår kroppsskada eller död, till straffarbete från och med åtta till och med tio år eller på lifstid.

Sker det med qwinna, som fyllt tolf, men ej femton år; dömes till straffarbete i högst två år eller fängelse i högst sex månader.

7 § (1937–64). Övar man otukt med kvinna, som ej fyllt tolv år; dömes till straffarbete från och med fyra till och med åtta år; dock må, där omständigheterna äro synnerligen mildrande, tiden för straffarbetet till två år nedsättas. Fick kvinnan av gärningen svår kroppsskada eller ljöt hon därav döden; dömes till straffarbete från och med åtta till och med tio år eller på livstid. (Lag 21 maj 1937, som trätt i kraft 1 juli s. å.)

8 § (1937–64). Övar någon, i annat fall än i 7 § sägs, otukt med barn, som ej fyllt femton år; dömes till straffarbete från och med sex månader till och med fyra år eller fängelse i minst sex månader.

10 § (1864–1944). Öfwar någon med annan person otukt, som emot naturen är, eller öfwar någon otukt med djur; warde dömd till straffarbete i högst två år.

10 § (1944–64). Övar någon otukt med annan av samma kön, som ej fyllt femton år, dömes till straffarbete i högst fyra år eller fängelse.

Har någon övat sådan otukt med den, som fyllt femton men ej aderton år, och var han ej själv under aderton år, dömes till straffarbete i högst två år eller fängelse.

Har någon, som fyllt aderton år, övat otukt med annan av samma kön, som fyllt aderton men ej tjuguet år, under utnyttjande av dennes oerfarenhet eller beroende ställning, straffes som i 2 mom. sägs.

10 a § (1944–64). Övar någon otukt med annan av samma kön, som är sinnessjuk eller sinnesslö, straffes med fängelse eller straffarbete i högst två år.

Samma lag vare, om styresman, föreståndare eller annan tjänsteman, läkare, uppsyningsman eller vaktbetjänt vid inrättning, som avses i 6 § 2 mom., övar otukt med där intagen person av samma kön, eller om någon eljest övar otukt med*

1864
Swedish Penal Code

18th chapter. On crimes against morality

7 § (1864–1937). If a man fornicates with a woman, who is not yet twelve years, he shall be sentenced to hard labor from four to eight years and, if she suffered severe physical injury or death from the deed, to hard labor from eight to ten years or for life.

If it is done to a woman, who has reached twelve, but not fifteen years; he shall be sentenced to hard labor up to two years or prison up to six months.

7 § (1937–64). If a man fornicates with a woman, who is not yet twelve years; he shall be sentenced to hard labor from four to eight years; if, however, the circumstances are extraordinarily attenuating, the time for hard labor may be lowered to two years. If the woman suffered severe physical damage or died from the deed, he shall be sentenced to hard labor from eight to ten years or for life. (Law May 21, 1937, in force July 1, 1937.)

8 § (1937–64). If anyone, in other circumstances than stated in 7 §, fornicates with a child, who is not yet fifteen, the sentence shall be hard labor from six months to four years or prison no less than six months. (Law May 21, 1937, in force July 1, 1937.)

10 § (1864–1944). Anyone who commits fornication that is against nature with another person or commits fornication with animals shall be sentenced to hard labor for no more than two years.

10 § (1944–64). If anyone fornicates with another person of the same sex, who is not yet fifteen years old, he shall be sentenced to up to four years' hard labor or prison.

If anyone has committed such fornication with a person who is fifteen but not yet eighteen years old, himself not being under eighteen years of age, he shall be sentenced to up to two years' hard labor or prison.

If anyone, who is eighteen years or more, has committed fornication with another person of the same sex between eighteen and twenty-one years old, in so doing taking advantage of the other person's inexperience or dependent position, shall be punished as stated in subsection 2.

10 a § (1944–64). If anyone commits fornication with another person of the same sex who is insane or feebleminded shall be punished with up to two years' hard labor or prison.

The same law applies, if a director, manager, or other official, a physician, supervisor, or warder at an institution of the kind referred to in 6 §, subsection 2, commits fornication with an inmate of the*

annan av samma kön under grovt missbruk av hans beroende ställning.

*) "straffinrättning, häkte, sjukhus, fattighus, barnhus eller annan sådan inrättning" (SL 18 kap. 6 § 2 mom.)

1965

Brottsbalk

Lag 1962:100.

I kraft 1 januari 1965.

6 kap. Om sedlighetsbrott

§ 1. Tvingar man kvinna till samlag genom våld å henne eller genom hot som innebär trängande fara, dömes för *våldtäkt* till fängelse, lägst två och högst tio år. Lika med våld anses att försätta kvinnan i vanmakt eller annat sådant tillstånd.

Är brottet med hänsyn till kvinnans förhållande till mannen eller eljest att anse som mindre grovt, dömes för *våldförande* till fängelse i högst fyra år.

2 §. Den som, i annat fall än i 1 § sägs, förmår någon till samlag eller annat könsligt umgänge medelst olaga tvång eller genom grovt missbruk av dennes beroende ställning eller övar könsligt umgänge med någon under otillbörligt utnyttjande av att denne befinner sig i vanmakt eller annat hjälplöst tillstånd eller är sinnessjuk eller sinnesslö, dömes för *frihetskränkande* otukt till fängelse i högst fyra år.

3 §. Har någon könsligt umgänge med barn under femton år, dömes för *otukt med barn* till fängelse i högst fyra år.

Om gärningsmannen förgripit sig särskilt hänsynslöst mot barnet eller brottet eljest är att anse som grovt, skall dömas till fängelse, lägst två och högst åtta år.

4 §. Har någon könsligt umgänge med annan av motsatt kön, som är under aderton år och som står under hans tillsyn vid skola, anstalt eller annan inrättning eller som eljest står under hans övervakning, vård eller lydnad, eller sker det under utnyttjande i annat fall av den underåriges beroende ställning, dömes för *otukt med ungdom* till fängelse i högst fyra år.

Mom. 2 (1965–69). *Detsamma skall gälla, om någon som fyllt aderton år har könsligt umgänge med annan av samma kön som ej fyllt aderton år eller ock, under omständigheter som angivas i första stycket, med annan av samma kön som är under tjuugoett år.*

same sex, or if anyone otherwise commits fornication with a person of the same sex, in so doing grossly taking advantage of his dependent position.

*) "penitentiary, jail, hospital, poorhouse, orphanage, or other such establishment" (Chapter 18, section 6, subsection 2 of the Penal Code.)

1965

Swedish Criminal Code

Law no. 700, 1962.

In force January 1, 1965.

6th chapter. On crimes against morality

§ 1. If a man forces a woman to sexual intercourse by violence or by threats which constitute imminent danger, he will be sentenced for *rape* to prison, no less than two and not more than ten years. Equivalent to violence is regarded bringing the woman to unconsciousness or to another corresponding condition.

If the crime is to be regarded as less severe, in view of the woman's relationship to the man or otherwise, he shall be punished for *violation* to prison for not more than four years.

2 §. Anyone who in other ways than described in section 1 makes another person consent to sexual intercourse or other sexual acts by illegal coercion or by grossly abusing the other person's dependency or engages in sexual acts with someone by undue exploitation of the fact that the other person is unconscious or in another helpless condition or is mentally ill or feeble-minded, will be punished for *coercive fornication* to prison for not more than four years.

3 §. Anyone who engages in sexual acts with a child under fifteen years will be sentenced for *fornication with children* to prison up to four years.

If the perpetrator has violated the child especially ruthlessly or the deed otherwise is to regard as a severe crime, he shall be punished to prison, no less than two and no more than eight years.

4 §. If anyone engages in sexual acts with another person of the opposite sex, who is under eighteen years old and who is under his supervision in a school, institution or other establishment or who otherwise is under his surveillance, care, or authority, or if it is done by taking advantage in any other way of the dependent situation of the underage person, he shall be sentenced for *fornication with youth* to prison up to four years.

Subsection 2 (1965–69). *The same applies if someone over eighteen years engages in sexual acts with another person of the same sex, who has not yet reached eighteen years or else, under circumstances described in the first subsection, with another person of the same sex who is not yet twenty-one years old.*

Mom. 2 (1969–78). *Detsamma skall gälla, om någon som fyllt aderton år har könsligt umgänge med annan av samma kön som ej fyllt aderton år eller ock, under omständigheter som angivas i första stycket, med annan av samma kön som är under tjugo år.* (Ändrad genom lag 1969:162, som trätt i kraft 1 juli s.å. Mom. 2 avskaffat genom lag 1978:103, som trätt i kraft 1 april s.å.)

Subsection 2 (1969–78). *The same applies if someone over eighteen years engages in sexual acts with another person of the same sex, who has not yet reached eighteen years or else, under circumstances described in the first subsection, with another person of the same sex who is not yet twenty years old.* (Amended by law no. 162, 1969, in force July 1, 1969. Subsection 2 repealed by law no. 103, 1978, in force April 1, 1978.)

Finland

Before 1952, laws were translated from Swedish to Finnish. The translation below is made from the Swedish version.

Ruotsin Waltakunnan Laki

1734 Rikoskaari

10 luku. Eläimiin sekaantumisesta

1 §. Joka sekaantuu eläimiin tahi muihin järjettömiin luontokappaleisn, mestattakoon ja lawalla poltettakoon; siinä tapettakoon ja poltettakoon myös sama eläin.

2 §. Jos jotakuta ei woida näyttää syypääksi itse rikokseen, mutta hän hawaitaan olleen täydessä aikomuksessa ja walmisna tällaisen kauhistuksen tekemään, niin hänen pitää kaularaudassa tehdä työtä puolen wuotta tahi enemmän, asianhaarain mukaan.

1894 Rikoslaki Suomen Suuriruhtinaanmaalle

Säädetty 19. joulukuuta 1889.

Astunut voimaan 14. huhtikuuta 1894.

20 Luku (1894–1971). Luvattomasta sekaannuksesta ja muusta haureudesta.

7 § (1889–1926). Jos joku makaa tytön, joka ei ole täyttänyt kahtatoista vuotta, taikka harjoittaa hänen kanssaan muuta haureutta; tuomitakoon kuritushuoneeseen vähintään kahdeksi ja enintään kahdeksaksi vuodeksi taikka vankeuteen vähintään kuudeksi kuukaudeksi.

Jos se tehdään tytön kanssa, joka on kaksitoista, vaan ei viittätoista vuotta täyttänyt, eikä ole ennen maattu; olkoon rangaistus kuritushuonetta korkeintaan kaksi vuotta taikka vankeutta vähintään kolme kuukautta ja enintään kaksi vuotta.

Jos joku makaa tytön, joka on viisitoista, vaan ei seitsemäätoista vuotta täyttänyt, eikä ennen ole maattu; tuomitakoon vankeuteen korkein-

Law of the Swedish Realm

1734 Felony code

10th chapter. On bestiality

1 §. Anyone who commits bestiality with cattle or other dumb animals; shall be beheaded and burnt at a stake, and the animal likewise killed and burnt.

2 §. Now someone cannot be bound to the deed; but is found to have had full intention and been prepared to consummate such abomination: then he shall work in neck iron half a year or more, according to the circumstances of the crime.

1894 Penal Code for the Grand Duchy of Finland

Law December 19, 1889.

Promulgated April 14, 1894.

20th chapter (1894–1971). On illicit sexual intercourse and other kinds of fornication.

7 § (1889–1926). Anyone guilty of illicit sexual intercourse or any other kind of fornication with a girl, who is not yet twelve years, shall be punished by penal servitude from two to eight years or prison no less than six months.

If it is done to a girl who is twelve, but not yet fifteen years old, and who has not lost her virginity; the punishment shall be penal servitude no more than two years or prison from three months to two years.

If someone commits illicit sexual intercourse with a woman, who has reached fifteen, but not seventeen years, and who has not lost her

taan kolmeksi kuukaudeksi taikka enintään kolmensadan markan sakkoon.

Tämän §:n 2 tahi 3 momentissa mainituista rikoksista älköön virallinen syyttäjä tehkö syytettä, ellei asianomistaja ole ilmoittanut rikosta syytteen esittämiseksi.

7 § (1926–52). Jos joku sekaantuu lapseen, joka ei ole täyttänyt viittätoista vuotta, taikka harjoittaa hänen kanssaan muuta haureutta, tuomittakoon kuritushuoneeseen enintään kymmeneksi vuodeksi taikka, jos asianhaarat ovat erittäin lieventävät, vankeuteen vähintään kuudeksi kuukaudeksi.

Jos sellainen teko tehdään henkilölle, joka on täyttänyt viisitoista, vaan ei seitsemäätoista vuotta, eikä ole siveettömyyteen antautunut, olkoon rangaistus kuritushuonetta tahi vankeutta, enintään kaksi vuotta, taikka sakkoa.

Joka 1 tai 2 momentissa mainitun henkilön nähdessä siveettömässä tarkoituksessa ryhtyy tekoon, joka loukkaa sukupuolikuria, rangaistakoon vankeudella enintään yhdeksi vuodeksi taikka sakolla. (L. 5.2.1926.)

7 § (1952–54). Jos joku sekaantuu lapseen, joka ei ole täyttänyt kahtatoista vuotta, tuomittakoon kuritushuoneeseen vähintään kahdeksi ja enintään kymmeneksi vuodeksi. Jos joku harjoittaa muuta haureutta lapsen kanssa, joka ei ole täyttänyt kaksitoista, vaan ei viittätoista vuotta, tuomittakoon kuritushuoneeseen enintään kymmeneksi vuodeksi taikka, jos asianhaarat ovat erittäin lieventävät, vankeuteen vähintään kuudeksi kuukaudeksi.

Jos sellainen teko tehdään henkilölle, joka on täyttänyt viisitoista, vaan ei seitsemäätoista vuotta, eikä ole siveettömyyteen antautunut, olkoon rangaistus kuritushuonetta tai vankeutta, enintään kaksi vuotta, taikka sakkoa.

Joka 1 tai 2 momentissa mainitun henkilön nähdessä siveettömässä tarkoituksessa ryhtyy tekoon, joka loukkaa sukupuolikuria, rangaistakoon vankeudella enintään yhdeksi vuodeksi, taikka sakolla. (L. 7.11.1952/365.)

7 § (1954–71). Jos joku sekaantuu lapseen, joka ei ole täyttänyt kahtatoista vuotta, tuomittakoon kuritushuoneeseen vähintään kahdeksi ja enintään kymmeneksi vuodeksi. Jos joku lapsen kanssa, joka ei ole täyttänyt viittätoista vuotta, harjoittaa muuta haureutta tai sekaantuu lapseen, joka on täyttänyt kaksitoista, mutta ei viittätoista vuotta, tuomittakoon kuritushuoneeseen enintään kymmeneksi vuodeksi taikka, jos

virginitä, he shall be sentenced to prison no more than three months or a fine no higher than three hundred marks.

Crimes mentioned in subsections 2 and 3 of this section may not be carried by a prosecutor unless the plaintiff has reported it for prosecution.

7 § (1926–52). Anyone guilty of illicit sexual intercourse or other kind of fornication with a child, who is not yet fifteen years, shall be punished by penal servitude no more than ten years or, if the circumstances are extraordinarily attenuating, with prison no less than six months.

If it is done to someone who is fifteen, but not yet seventeen years old, and who does not indulge in lewdness, the punishment shall be penal servitude or prison no more than two years or a fine.

Anyone who in the sight of a person mentioned in subsection 1 or 2 commits an act, which violates decency, shall be held in prison no more than one year or sentenced to a fine. (Law February 5, 1926.)

7 § (1952–54). Anyone guilty of illicit sexual intercourse with a child who is not yet twelve years old, shall be punished by penal servitude for no less than two and no more than ten years. Anyone who commits other fornication with a child who has not reached fifteen, or has illicit sexual intercourse with a child who has reached twelve, but not fifteen years, shall be sentenced to penal servitude for no more than ten years or, if the circumstances are extraordinarily attenuating, to prison for no less than six months.

If such deed is committed with a person who has reached fifteen, but not seventeen years, and does not indulge in lewdness, the punishment shall be penal servitude or prison for not more than two years or a fine.

Anyone who in the sight of a person mentioned in subsection 1 or 2 commits an act, which violates decency, shall be held in prison no more than one year or sentenced to a fine. (Law no 365, November 7, 1952.)

7 § (1954–71). Anyone guilty of illicit sexual intercourse with a child who is not yet twelve years old, shall be punished by penal servitude for no less than two and no more than ten years. Anyone who commits other fornication with a child who is not yet fifteen, or has illicit sexual intercourse with a child who has reached twelve, but not fifteen years, shall be sentenced to penal servitude for no more than ten years or, if the

asianhaarat ovat erittäin lieventävät, vankeuteen vähintään kuudeksi kuukaudeksi.

Jos joku sekaantuu henkilöön, joka on täytännyt viisitoista, mutta ei seitsemäätoista vuotta, eikä ole siveettömyyteen antautunut, olkoon rangaistus kuritushuonetta enintään kolme vuotta tai vankeutta vähintään kolme kuukautta ja enintään kolme vuotta taikka, jos asianhaarat ovat erittäin lieventävät, vankeutta tai sakkoa. Jos joku harjoittaa muuta haureutta tällaisen henkilön kanssa, rangaistakoon kuritushuoneella tai vankeudella, enintään kolmeksi vuodeksi, tai sakolla.

Joka 1 tai 2 momentissa mainitun henkilön nähden siveettömässä tarkoituksessa ryhtyy tekoon, joka loukkaa sukupuolikuria, rangaistakoon vankeudella enintään yhdeksi vuodeksi taikka sakolla. (L 26.21954/72.)

(Mieheen, joka oli harjoittanut haureutta 15 vuotta nuoremman pojan kanssa, on sovellettu RL 20 luv. 7 §:n 1 momenttia eikä 12 §:n 1 momenttia. KKO 1933 I 18.)

12 § (1894–1971). *Jos joku harjoittaa haureutta toisen samaa sukupuolta olevan kanssa; rangaistakoon kumpikin vankeudella korkeintaan kahdeksi vuodeksi.*

Joka sekaantuu eläimeen taikka sellaista yrittää, rangaistakoon vankeudella korkeintaan kahdeksi vuodeksi.

20 luku (1971–99). Siveellisyysrikoksista

(Laki nro 16 astunut voimaan 15.1.1971, kumottu lailla nro 563, säädetty 24.6.1998, astunut voimaan 1.1.1999.)

3 §. Joka on sukupuoliyhteydessä neljätöistä vuotta nuoremman henkilön kanssa tai harjoittaa tämän kanssa muuta, siihen verrattavissa olevaa haureutta, on tuomittava lapseen kohdistuvasta haureudesta kuritushuoneeseen enintään kuudeksi vuodeksi tai, jos asianhaarat ovat erittäin lieventävät, vankeuteen.

Jos kuusitoista vuotta täyttänyt henkilö suorittaa 1 momentissa tarkoitetun teon neljätöistä, mutta ei kuuttatoista vuotta täyttäneen henkilön kanssa, olkoon rangaistus kuritushuonetta enintään neljä vuotta tai vankeutta taikka, jos asianhaarat ovat erittäin lieventävät, vankeutta enintään kaksi vuotta tai sakkoa.

Jos 1 tai 2 momentissa tarkoitettu rikos tapahtuu erityistä raakuutta tai julmuutta osoittavalla tavalla, ja sitä on edellä mainituissa tai muissa tapauksissa, huomioon ottaen rikokseen johtaneet ja siitä ilmenevät seikat kokonaisuudessaan, pidettävä törkeänä, on rikoksentekijä tuomittava

circumstances are extraordinarily attenuating, to prison for no less than six months.

Anyone who commits illicit sexual intercourse with a person who has reached fifteen but not seventeen and does not indulge in lewdness, shall be punished by penal servitude no more than three years or prison no less than three months and no more than three years or, if the circumstances are extraordinarily attenuating, prison or a fine. Anyone who commits other kinds of fornication with such a person shall be punished by penal servitude or prison for no more than three years, or a fine.

Anyone who in the sight of a person mentioned in subsection 1 or 2 commits an act, which violates decency, shall be held in prison no more than one year or sentenced to a fine. (Law no 72, February 26, 1954, in force April 1, 1954.) (A man, who engaged in fornication with a 15 years old boy, was sentenced according to chapter 20, section 7, subsection 1, and not to section 12, subsection 1. Supreme Court Ruling I 18, 1933.)

12 § (1894–1971). *If anyone commits fornication with another person of the same sex; both shall be punished by prison not more than two years.*

If someone is guilty of bestiality or attempted bestiality; he shall be punished by prison for not more than two years.

20th chapter (1971–99). On crimes against morality

(Amended by law no. 16, January 15, 1971, repealed by law no. 563, July 24, 1998, in force January 1, 1999)

3 §. If anyone has sexual intercourse with a person who is not yet fourteen or commits some other comparable fornication with such person, he shall be sentenced for fornication with children to penal servitude no more than six years, or, if the circumstances are extraordinarily attenuating, to prison.

If a person who has reached sixteen years, commits an act designated in subsection 1 with a person who has reached fourteen but not sixteen, the punishment shall be penal servitude for four years or prison or, if the circumstances are extraordinarily attenuating, prison no more than two years, and a fine.

If a crime designated in subsection 1 or 2 is committed in a way which reveals extreme ruthlessness or cruelty, and if the crime in the above mentioned or other cases, taken into consideration all the circumstances resulting from or leading to the crime, is to be regarded as severe,

törkeästä lapsen kohdistuvasta haureudesta kuritushuoneeseen vähintään kahdeksi ja enintään kymmeneksi vuodeksi.

Tässä pykälässä mainittujen rikosten yritys on rangaistava.

4 §. Joka viettelee tai taiputtaa neljäätoista vuotta nuoremman henkilön sukupuoliyhteyteen tai muuhun, siihen verrattavissa olevaan haureuteen toisen henkilön kanssa, on tuomittava lapsen viettelemisestä haureuteen [kuritushuoneeseen] enintään kahdeksaksi vuodeksi tai, jos asianhaarat ovat erittäin lieventävät, vankeuteen.

Jos kuusitoista vuotta täyttänyt henkilö viettelee tai taiputtaa neljätoista, mutta ei kuuttatoista vuotta täyttäneen henkilön 1 momentissa tarkoitettulla tavalla, olkoon rangaistus joko kuritushuonetta tai vankeutta, enintään kaksi vuotta, taikka sakkoa. (L 15.1.1971/16.)

5 §. Joka asemaansa hyväksikäyttäen on sukupuoliyhteydessä kuusitoista, mutta ei kahdeksaatoista vuotta täyttäneen henkilön kanssa, joka on hänen huollettavanaan taikka koulussa, muussa laitoksessa tai muuten hänen käskyvaltansa tai valvontansa alainen, taikka harjoittaa sellaisen toista sukupuolta olevan henkilön kanssa muuta, sukupuoliyhteyteen verrattavissa olevaa haureutta, on tuomittava nuoreen henkilöön kohdistuvasta haureudesta joko kuritushuoneeseen tai vankeuteen, enintään kolmeksi vuodeksi. Laki on sama, jos mainitunlainen teko tapahtuu käytännöllä hyväksi nuoren henkilön muuta sellaista riippuvuussuhdetta tekijästä.

Jos kahdeksantoista vuotta täyttänyt henkilö harjoittaa sukupuoliyhteyteen verrattavissa olevaa haureutta samaa sukupuolta olevan kuusitoista, mutta ei kahdeksaatoista vuotta täyttäneen henkilön kanssa tai edellä 1 momentissa tarkoitetuissa olosuhteissa kuusitoista, mutta ei kahtakymmentä vuotta täyttäneen samaa sukupuolta olevan henkilön kanssa, on tekijä tuomittava niin kuin 1 momentissa on säädetty. (L 15.1.1971/16)

9 §. Jos joku julkisesti ryhtyy sukupuoliwiseellisyyttä loukkaavaan tekoon ja sillä saa pahennusta aikaan, on hänet tuomittava sukupuoliwiseellisyyden julkisesta loukkaamisesta vankeuteen enintään kuudeksi kuukaudeksi tai sakkoon.

Joka julkisesti kehottaa samaa sukupuolta olevien henkilöiden välisen haureuden harjoittamiseen, on tuomittava kehottamisesta samaa sukupuolta olevien haureuteen 1 momentissa säädettyyn rangaistukseen.

the perpetrator shall be punished for severe fornication with children to penal servitude no less than two and no more than ten years.

Attempted crimes mentioned in this section are punishable.

4 §. Anyone who entices or induces a person who is not yet fourteen, into sexual intercourse or other kinds of comparable fornication with another person, shall be sentenced for enticement of children to fornication to penal servitude for a maximum of eight years, or if the circumstances are extraordinarily attenuating, to prison.

If a person who has reached sixteen years entices or induces a person who has reached fourteen but not sixteen years, in ways described in subsection 1, the punishment shall be either penal servitude or else prison no more than two years or a fine. (Law 16, January 15, 1971.)

5 §. Anyone who uses his position to obtain sexual intercourse with a person who has reached sixteen but not eighteen years and who is under his care or who in a school, other establishment or otherwise is under his authority and surveillance, or commits other kind of fornication, comparable to sexual intercourse with such a person of the opposite sex, shall be sentenced for fornication with youth to penal servitude or to prison no more than three years. The same law applies if a deed of the kind mentioned is undertaken by exploiting the young person's dependency in any other way on the perpetrator.

If anyone, who has reached eighteen years, commits fornication comparable to sexual intercourse with a person of the same sex, who has reached sixteen but not eighteen years, or in circumstances indicated above in subsection 1 with a person of the same sex who has reached sixteen but not twenty-one, the perpetrator shall be judged as stated in subsection 1. (Law no. 16, January 15, 1971.)

9 §. If anyone publicly engages in an act violating sexual morality, thereby causing offence, he shall be sentenced for publicly violating sexual morality to prison no more than six months or to a fine.

Anyone who publicly encourages fornication between persons of the same sex, shall be sentenced for encouragement of fornication between persons of the same sex to the punishment mentioned in subsection 1. (Law no. 16, January 15, 1971, repealed by law no. 563, July 24, 1998, in force January 1, 1999.)

Finland
Swedish language version

Sveriges Rikes Lag

1734**Missgjernings balk**

10. Cap. Om tidelag

1. §. Hwar som hafwer tidelag med få, eller andra oskiälige diur; then skal halshuggas, och i båle brännas, warde ock samma diur tillika dödadt och brändt.

2. §. Nu kan någor ej bindas til sielfwa gierningen; men finnes hafwa haft fullt upsåt, och warit beredd en sådan styggelse at fullborda: tå skal han arbeta i halsjern halft åhr eller mera, efter sakens omständigheter.

Tilläg:

Art. 1. Dömmes någon till ansvar enligt 2 § 10 Kap. Missgjernings Balken, och finnes ej arbete å den ort, hwarest brottet föröfwats; då skall förbrytaren sändas till Kronans fästning att straffet der undergå; och warde halsjernet, hwari den brottslige till arbete bortföres, påslaget i gerningsorten, uti menighetens närwaro. (Kgl Br. d. 28 Maj 1752)

Art. 2. Förekomma i sådana mål, som uti 2 § 10 Kap. Missgjernings Balken nämnda äro, synnerligen lindrande omständigheter; äge Hofrätt att hemställa saken till Kejsarens förordnande. (Kgl. Br. d. 28 Maj 1752)

1894**Strafflag för Storfurstendömet Finland**

Förordning den 19 december 1889.

Stadfäst 14 april 1894.

20 Kap. (1894–1971). Om lägersmål och annan otukt

7 § (1894–1926). Hvar, som har lägersmål eller öfvar annan otukt med flicka, hvilken ej fylt tolf år, straffes med tukthus från och med två till och med åtta år eller fängelse ej under sex månader.

Sker det med flicka, som fylt tolf, men ej femton år, och förut icke blifvit lägrad; vare straffet tukthus i högst två år eller fängelse från och med tre månader till och med två år.

Öfvar någon lägersmål med qvinna, som fylt femton, men ej sjutton år, och förut icke blifvit lägrad; dömes till fängelse i högst tre månader

Law of the Swedish Realm

1734**Felony code**

10th chapter. On bestiality

1 §. Anyone who commits bestiality with cattle or other dumb animals; shall be beheaded and burnt at a stake, and the animal likewise killed and burnt.

2 §. Now someone cannot be bound to the deed; but is found to have had full intention and been prepared to consummate such abomination: then he shall work in neck iron half a year or more, according to the circumstances of the crime.

Addendum:

Article 1. If someone is found guilty according to chapter 10, section 2 of the Felony Code, and if there is no work in the place where the crime is committed; then the culprit shall be sent to a castle of the Crown to serve his punishment; and the neck iron shall be smitten on the place of the crime, in the presence of the congregation. (Royal decree May 28, 1752.)

Article 2. If in a case such as is described in chapter 10, section 2 of the Felony Code there are extraordinarily attenuating circumstances, a Royal Court of appeal is authorized to submit the case to the Emperor. (Royal decree, May 28, 1752.)

1894**Penal Code for the Grand Duchy of Finland**

Law December 19, 1889.

Promulgated April 14, 1894.

20th chapter (1894–1971). On illicit sexual intercourse and other kinds of fornication.

7 § (1894–1926). Anyone guilty of illicit sexual intercourse or any other kind of fornication with a girl, who is not yet twelve years, shall be punished by penal servitude from two to eight years or prison no less than six months.

If it is done to a girl who is twelve, but not yet fifteen years old, and who has not lost her virginity; the punishment shall be penal servitude no more than two years or prison from three months to two years.

If someone commits illicit sexual intercourse with a woman, who has reached fifteen, but not seventeen years, and who has not lost her

eller böter ej öfver trehundra mark.

Ej må brott som i 2 eller 3 mom. af denna § nämnes, åtalas af allmän åklagare, om ej målseganden anmält det till åtal.

7 § (1926–52). Var, som har lägersmål eller övar annan otukt med barn, som ej fyllt femton år, straffes med tukthus i högst tio år eller, där omständigheterna äro synnerligen mildrande, med fängelse ej under sex månader.

Förövas sådan gärning med den, som fyllt femton, men ej sjutton år, och ej är hemfallen till osedlighet, vare straffet tukthus eller fängelse i högst två år eller böter.

Den, som i åsyn av 1 eller 2 mom. omnämnd person i osedlig avsikt företager handling, som sårar tukt, straffes med fängelse i högst ett år eller böter. (L 5 febr. 1926.)

7 § (1952–54). Var, som har lägersmål med barn, som ej fyllt tolv år, straffes med tukthus i minst två och högst tio år. Var, som övar annan otukt med barn som ej fyllt femton år, eller har lägersmål med barn, som fyllt tolv, men ej femton år, dömes till tukthus i högst tio år eller, där omständigheterna äro synnerligen mildrande, till fängelse i minst sex månader.

Förövas sådan gärning med den, som fyllt femton, men ej sjutton år, och ej är hemfallen till osedlighet, vare straffet tukthus eller fängelse i högst två år eller böter.

Den, som i åsyn av i 1 eller 2 mom. omnämnd person i osedlig avsikt företager handling, som sårar tukt, straffes med fängelse i högst ett år eller böter. (L 365/52 7 nov. 1952)

7 § (1954–71). Var, som har lägersmål med barn, som ej fyllt tolv år, straffes med tukthus i minst två och högst tio år. Var, som övar annan otukt med barn, som ej fyllt femton år, eller har lägersmål med barn, som fyllt tolv, men ej femton år, dömes till tukthus i högst tio år eller, där omständigheterna äro synnerligen mildrande, till fängelse i minst sex månader.

Var, som har lägersmål med den, som fyllt femton, men ej sjutton år, och ej är hemfallen

virginity, he shall be sentenced to prison no more than three months or a fine no higher than three hundred marks.

Crimes mentioned in subsections 2 and 3 of this section may not be carried by a prosecutor unless the plaintiff has reported it for prosecution.

7 § (1926–52). Anyone guilty of illicit sexual intercourse or other kind of fornication with a child, who is not yet fifteen years, shall be punished by penal servitude no more than ten years or, if the circumstances are extraordinarily attenuating, with prison no less than six months.

If it is done to someone who is fifteen, but not yet seventeen years old, and who does not indulge in lewdness, the punishment shall be penal servitude or prison no more than two years or a fine.

Anyone who in the sight of a person mentioned in subsection 1 or 2 commits an act, which violates decency, shall be held in prison no more than one year or sentenced to a fine. (Law February 5, 1926.)

7 § (1952–54). Anyone guilty of illicit sexual intercourse with a child who is not yet twelve years old, shall be punished by penal servitude for no less than two and no more than ten years. Anyone who commits other fornication with a child who has not reached fifteen, or has illicit sexual intercourse with a child who has reached twelve, but not fifteen years, shall be sentenced to penal servitude for no more than ten years or, if the circumstances are extraordinarily attenuating, to prison for no less than six months.

If such deed is committed with a person, who has reached fifteen, but not seventeen years, and does not indulge in lewdness, the punishment shall be penal servitude or prison for not more than two years or a fine.

Anyone who in the sight of a person mentioned in subsection 1 or 2 commits an act, which violates decency, shall be held in prison no more than one year or sentenced to a fine. (Law no 365, November 7, 1952.)

7 § (1954–71). Anyone guilty of illicit sexual intercourse with a child who is not yet twelve years old, shall be punished by penal servitude for no less than two and no more than ten years. Anyone who commits other fornication with a child who is not yet fifteen, or has illicit sexual intercourse with a child who has reached twelve, but not fifteen years, shall be sentenced to penal servitude for no more than ten years or, if the circumstances are extraordinarily attenuating, to prison for no less than six months.

Anyone who commits illicit sexual intercourse with a person, who has reached fifteen but not

till osedlighet, straffes med tukthus i högst tre år eller fängelse i minst tre månader och högst tre år eller, där omständigheterna äro synnerligen mildrande, fängelse eller böter. Var, som övar annan otukt med dylik person, straffes med tukthus eller fängelse, i högst tre år, eller böter.

Den som i åsyn av 1 eller 2 mom. omnämnd person i osedlig avsikt företager handling, som sårar tukt, straffes med fängelse i högst ett år eller böter. (L 72/54 26 febr. 1954, som trätt i kraft 1 april 1954.)

12 § (1894–1971). *Öfvar någon otukt med annan af samma kön; straffes hvardera med fängelse i högst två år.*

Gör sig någon skyldig till tidelag eller försök dertill; straffes med fängelse i högst två år.

(När otukt övats mellan personer av samma kön, av vilka den ena ej fyllt femton år, har SL 20: 7, och icke denna §, tillämpats. HD 1933 R 18. Samma principiella ståndpunkt, om den ena fyllt femton men icke sjutton år, såvida han icke varit hemfallen till osedlighet. HD 1944 R 15.)

20 kap. (1971–99). Om sedlighetsbrott

(Infört genom L 15.1.1971/16, upphävt genom L 24.7.1998/563, i kraft 1 januari 1999)

3 §. Har någon samlag med person, som ej fyllt fjorton år eller idkar någon annan därmed jämförbar otukt med sådan person, skall han för *otukt med barn* dömas till tukthus i högst sex år, eller, såframt omständigheterna äro synnerligen mildrande, till fängelse.

Begår person, som fyllt sexton år, i 1 mom. avsedd handling med person, som fyllt fjorton men ej sexton år, vare straffet tukthus i högst fyra år eller fängelse eller, såframt omständigheterna äro synnerligen mildrande, fängelse i högst två år eller böter.

Sker i 1 eller 2 mom. avsett brott på sätt, som ådagalägger synnerlig råhet eller grymhet, och bör brottet i ovannämnda eller andra fall, med beaktande av samtliga omständigheter, vilka framgått av eller lett till brottet, anses grovt, skall gärningsmannen för *grov otukt med barn* dömas till tukthus i minst två och högst tio år.

seventeen and does not indulge in lewdness, shall be punished by penal servitude no more than three years or prison no less than three months and no more than three years or, if the circumstances are extraordinarily attenuating, prison or a fine. Anyone who commits other kinds of fornication with such a person shall be punished by penal servitude or prison for no more than three years, or a fine.

Anyone who in the sight of a person mentioned in subsection 1 or 2 commits an act, which violates decency, shall be held in prison no more than one year or sentenced to a fine. (Law no 72, February 26, 1954, in force April 1, 1954.)

12 § (1894–1971). *If anyone commits fornication with another person of the same sex; both shall be punished by prison not more than two years.*

If someone is guilty of bestiality or attempted bestiality; he shall be punished by prison for not more than two years.

(When fornication has been committed by persons of the same sex, one of whom had not yet reached fifteen years, chapter 20, section 7 has been applied, and not this section. Supreme Court ruling R 18, 1933. The same principle was applied if one of them had reached fifteen but not seventeen, unless he was indulging in lewdness. Supreme Court ruling R 15, 1944.)

20th chapter (1971–99). On crimes against morality

(Amended by law no. 16, January 15, 1971, repealed by law no. 563, July 24, 1998, in force January 1, 1999)

3 §. If anyone has sexual intercourse with a person who is not yet fourteen or commits some other comparable fornication with such person, he shall be sentenced for *fornication with children* to penal servitude no more than six years, or, if the circumstances are extraordinarily attenuating, to prison.

If a person, who has reached sixteen years, commits an act designated in subsection 1 with a person who has reached fourteen but not sixteen, the punishment shall be penal servitude for four years or prison or, if the circumstances are extraordinarily attenuating, prison for no more than two years, and a fine.

If a crime designated in subsection 1 or 2 is committed in a way which reveals extreme ruthlessness or cruelty, and if the crime in the above mentioned or other cases, taken into consideration all the circumstances resulting from or leading to the crime, is to be regarded as severe, the perpetrator shall be punished for *severe*

Försök till brott, som nämnes i denna paragraf, är straffbart.

4 §. Den som förleder eller förmår person, som ej fyllt fjorton år, till samlag eller annan därmed jämförbar otukt med annan skall för *förledande av barn till otukt* dömas till tukthus i högst åtta år eller, såframt omständigheterna äro synnerligen mildrande, till fängelse.

Förleder eller förmår person, som fyllt sexton år, person som fyllt fjorton, men icke sexton år, på sätt som avses i 1 mom., vare straffet antingen tukthus eller ock fängelse i högst två år eller böter.

5 §. Den som med utnyttjande av sin ställning har samlag med person, som fyllt sexton men ej aderton år och som står under hans vård eller som i skola, annan inrättning eller eljest står under hans lydnad eller övervakning, eller idkar med samlag jämförbar annan otukt med sådan person av annat kön, skall för *otukt med ung person* dömas till tukthus eller till fängelse i högst tre år. Lag samma vare om handling av nämnt slag sker med utnyttjande av den unga personens av gärningsmannen eljest beroende ställning.

Idkar någon, som fyllt aderton år, med samlag jämförbar otukt med person av samma kön, som fyllt sexton, men icke aderton år, eller under ovan i 1 mom. avsedda förhållanden med person av samma kön, som fyllt sexton, men icke tjuogoett år, skall gärningsmannen dömas såsom i 1 mom. är stadgat. (15/1 1971/16)

9 §. Gör någon offentligen sig skyldig till handling, som sårar tukt och sedlighet och därigenom åstadkommer förargelse, skall han för *offentlig kränkning av sedligheten* dömas till fängelse i högst sex månader eller till böter.

Den som offentligen uppmanar till otukt mellan personer av samma kön, skall för uppmaning till otukt mellan personer av samma kön dömas till i 1 mom. nämnt straff. (Införd genom L 15/1 1971/16, upphävd genom L 24.7.1998/563, i kraft 1 jan. 1999.)

fornication with children to penal servitude no less than two and no more than ten years.

Attempted crimes mentioned in this section are punishable.

4 §. Anyone who entices or induces a person who is not yet fourteen, into sexual intercourse or other kinds of comparable fornication with another person, shall be sentenced for *enticement of children to fornication* to penal servitude for a maximum of eight years, or if the circumstances are extraordinarily attenuating, to prison.

If a person who has reached sixteen years entices or induces a person who has reached fourteen but not sixteen years, in ways described in subsection 1, the punishment shall be either penal servitude or else prison no more than two years or a fine.

5 §. Anyone who uses his position to obtain sexual intercourse with a person who has reached sixteen but not eighteen years and who is under his care or who in a school, other establishment or otherwise is under his authority and surveillance, or commits other kind of fornication, comparable to sexual intercourse, with such a person of the opposite sex, shall be sentenced for *fornication with youth* to penal servitude or to prison no more than three years. The same law applies if a deed of the kind mentioned is undertaken by exploiting the young person's dependency in any other way on the perpetrator.

If anyone, who has reached eighteen years, commits fornication comparable to sexual intercourse with a person of the same sex, who has reached sixteen but not eighteen years, or in circumstances indicated above in subsection 1 with a person of the same sex who has reached sixteen but not twenty-one, the perpetrator shall be judged as stated in subsection 1.

9 §. If anyone publicly engages in an act violating sexual morality, thereby giving offence, he shall be sentenced for *publicly violating sexual morality* to prison no more than six months or to a fine.

Anyone who publicly encourages fornication between persons of the same sex, shall be sentenced for encouragement of fornication between persons of the same sex to the punishment mentioned in subsection 1. (Law no. 16, January 15, 1971, repealed by law no. 563, July 24, 1998, in force January 1, 1999.)

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