

Productive Trials: English and Finnish Legislation and Conceptualisations of Same-Sex Sexualities in Course of Trials of Oscar Wilde, Maud Allan, Radclyffe Hall and Herb Grove, from 1885 to 1957.¹

Antu Sorainen

Any Western narrative presupposes the existence of a legal system, against which the agents of narrative militate.² One of the most influential narratives on modern Western sexualities has been based on the argument that Oscar Wilde's trials for 'gross indecency' in 1895 marked the birth of the homosexual image in the public domain.³ Similarly, the libel trial of Maud Allan in 1918 and the obscenity trial for Radclyffe Hall's book *The Well of Loneliness* in 1928 have been claimed to have produced material for the emerging public discourse and a set of recognised stereotypes on the 'lesbian' in England.⁴

In England, women were intentionally left out of the statute for 'gross indecency', which criminalized same-sex sexual acts between men in public in 1885. In Finland, same-sex sexual acts were criminalized around the same time as Oscar Wilde's trials took place in London. Women were explicitly mentioned in the framing of the new Finnish criminal law. The Finnish Penal Code was passed in the Estates in 1888 and promulgated in 1889, but it only came into force in 1894. The twentieth chapter of the Code dealt with *Unlawful sexual intercourse and other lewdness*. Its twelfth section decreed 'fornication with a person of the same sex' punishable by imprisonment for a maximum period of two years for both parties. In total 51 women and

1023 men were sentenced for same-sex fornication while the law was in force, from 1894 to 1971.⁵

In Finland, there never were trials for same-sex acts as famous as those of Oscar Wilde's, Maud Allan's or Radclyffe Hall's. However, in the 1950s in Finland a series of trials took place that made the headlines in the national newspapers. A number of women all of whom were employees in an orphanage called "Herb Grove" were prosecuted for same-sex fornication.⁶ Despite of a considerable publicity, this case was not circulated in the Finnish public or legal sphere in the same way as Oscar Wilde's case in England.

In this article, I will juxtapose the three above mentioned famous British trials and the Finish case of Herb Grove. First, I will discuss the late 19th century and early 20th century legislation on same-sex sexuality in England, and especially the trials of Oscar Wilde, Maud Allan and Radclyffe Hall. I will argue that Oscar Wilde was made homosexual not in his own trials but only later in a 'lesbian' context, that is, during Maud Allan's and Radclyffe Hall's court proceedings and in the English parliamentary debates on women's 'gross indecency' in the 1921. Secondly, I will move to Finland and explore the background for the criminalization of women's same-sex fornication in the

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1889 law. I will make some remarks on how women's same-sex sexual acts were talked about and conceptualized in the 1950s Finland legal culture. Despite of sharing some central concepts, such as 'indecenty', meaning of the concepts in English and Finnish legal history have to traced separately due to a profoundly different genealogies.

Changes in Legislation

It has been claimed that, in general, European legislation on sexuality and same-sex acts was tightened up in the 19th century (Weeks 1977, 15; Träskman 1990, 228 263).⁷ In the UK, this has been referred to as a grappling for control, which means to say that common law's local and semi-amateur system of law-enforcement was replaced by more effective and sophisticated legislation for enactment. (Smart 1992, 11; Weeks 1977, 13.) In England this meant, for example, that the death penalty for sodomy was re-enacted in 1826, and the regulation of women became more precise and was centred around the policing of motherhood, which had become more and more inevitable particularly for working-class women (Smart 1992, 23; Weeks 1977, 13).

However, a general theory of the tightening up of legislation on same-sex acts in the 19th century Europe can be questioned. For example, in the 18th century Dutch legislation and in the national Penal Code from 1810 'sodomy' and 'unnatural acts' had been decreed capital crimes – even though the severest sentence was rarely put in use. The national legislation in the Netherlands was, however, replaced from 1811 to 1886 with the Napoleonic

Code which decriminalized 'acts of sodomy in private'.⁸ The Napoleonic Code thus removed same-sex acts from criminal sanctions, when committed in private by consenting adults. In the new Dutch Criminal Law from 1886, only such 'crimes against morals' were criminalized, which were connected with violence or with the threat of violence, or, to which children or other vulnerable people were subjected, and which affronted public decency (Schimmel-Bonder 1992, 157).⁹

In Finland, the old Swedish law remained in force until the enforcement of the national Penal Code in 1889, which explicitly criminalised 'same-sex fornication acts' between women as well as between men.¹⁰ In the Swedish Codex from 1734, only the crime of bestiality had been mentioned, but it had been possible for the courts to sentence those guilty of same-sex sexual acts on grounds of analogical interpretation of the sanction against bestiality (Löfström 1998, 55).¹¹ However, the so-called legality principle, which was adopted in Finnish legal science in the 19th century, predicated that a person could only be punished for an action if this had been explicitly singled out as a legal offence in criminal law (ibid. 55 56).

In England, the death penalty for male 'sodomy' remained in the law books until 1861. After that, the Offences Against the Person Act decreed that the death sentence was to be deleted from the English legislation and replaced by a life sentence. 'Gross indecenty' between men was criminalized in 1885 by the Criminal Law Amendment Act. The clause has become known as the Labouchère Amendment Act, after the Liberal-Radical MP Henry Labouchère, who

invented and introduced this new clause into the Act (Hyde 1970, 134). It was also dubbed the Blackmailer's Charter in public, as it was considered to open the door wide for blackmailers (ibid.). Originally, the Criminal Law Amendment Act was not intended to deal with sodomy, but was titled as a "Bill to make further provision for the protection of women and girls, the suppression of brothels, and other purposes" (ibid.). It was concerned with the white-slave trade, brothels, protection of young girls from sexual abusers, and raised the age of consent to sixteen (Smart 1992, 14; Weeks 1989, 87).¹²

The Act was put on trial in two famous prosecutions, the Cleveland Street Scandal in 1889 and Oscar Wilde's trials in 1895. The Cleveland Street Scandal was about a male brothel in London, where telegraph boys did highly successful business with various aristocratic and other well-to-do male customers (Hyde 1970, 123-127; Weeks 1989, 106-107). In the UK, Oscar Wilde's trials have been seen as crucial for the construction of the gay and lesbian historiography and fictions of the queer past.¹³ For example, a British gay historiographer Jeffrey Weeks (1989, 103) has argued that Oscar Wilde's conviction for gross indecency in 1895 "was a most significant event for it created a public image for the 'homosexual'".

The Birth of the Homosexual – Or, rather, His Conception?

Oscar Wilde's trials were more about gender and morality than sexuality. During the trials, his effeminacy and general immorality were more in focus than his alleged sexual

practices.¹⁴ Wilde's deviancy was described more in moral and social terms than in pathological or medical ones. Such words as 'homosexual' or 'invert' were not heard in the court room during Wilde's trials. The prosecutor and judges referred to Wilde's alleged actions as 'indecent', 'decadent', and 'corrupt'; all concepts, that referred more to morals than directly to sexuality.

Even though the concepts of 'sexual inversion' and 'sexual invert' were already formulated and articulated in sexology by the time of Oscar Wilde's trials, the meanings of the terms were still contested.¹⁵ Inversion implied gender deviance rather than deviance in sexual object choice. The concept had not yet been circulated in the public domain. (Foldy 1997, 169; Vicinus 2004, 202-208.) Oscar Wilde was prosecuted because of the general immorality of his behaviour, and not because he represented a special type of sexual aberration.¹⁶ Wilde's alleged deeds were constructed as 'unnatural practices', as results of his decadence and moral decline, in the courtroom.

But what was the content of the legal charge under which Wilde was convicted? 'Gross indecency' was not defined by statute and no definition had been attempted by the courts. Physical contact was not necessary, even though the crime usually consisted of "exhibition and mutual excitement of the genital organs, masturbation, fellatio or other sexual activity falling short of the offence of sodomy or attempted sodomy" (Radzinowicz 1957, 349). Ruth Robbins (1997, 104), a British scholar of cultural studies, has argued that unlike sodomy, 'gross indecency' was a crime which was named but not defined. The crime had no specific legal

definition, but the definition of the term was left for the jury. What was prohibited, depended on a shifting community of interpreters – the jury – whose view changed as cultural values and morality changed. In a sense, the jury had to create a story of desire, and imagine its commission and effects (ibid.).

The trials and prosecution of Oscar Wilde in 1895 began with Wilde's libel suit against the Marquess of Queensberry. Queensberry had left his visiting card at Wilde's club. On the card Queensberry had written "For Oscar Wilde posing Sodomite (sic!)". Queensberry's plea of justification was accepted by the court. This meant that Queensberry's statement of Wilde posing as sodomite was decreed as true in public. As a consequence, it was inevitable that Wilde was arrested on charges of gross indecency. Wilde was tried in two separate trials in spring 1895. In the first trial, the jury was unable to reach a verdict. In the retrial, the jury found Wilde guilty, and he was convicted to the maximum sentence allowed by law: two years imprisonment with hard labour.

Wilde's main concern in the libel trial was to maintain his good name. That is why he, at least in the eyes of his contemporaries, had to sue the Marquess of Queensberry with a libel suit. The judge expressed this belief in the third trial: "This was a message which left the defendant no alternative but prosecute or else be branded publicly as a man who could not deny a foul charge" (Hyde 1976, 287). Eventually, this 'duty of a man' took Wilde to prison. Had he left the libel unchallenged or had he confessed to the crime in the second and the third trial, he would, however,

have confessed to un-manliness as well, as a 'man' had to look after his good name. In the course of the trials, Wilde was transformed from that of a subject in the law to an object of the law (Moran 1996, 48).

Mr Justice Wills, the judge in Wilde's final trial, addressed in his summing-up for the jury Wilde's letters to his former lover, Lord Alfred Douglas: "Is the language of those letters calculated to calm and keep down the passions which in a young man need no stimulus? [- -] It is strange that it should not occur to a gentleman capable of writing such letters that any young man to whom they were addressed must suffer in the estimation of everybody, if it were known" (Hyde 1976, 287). Sexual desire between two men was, thus, seen as a natural drive by the judge – the 'unnaturalness' of it was the practice of the vice. The inability of a decent man to exercise self-restraint was judged as criminal. The crime of Oscar Wilde was his unmanly inability to control his sexual drives.

Even if the concept of 'homosexuality' as a personality category, as invented by the early sexologists, did add to a public cultural representation, it did not straightforwardly transform into a new popular type of homosexual after Wilde's trials. The concept interacted with older conceptions until the 1950s. In legal discourses in England, the sexologists' new language of sexuality remained disputed and controversial at least until the *Wolfenden Committee's Report* in 1957, which formally connected the terms 'buggery' and 'homosexual'.¹⁷ In a way, Oscar Wilde's trials preceded their time. Even though Wilde himself was aware about the new sexologists' concepts, the legal body and the

public at the time of his trials were not. The new concepts became attached to Wilde and circulated in his name only a few decades later in the 'lesbian' trial of Maud Allan, and after that, in the 1921 English parliamentary debates on the criminalization of women's gross indecency.

The Cult of Clitoris and Women's Indecency

The libel trial of Maud Allan that took place in the 1918 actually established Oscar Wilde as a homosexual. In this very trial 'lesbianism' as an identity category was, for the first time, a target of juridical discourse in England (Travis 1995, 147 163).

In the so-called *Black Book case* Maud Allan, a dancer and the star of the play *Salome* by Oscar Wilde, brought a libel suit against an eccentric right-wing Member of Parliament, Noel Pemberton Billing. The fictional Black Book, created in the mind of Billing, was supposed to contain some 47 000 names of British citizens who had committed "propagation of evils [...] in Sodom and Lesbia". The book was believed to be in the possession of the Germans, which through the list were in a position to blackmail these prominent British men and women. In a newspaper run by Billing, the *Vigilante*, it was claimed that to be a member of Maud Allan's private performances in Wilde's *Salome*, deemed that if "Scotland Yard were to seize the list of these members" there was "no doubt they would secure the names of the first 47,000" of the persons mentioned in the Black Book. The accusation appeared in a boxed paragraph under a heading *The Cult of Clitoris*, in bold black type.

(Hoare 1997, 91.)

Never before had a newspaper used such a headline, even though its meaning was, according to a British journalist Philip Hoare (1997, 91), lost on most of its readers who did not know the meaning of the word clitoris. Maud Allan sued Billing for criminal libel. In the complex and long trial Allan was accused of cultivating 'lesbian sadism' and 'The Cult of Wilde'. Also, the meaning of clitoris and 'female orgasm' were discussed at length by different witnesses brought to the court room by Billing. Billing's key medical witness, Dr. Cooke, confused the concept of 'sadism' with 'lesbianism' and discussed these in connection to the work of a famous German sexologist Richard von Krafft-Ebing.¹⁸ The talk then turned to Oscar Wilde. Dr. Cooke argued that it would have been impossible for Wilde to have written his play without "a close and intimate knowledge of sexual perverts [...] The probability is that he had von Krafft-Ebing's book *Pcychopathia Sexualis* in front of him all the time". (Ibid. 144 146.)

Wilde's former lover, Lord Alfred Douglas appeared as a witness. He claimed that *Salome* had indeed been written after Wilde had read Krafft-Ebing's book (ibid. 146). Douglas further stated that Wilde would have never used such words as 'sodomitic' or 'Cult of Clitoris' because he "would express horror at such language". However, Douglas claimed that Wilde was "the greatest force for evil" that had "appeared in Europe during the last 350 years" (ibid. 152). Douglas was then asked by the prosecutor: "When did you cease to approve of sodomy?" (ibid., 156). The trial which had begun as Maud Allan's libel suit, turned

out to be a lengthy public discussion of ‘sodomites’ in general – and of Oscar Wilde, 23 years after his own trial, in particular – as perverted enemies of the state.

Even though Billing admitted libelling Allan in the paragraph of the *Vigilante* that claimed she was a lesbian, the verdict was “Not Guilty” (ibid. 180). Allan apparently lost her case because it was thought that a woman who knew the meaning of such a word as clitoris could not be libelled by it. Further, it was argued by Billing, that to be able to perform a sadistic act of Salome, a person must be a sadist – a pervert – herself. In the trial, there were greater political issues at stake for Billing than just Allan’s alleged perversions (ibid., 170). Obviously, the trial was very much connected with the nationalist chauvinism caused by the war. Billing declared, in his final address to the court: “Do you think I am going to keep quiet in my position as a public man while nine men die in a minute to make a sodomite’s holiday? [- -] I am obsessed with one subject. And that is, bringing our Empire out of this war a little cleaner than it was when it went in” (ibid., 169 170). Billing was further railing against the support of German interests in Britain, and claimed he was attacking this influence through his libel. Thus, Maud Allan was only “an incident” – as Billing himself said in the court – through whom Billing could address his concern for the purity of nation and “the protection which the Germans - - in this country get” (ibid.).¹⁹

The Maud Allan trial resulted, as a mixture of discourses on national purity and sexual morality, in a confusion of legal conceptualisations. The way that women’s same-sex sexuality and concepts of ‘pervert’ and ‘invert’ were discussed in the

court room, reveals that the content of the concepts was unclear even for the most educated members of the legal field and medical science. For example, ‘sadism’, ‘sodomy’ and ‘lesbianism’ were connected and confused with each other. The definition of any of these concepts was only vaguely defined and not stable. The concepts worked here, as they did earlier in Oscar Wilde’s case, as metaphors for a wide range of things held immoral, such as ‘evil’, ‘peril’ and ‘decadent’.

Maud Allan’s trial was influential because it was widely followed by the press and in public. After Maud Allan’s trial, a heightened anti-homosexual atmosphere intensified in post-war English culture.²⁰

Debating the Criminalisation of Women’s ‘Gross Indecency’ in England

The initiation of the proposal to criminalize ‘gross indecency’ between women in 1921 was obviously one of the effects of Maud Allan’s trial in England.²¹ Vague and non-stable terminology was typical for the parliamentary debates on this proposal. The proposal for the new clause, Acts of Indecency by Females, was accepted in the House of Commons on the 4th of August, 1921: “*Any act of gross indecency between female persons shall be a misdemeanour, and punishable in the same manner as any such act committed by male persons under section eleven of the Criminal Law Amendment Act, 1885.*”²²

The clause decreed indecent acts between women a criminal offence, even when committed in private. It was

passed as a new introduction to the Criminal Law Amendment Bill in the small hours. In the debate, the concept of 'homosexuality' was mentioned only once. Mr. Macquisten, who had introduced the clause, referred to the "horrid grossness of homosexual immorality - - an evil which is capable of sapping the highest and the best in civilisation".²³ 'Lesbian vice' and 'Lesbian love' were both mentioned once, in connection to the poems of Sappho and to the scientific work of Krafft-Ebing and a British sexologist, Havelock Ellis.²⁴

In the House of Lords, The Director of Public Prosecutions, Lord Desart, spoke strongly against the clause. Desart referred to Wilde's trials in his speech. He said that after Wilde's prosecution, "a perfect outburst of that offence all through the country" took place.²⁵ Desart was convinced that trials for "acts of indecency by females" would constitute a great public danger, even though "it would be, at most, an extremely small minority" that "really are so vile, so unbalanced, so neurotic, so decadent as to do this". Lord Desart, reasoned in his famous speech to members of Parliament: "You are going to tell the whole world that there is such an offence, to bring it to the notice of women who have never heard of it, never thought of it, never dreamt of it. I think that is a very great mischief."²⁶

The members of the Lords, when discussing the matter further, preferred to speak of 'this subject', 'this vice' or 'these practices', not of 'lesbianism'. The Lords eventually dropped the clause because of its alleged ability to increase opportunities for blackmail, and the difficulty of getting evidence of the offence. It was dropped, even though it was

mentioned that killing the clause could risk losing the Bill entirely.²⁷ The clause was allowed to drop by the Commons as well.²⁸

In the English parliamentary debates, women's same-sex sexuality was thus discussed through a range of negative euphemisms – it represented the threat of decadent morality. Even the most sympathetic speaker, in favour for non-criminalization in the Commons, suggested that 'perverts' should be "dealt with by one of three methods: to stamp them out by a death sentence, to get rid of them by locking them up in a lunatic asylum, or simply by not noticing them. The third method was the best, because "these cases are self-exterminating. [- -] They are examples of ultra-civilisation".²⁹ Generally, in the parliamentary debates on homosexuality from 1921 to the 1960s, the threat of same-sex sexual practices for the British race and nation was mentioned constantly.³⁰

In 1921, having read Havelock Ellis's work, some of the MP's feared that all English women, including their own wives, could be charged with counts on homosexuality. According to Havelock Ellis (1936, 257 258): "[H]omosexual passion in women finds more or less complete expression in kissing, sleeping together and close embraces." In sexologists' discourses, it had been working class women that were constructed as 'deviants', but the English parliamentarians wanted to preclude the spread of these deviant sexualities to their own sphere. The world that needed to be protected from the knowledge of this vice was the world of middle class and upper class women, the wives and daughters of the legislators. (Hart 1994, 4).

Women's same-sex sexual acts were intentionally left out of the English legislation, in order to make sure that women would not become aware of the vice. The reluctance to admit women an autonomous sexuality was cemented in the late 1920s in the obscenity trial of Radclyffe Hall's novel *The Well of Loneliness*. The judge used extra-legal argumentation understandable only in connection to Oscar Wilde's and Maud Allan's trials.

The Allure of Unnatural Offences

The prosecution of Radclyffe Hall's book *The Well of Loneliness* in 1928 was somewhat different from Oscar Wilde's and Maud Allan's trials, which both had, originally, began as libel suits. Hall's person was not an object of the trial, but her book was. The novel was judged obscene under the Obscene Publications Act, under which no person could be convicted. If the case was made, the objectionable material could be destroyed (Hyde 1965, 256). Under the act the owners of the book and not its author were liable. Accordingly, Radclyffe Hall was not allowed, as the law stood, to stand as a witness in the trial of her book, either. (Vicinus 2004, 220.)

The defence counsel claimed in the trial that *The Well of Loneliness* was not about 'perversion' but about something that members of the medical profession called 'inversion'. The defence counsel's attempt to base this argument on the vocabulary of the new science of sexology was rejected. The judge ignored his argument and drew the discussion to the level of moral questions. He asked the attorney whether

the book was not dealing with 'unnatural offences', and further, whether it was not likely to 'deprave' or 'corrupt' those who were likely to read it. These concepts are, as we have seen, understandable in connection to Oscar Wilde's and Maud Allan's trials, in which 'unnatural' had been connected to effeminacy in Wilde's case and to knowledge in Allan's case, whereas 'corruption' had been connected to national purity and sexual morality.

The judge in *The Well* trial applied a somewhat arguable juridical terminology. 'Unnatural offences' between women were not criminalized in the UK, but the judge considered it justifiable to use this legal concept. He found against the novel because the author had not stigmatised the sexual relationship between her two women figures as being blameworthy, and because "certain acts are described in alluring terms", which made the book an obscene libel and corruptive in its tendency. (Hyde 1965, 256 259.)³¹

The trial lasted barely a day, since the chief magistrate ruled out of order almost any discussion of the novel (Vicinus 2004, 220). In the trial, the words 'lesbianism' or 'homosexuality' were not mentioned. The concept of 'unnatural offence' worked as an instrumental tool, as a metaphor for something morally threatening that was likely to corrupt the British readers of the novel. The main effect of *The Well of Loneliness* was, argues an English lesbian historian, Emily Hamer (1996, 148), that the novel has worked, since the trial, as the major introduction for lesbians to their sexuality as a public phenomenon rather than a private desire.³² In a legal sense, the trial was a testing ground for the new concepts of sexology. Morality more than sexuality,

'corruption' instead of 'inversion' and 'acts' instead of 'persons' were the concepts that the judge recognised.

The libel trial of Maud Allan and her performance in *Salome* took place in the 1918, the parliamentary debate on women's 'gross indecency' in 1921, and the obscenity trial of Radclyffe Hall's novel in 1928.³³ Legal conceptualisation of women's same-sex sexualities remained confused in all these English trials. It is intriguing that Finnish criminal law has recognised women's same-sex sexuality from 1889, but there are only sparse notions of women's same-sex relationships, sexualities and identities in the Finnish literature, national or translated. For example, *The Well of Loneliness* was never translated in Finnish.³⁴ A quick glimpse at the history of criminal law might help the reader to understand the background of legal representations of women's same-sex sexuality in Finnish culture.

Same-Sex Fornication in Finnish Legislation

Contrary to England, where Oscar Wilde's, Maud Allan's and Radclyffe Hall's trials were noted in large scale in public and discussed in depth in media, the Finnish culture of the late 19th and early 20th century was neither concerned nor inhabited by public trials and scandals dealing with same-sex sexualities. There was hardly any public discussion in Finnish society of 'inversion' or 'homosexuality', or at the time of the drafting the Penal Code (Löfström 1998, 20).

The birth of the 1889 Penal Code and the criminalisation of women's same-sex fornication need to be analysed against the background of Finnish society and legal culture. At the

end of the 19th century, so-called absolute sexual morals prevailed in Finnish legal culture, and were the base for the legislation on sexuality. According to absolute sexual morals there was only one accepted form of sexual behaviour in the religious and legal sense: heterosexual marriage, in which sexuality was meant to be reproductive and monogamous (Nieminen 1951, 197 235; Backman 1976, 222).³⁵ Absolute morals were promoted not only by the legal body but also by the dominant Lutheran Church. The forms and morals of everyday life were not straightforwardly directed by official morals, even though laws and legal statutes had a range of direct and indirect effects on rural dwellers' lives. Even though the official moral ideology was always met by a real-life practical resistance, a self-conscious counter-ideology never emerged in Finland. (Backman 1976, 222 223.)

German idealistic philosophy influenced middle class thinking about the family from the 1840s onwards in Finland. In particular G.W.F. Hegel and his Finnish interpreter, J.V. Snellman, had a strong impact on Finnish political thinking about 'decency', that is, on the meanings of the concepts of society, state and family. Contrary to British liberal thinking on the family as a contract and an independent social unit, Hegel (1821) saw the basis of the family as lying in love and in the upbringing of children. The relationship of the Family to the State and to Society was a moral one. J.V. Snellman, the main theorist in outlining the concept of the Finnish nation state in the 1840s, followed the Hegelian lead. Snellman made a strict distinction

between The State and The Nation State. (Häggman 1994, 174 181; Pulkkinen 1989.) ‘Decency’ [*Sittlichkeit*] in the Hegelian-Snellmanian discourse did not refer mainly to sexuality, but to all good habits and virtues. The fortune of the Family and the State were bound together by virtues. Without decent family-life the citizen was not able to fulfil her or his other virtues (Häggman 1994, 180; Pulkkinen 1989).

Finnish legislation became heavily influenced by Hegelian legal philosophy.³⁶ Another reason for the criminalization of women’s same-sex fornication in Finland was, according to a Finnish historian Jan Löffström (1998, 15 16), that women in Finnish culture were traditionally granted the same potential for sexual subjectivity and autonomous sexual desire as men. Thus, it made no difference for the protectors of absolute morals, whether it was the unconventional sexuality of a woman or of a man that was threatening the absolute model of reproductive heterosexual marital sexuality. Thus, it may have been easy for the criminal law legislators to see women and men as equally capable of threatening the Family via same-sex activities, since women were seen, in Hegel’s (1821, §166) philosophy of law, to be responsible in their own ‘natural’ – passive and subjective – way in the maintenance of the Family.

Jaakko Forsman, a professor of criminal law, practically invented the vocabulary of the Finnish Penal Code of 1889. Forsman strongly influenced the legislators’ decision to declare women capable of sexual offences in Finnish Criminal Law (Sorainen 1996).³⁷ He claimed that same-sex

acts “injured the natural and decent basis on which our society lies” (Aspegrén & Saxen 1917, 84). The text of the law used an old biblical term, ‘fornication’. It was juridically defined as a crime that comprised every act which used the body of another person of the same sex as a means to arouse or to satisfy one’s sexual drive. Touching or trying to touch the other person’s body was not necessary. The intent of the penalty was to punish for an act that had happened in the past, not to sanction someone’s personality or personal traits (Utriainen 1984, 107). The result of criminalization was that the religious spirit of the legislators’ morals and the Hegelian-Snellmanian desire for ‘natural’ order of society, that is, marital heterosexual reproductive sex, were inverted into the text of law.

The statute of the 1889 Finnish Penal Code, which criminalized women’s same-sex fornication, can be seen as a symbolic gesture aimed at making the legislators’ morals familiar and dominating (Törnudd 1989, 482 484). In that sense, the Finnish legislators desired a legal order in which women’s sexuality could be manipulated by the law, contrary to England, where the MP’s feared that the articulation in law would awake women’s hidden desires.

But who were the women to be targeted in Finland? I will look closer at one court case, that of the *Herb Grove*, which took place in the rural Eastern Finland in the early 1950s. The case was a rare and sensational trial in its time. It went through all the legal phases from the district court to the Supreme Court. The trials lasted almost four years, from 1951 to 1954. The newspapers in Finland covered the trial in great detail. Pictures from the courtroom were printed

and the names of the accused women were published on the front pages of newspapers even before the sentences were read.

One major difference between the Finnish trial case – the Herb Grove – and the English trial cases – those of Oscar Wilde, Maud Allan and Radclyffe Hall – is that even though all these trials caught the public eye, the women of Herb Grove were not public persons, whereas Wilde, Allan and Hall were well-known already before their trials.

Sisters in Faith

Many of the women's same-sex prosecutions in the 1950s Finland were initiated due to information, not just because of controversies in sexual morals, but rather because of economic disputes or personal clashes in village communities.³⁸ The largest proportion of women's sentences for fornication, twelve, in one year took place in 1951. This was due to two separate trials, that of "Eeva"³⁹ and of the Herb Grove, in both of which more than two women were convicted. Both these trials took place in Eastern Finland and they were closely interconnected.

A couple of months before Eeva's arrest she had moved into the Herb Grove orphan house, which was also known as the *Sisterhome*, because all of its personnel belonged to a religious sect. The Sisterhome was partly abhorred by the local villagers because of the extravagant features of the religious cult. However, it was also respected for the valuable social work that was being done there. The Sisterhome provided not only nurture and nutrition for its

inmates, but also a working place, a school and a dentist.

Eeva had told the police that she had had intimate relations with some of the woman employees of Herb Grove and that the religious rituals practised there were of a criminal nature. The Provincial Police wanted to organise an unofficial hearing so as to avoid undesired publicity and going to court, but the Herb Grove women themselves were not co-operative. They believed that a local competing religious sect was behind the malevolent gossip and urged the police to take action, in order to clear their reputation. A police investigation was ordered, but the prosecutor had to wait for months before the county governor allowed the case to be taken to trial.

The religious sect located at Herb Grove was invented by women. They had built a church, created a doctrine, written and conducted more than 400 religious songs that had been printed as a book, and designed special 'sister' attire. One of their doctrines consisted of oil anointment. In this ritual an inmate's genitals were oiled in order to check whether being at her devotions had made her resistant to secular or 'abnormal' lusts. If the person got sexually excited during the oiling, the ritual had to be repeated. The person who was acting as the oil-provider was seen as a mediator between 'the heavenly healer' Jesus Christ and the 'ill' person. It was this particular ritual that became interpreted as a crime, an 'act of fornication', in the legal proceedings.

Once the police interrogation had started, the police officers transformed the religious vocabulary of the oil anointment ritual into the language of the criminal law system. The police officers who interrogated the suspected women were

local men who had been trained into the profession mainly through work in the field. Their concepts were a mixture of common village knowledge, short police training, legal textbooks and medical and psychoanalytic discourses which were used in 1950s juridical and everyday discourses.⁴⁰ The police officers were uncertain of the nature of this rare crime, so they wanted to write up every detail they could ever think of to serve as evidence of fornication. In a juridical sense, activity or passivity during the act was irrelevant. For the legal authors of the 1950s Finland, ‘fornication’ entailed that a person was “made to expose her genitalia and, thereby making her an object of indecent observation”. Fornication comprised of acts which were “taken up for the purpose of satisfying or arousing one’s sexual drive” (Honkasalo 1960, 47; 71).

Regardless of that, in the police interrogations the most crucial question was which of the accused woman had been on ‘top’ and which one ‘underneath’ during the act. The police officers wanted to define who the seducer was and who the active party was. They also asked whether the women’s ‘seed’ had run.⁴¹ Other questions about very detailed physical things were asked, from the loss of virginity to the menstrual cycle, not to mention the details of the suspected acts and the bodily sensations and practices during the acts.⁴² In this proceeding of police interrogation, a ‘penitent’ and confessing woman was constructed also as a sexually active woman.

Right from the beginning of the police interviews, most of the women, even when they confessed to detailed sexual acts or passionate love, spoke in terms of their religious

doctrines.⁴³ In spite of this, the accused women were apparently aware of the existence of a category of people with same-sex interests. The term ‘homosexualist’⁴⁴ was mentioned a couple of times. The women always excluded themselves from this category of ‘sick’ or ‘sinful’ persons as “that group of people to whom I do not belong”. Only one of the women had linked her actions to the concept of ‘homosexuality’. She said in court that she had “became accustomed to homosexuality”.⁴⁵ However, she never embraced the identity by explicitly stating that she *was* a homosexual.⁴⁶ The concept ‘lesbian’ can hardly be found in Finnish medical journals or criminal law science books in the 1950s.⁴⁷ The concept of ‘lesbianism’ was used neither by the women nor by the police officers.

For the ends to build an effective defence, the defence counsels attempted to apply contemporary psychoanalytical and medical ideas about sexuality. Once the Herb Grove case was taken to the court room, the sexuality of the accused women was linked not only to religious-nationalist discourses of ‘sin’ and ‘indecent’ but also to medical and psychoanalytic discourses on abnormality and pathology. This last rhetoric was pursued by the legal advisers, for the purposes of defence. The attorneys were seeking to represent an image of emotionally soft, hormonally disturbed and mentally sick women as innocent actors in the dangerous field of uncontrolled sexual drives. These ideas, also known as the ‘cure ideology’ in criminology, were somewhat influential in criminal legal science from the 1950s onwards. According to this ideology, ‘homosexuals’ and other ‘pathological’ persons needed to

be treated in hospitals, not locked up in prison. The concept of 'pathology' – that is, the concept of a criminal as a 'sick' person who needs to be cured, not punished – marked here a shift in the criminological discourse in Finland. However, this line of defence did not work in the court room. The judges were acting according to the principles and definitions of the old legal authorities. For them acts were acts: if genital contact and sexual excitement had been proven, then an act of fornication had been committed. Juridical textbooks only introduced the concept of the 'pathological homosexual', a male at that, in the 1960s in Finland.

The Herb Grove trials worked as a language laboratories where religious conceptualisations and shifts in psychiatric, criminological, medical and juridical discourses met.⁴⁸ The convicted women were moving as if in a liminal space: they were not 'homosexuals' since they were not men but they were not 'lesbians' either since lesbians did not exist in Finland at that time in a social or cultural sense. As they were charged by police officers they were thus acknowledged full sexual subjectivity as women, but they were deprived of it again by their defence counsels as members of soft and overtly-emotional 'female gender'. According to the judges the women were not pathological since they were convicted of indecent acts, which demanded from a perpetrator a capacity for rational and moral judgement. The Herb Grove women themselves, however, refused to view themselves as sexual criminals, since they approached their actions from the point of view of their own religious logic.⁴⁹

The newspapers did not use the concept of the lesbian, but wrote about 'sex crimes' and 'indecent acts'.⁵⁰ Some of the national newspapers used the opportunity to provoke a discussion on the demands for reform of the criminal law. There was speculation as to whether the 'sisters in faith' were martyrs in a religious sense or whether they should have been locked up in a mental asylum instead of a prison. Also, it was questioned why same-sex fornication was criminal whilst heterosexual illicit intercourse had been decriminalised in the 1930s.⁵¹

Part of the rhetoric used in the 1950s Finnish trials may have been tactical, for the purposes of defence. Neither the defence counsels nor the police officers used the word 'lesbian'. The language used by all who were involved in the proceedings, including the press, was full of euphemisms, but in a different vein than the language used in the English same-sex trials and parliament discussions in the late 19th and early 20th century. 'Sick' and 'sinful' are not exactly positive words, but they were not used in the Herb Grove case with similar disgust or nationalist chauvinism as in the British context, in Oscar Wilde's, Maud Allan's and Radclyffe Hall's cases.

'Decency' in England and in Finland

Oscar Wilde's "crime" has been widely debated in queer history. Further, Wilde's trials and the meanings of the legal concepts that were used in the court room have been circulated in other legal proceedings on same-sex sexualities in England. Wilde's trials were circulated in

Maud Allan's and Radclyffe Hall's 'lesbian' trials and in the parliamentary debates on women's gross indecency, which were turned on debates on national purity and general sexual morality.

In Finland, The Herb Grove trials worked as a kind of legal language laboratories, but the moralist and nationalist discourses on the 'purity' of the nation and of race that were at stake in the English trial cases and law reform debates were not relevant in Finland. The concept of 'decency' was central in both countries, but the different legal traditions, different social and cultural contexts, different understanding of genders, different time and amount of the public circulation of sexologist's concepts, and difference in the public character of the trials makes the genealogy of 'decency' extremely different in England and in Finland.

In England, women's same-sex sexuality has been discussed through Wilde and in connection to Wilde, not as a legally recognised criminal act on its own.⁵² English legislators wanted to believe that women's unnatural drives were kept under control as long as women were kept ignorant of the 'vice'. In Finland, the legislators thought it was better to have a tool to regulate women's 'unnatural' practices than to keep silent on women's active sexual possibilities. Women in rural Finnish society needed not to be safeguarded from something that they were perceived to be already familiar with.

Finnish women were not perceived as passive sexual objects to the degree they were seen in British legal debates. In comparison to industrial British society of the late 19th and early 20th century, Finland was an agrarian country in the

1950s. The concept of a male 'homosexual' was recognized in everyday language and in criminal legal science from the 1950s, but the social and cultural category of 'lesbian' was borne in Finland maybe only as late as in the 1970s. In the 1950s, heterosexual marriage was the social, linguistic and cultural norm. In this context, religious language and spiritual all-women communities provided the social, cultural, conceptual and mental framework for rural middle and lower class women with same-sex sexual interests.

The juridical interpretation of 'same-sex fornication' in Finland changed over the decades since the late 19th century until the 1950s. However, the nature of fornication remained the same, an act, but what it constituted was disputed. The different interpretations of fornication were related to the different views and values that the leading authors of criminal legal science posited. For the legal authors of the 1950s, even gazing could be seen as an act of fornication, in 'indecent' situations. The act was thus located in the brain, from where the fornicating pleasure transferred to the genitals. Such a definition of an act left the judges in a difficult situation: how to judge a person's mental state, and how to get evidence of what excites, pleasures or satisfies whom.

The 1950s Finnish women's same-sex 'fornication' trials took place in the 'periphery', in a rural setting in a remote village in the eastern borderlands of Finland, not in Helsinki or in another big industrial city. The juridical scene was set up in rural framework, in villages and in small towns. 'Ordinary' lives in the seemingly peaceful country-

side were turned, for a moment, into the extraordinary, in the eye of the law. Although women's same-sex 'fornication' trials, particularly that of Herb Grove, were publicised in Finland, they did not cause a remarkable conceptual change in post-trial medical or criminological discourses. In Eastern Finland, there were three other women's same-sex fornication trials in the same area in the same time period (Sorainen 2005, 6 7). None of the three other cases became public. Eeva's case predated and was technically connected to the Herb Grove case.⁵³ In the two other court proceedings, Herb Grove was not even mentioned.

Elderly people in Eastern Finland and in the legal profession remember the Herb Grove trials even today, but there are no traces of the case to be found in the legal text books or in the research. A legal closet was created.

In the public eye, the women of Herb Grove were left in peace after the trials in Finland, whereas the well-known characters of Oscar Wilde, Maud Allan and Radclyffe Hall were never forgotten in England. Their personalities have, ever since the trials, served as testing grounds for the application, circulation and innovation of legal conceptualisations of same-sex sexualities.

Notes

1. Many thanks to Tuula Juvonen for her editorial comments on the earlier drafts, to Juulia Jyränki for excellent comments, and for Matthew Billington for the language revision.

2. Hayden White (1987, 12 13).

3. That is, in the UK. See Weeks (1989, 103); cf. Sorainen (1999, 61).

4. Weeks (1977, 104 106); see also Vicinus (2004, 219 221).

5. From 1894 to 1924 persons accused of this crime were compiled in the same statistics as persons accused of 'bestiality'. 'Bestiality' was a typical male crime (Träskman 1990, 261). Cf. Rydström (2001; 2003) on 'bestiality' and same-sex fornication in Sweden. In Finland, only five women were accused of 'bestiality' in the 20th century, and two of them were convicted. A Finnish historian Jan Löfström has studied the trial documents of four of these five female cases, and as far as I know these cases were actually about 'fornication with a person of the same sex'. From 1924 to 1938 the statistics did not differentiate between men and women. See Hirvonen (2006) on women's same-sex fornication cases from 1946 to 1959 in Finnish district courts.

6. I am using a pseudonym in order to protect anonymity of those women who were involved in the case. Unlike Oscar Wilde, Maud Allan and Radclyffe Hall, the women of the Herb Grove were and are not public figures in Finland.

7. The attempts to tighten up sexual regulation in Europe was connected to popular campaigns by the Social Purity Movement in the context of debates on white slavery and child prostitution (Waites 2002, 325; de Vries 2005, 44 45.)

8. *Le Code Napoléon de 1810*, art. 330fg.

9. The example of the presumed sexual excesses of the French revolution remained, however, a standard staple of sexual-political discourse in the Netherlands until the beginning of the twentieth century (Hekma 1999, 84). After the era of sodomy legislation in the continental juridical tradition, the Netherlands was one of the few countries in Europe that criminalized 'fornication' between women in the 20th century. From 1911 to 1971, 'same-sex fornication with a minor' (16 21 years) was decreed punishable by imprisonment for a maximum period of four years. The statute included acts between women.

10. The criminalisation of same-sex fornication in Finland in 1889 will be addressed in more detail in the chapter titled *Same-Sex Fornication in Finnish Legislation*.

11. Cf. Liliequist (1998) on sanctions on bestiality in early modern Sweden.

12. The age of consent for girls rose from twelve in 1861, to thirteen in 1875 and to sixteen in 1885 (Weeks 1989, 94 95, supranote 24; Waites 2002, 325 327).

13. See Bravmann (1997) on queer fictions and Sorainen (1999) on mis/readings of Oscar Wilde's trials in queer historiography.

14. Cf. Foldy (1997, 168). See also Sinfield (1994) on Oscar Wilde and effeminacy in the 20th century.

15. Cf. Foldy (1997, 87) who argues that it was not until the 1940s and 1950s "that medical accounts of the pathological 'pervert' tended to replace the older, essentialist concepts of the 'invert'".

16. Similarly, in Finland, a number of men's same-sex cases were tried under the rubric 'crimes against chastity' in the 1950s. I have not come across any women's same-sex cases under that rubric in the reported crime of Eastern Finland city police district 1950 1953 or of the county police district 1950 1959 that I have been studying (*District Archives*).

17. Until the Sexual Offences Act 1967 that partially decriminalized consensual homosexual acts in private in England and Wales, all sexual behaviour between men was illegal as 'gross indecency' or 'buggery' (England and Wales only) or 'sodomy' (Scotland only) (Waites 2002, 326). See Moran (1996) on the *Wolfenden Committee's Report*.

18. The book in question was Krafft-Ebing's (1886) *Psychopathia sexualis*.

19. Cf. Ruth Benedict (1983, 127), a famous anthropologist of modern cultures: "By the beginning of the twentieth century... [N]ationalism was the juggernaut before which all lesser causes became unimportant. Class rivalries and minority conflicts were crushed before it at every

crisis."

20. See Waites (2002, 329 330) on a long series of attempts to tighten legislation on sexual offences after the First World War in England.

21. Laura Doan (1997), a British professor of cultural history and sexuality studies has suggested that the motivation for the proposed law derived from antagonism towards women entering the police service (cf. Waites 2002, 328). The 1921 proposal was preceded by a note-passing incident in 1920. The Joint Select Committee on the Criminal Law Amendment Bill heard a London Police Magistrate as an expert witness. This witness, Cecil Maurice Chapman, passed a note to the Chairman of the Committee, in which he suggested that the Criminal Law Amendment Bill should be extended to cover acts of 'gross indecency between women'. However, Doan (1997, 533 535) argues that this proposal may not have primarily constituted a direct attack on women's 'homosexuality' but a pragmatic strategy enacted against certain individual women or movements to achieve certain larger political aims. The background of the proposal lies in the power struggles inside the police forces; between the Metropolitan Police and the women police corps (ibid.).

22. *Hansard* (House of Commons Daily Debates. Official Report. 5th Series, 1921, Vol. 145, col. 1799).

23. *Hansard* (House of Commons Daily Debates. Official Report. 5th Series, 1921, vol. 145, col. 1800). See Waites (2002, 329) on Mr. Macquisten's role in the debate on the Criminal Amendment Act 1922, which created a minimum age for 'indecent assault' between women in England.

24. *Hansard* (House of Commons Daily Debates. Official Report. 5th Series, 1921, vol. 145, col. 1801 1803). The book in question was Havelock Ellis's *Studies in the Psychology of Sex* (1910).

25. *Hansard* (House of Lords Daily Debates. Official Report. 5th Series, 1921, vol. 46, col. 573).

26. *Hansard* (House of Lords Daily Debates. Official Report. 5th Series,

1921, vol. 46, col. 573).

27. *Hansard* (House of Lords Daily Debates. Official Report. 5th Series, 1921, vol. 46, cols. 567 578).

28. See Waites (2002, 329 330).

29. *Hansard* (House of Commons Daily Debates. Official Report. 5th Series, 1921, vol. 145, col. 1805).

30. According to a North-American scholar of lesbian history, Martha Vicinus (2004, 220 221): “[T]he race”, heterosexual British citizens, needed to procreate and would therefore always understand same-sex love as a phase or as an aberration. This became the paradigmatic medical and legal position until the gay liberation movement of the 1970s.”

31. According to Vicinus (2004, 220), the judge found the book deeply immoral because of its positive portrayal of cross-age same-sex love.

32. *The Well of Loneliness* was influenced by Havelock Ellis’ theories on sexual inversion and active masculine lesbian, which made later lesbian readers have complex feelings about it (Vicinus 2004, 205).

33. Between those very years – from 1918 to 1928 – all women over twenty-one received the vote, and professional and educational opportunities, most importantly law and accountancy, were gradually opened up to women in England (Hamer 1996, 75).

34. See Hepolampi (1999) on lesbian representations in translations in Finland. Kati Mustola (1996, 94), a pioneer in Finnish lesbian studies, has pointed out that the interesting question is whether Finnish lesbian identities have been constructed along different lines than the ‘radclyffehallian’ prototype of the masculine lesbian, as the image of butch has not dominated the process of construction (ibid., 98). It seems, says Mustola (ibid.), that hints to women’s same-sex relationships in Finnish literature have not been grounded in the masculine-feminine couple.

35. The concept of ‘absolute morals’ by Armas Nieminen (1951) is just

another term for the old Judeo-Christian tradition, in which all forms of sex which not lead to procreation were condemned. (Cf. Weeks 1977, 4.) It should be noticed, though, that the Judeo-Christian tradition was not one, but was moulded in a political combat between authoritative theologians, and was applied by state legislations in different degrees.

36. See Wahlberg (1997) on the Hegelian impact on the early Finnish criminal law science.

37. Jaakko Forsman even pointed out to his students that a case “where man is forced into sexual intercourse by woman technically can not be subsumed in the section which criminalizes rape as a violation of woman’s bodily integrity” (Aspegrén & Saxen 1917, 626; quoted in Löfström 1998, 17).

38. See Hirvonen (2006, forthcoming) for questions of evidence in women’s same-sex fornication trials from 1946 until 1959 in Finnish district courts.

39. I am using a pseudonym in order to protect Eeva’s anonymity. In the first trial, Eeva, a 31-year-old divorced mother with four children stood in the court charged with perjury and eight charges of fornication with a person of the same sex. The police had discovered Eeva’s same-sex activities during her divorce trial process. She had confessed to having ‘fornicated’ with several women while gallavaganting around the country. Five of her alleged accomplices were also accused; two of them were sentenced to six months imprisonment suspended for a three-year probation period. Eeva herself was sentenced to four years penitentiary and to a forfeiture of her civil rights for nine years. This sanction was, according to authors of criminal law science, meant to signify that the person was no more to be trusted as a responsible member of society (Honkasalo 1953, 157 161). Eeva also had to face a forensic examination in which her mental faculties were investigated. *District Archives* (Trial documents of Eeva).

40. See Sorainen (2005, 55 67) on the history of police training on same-sex sexualities in Finland.

41. In the contemporary everyday Finnish, ‘seed’ [*siemen*] refers to

vegetable seeds and flower seeds, but in old medical and religious language also to sperm.

42. *Supreme Court* (1948 1960. Trial documents of Herb Grove).

43. Cf. Vicinus (2004, 86; 229) on the history of erotic friendships of educated English and American women: “Women did not need the new, modern language to recognize their desires [...] women used the language of religious love to explain their passionately erotic and spiritual feelings. Surviving letters between women testify to a profound trust in the language and precepts of faith to express the spiritual and erotic longings aroused by human love. A spiritual language could both conceal and reveal, providing an acceptable public face, while allowing lovers to speak a private code to each other.”

44. The concept of “homosexual” was a neologism – the use of the term is still unstable in the contemporary Finnish.

45. The woman in question had been treated by a doctor for her ‘homosexual tendencies’ and had probably learned the medical term while in treatment. *Supreme Court* (1948 1960. Trial documents of Herb Grove).

46. *Supreme Court* (1948 1960. Trial documents of Herb Grove).

47. For example, in the leading medical journal of Finland (Duodecim), there are no articles in the years 1950-1959 in which the term lesbian was used.

48. In Finland, a new castration law from 1953 was actively put in use in sexual offence cases. The head mistress of Herb Grove was nominated for castration by the public prosecutor, but the medical board withdraw the charge. *Supreme Court* (1948 1960. Trial documents of Herb Grove).

49. District Archives (Trial documents of Eeva); Supreme Court (1948 1960. Trial documents of Herb Grove).

50. See Sorainen (1996, 198 201).

51. *Supreme Court* (1948 1960. Trial documents of Herb Grove).

52. Cf. Waites (2002) on the lesbian age of consent.

53. See chapter *Sisters in Faith*.

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