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Marxism and Homosexual Liberation

Magnus Hirschfeld's Relations with the Social-Democratic Party of Germany and the Early Soviet Government

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Abstract

The decriminalisation of homosexuality was a measure originally adopted by the bourgeois revolutions, which was abandoned by the bourgeois parties as the rise of the labour movement led the bourgeoisie to seek a compromise with landlords, clergy and monarchy in different countries. The demand to decriminalise homosexuality was therefore taken over by the Marxist workers' parties, such as the Social-Democratic Party of Germany before the First World War and the Bolshevik Party in Russia after the Revolution of October 1917. This article outlines the cooperation between the Scientific-Humanitarian Committee led by Magnus Hirschfeld and Social Democracy to decriminalise homosexuality by removing Paragraph 175 of the German Penal Code before the First World War. It also describes the decriminalisation of homosexuality in Russia under Lenin, with the adoption of the first Soviet Penal Code in June 1922, and Magnus Hirschfeld's relations with prominent figures of the early Soviet government such as N.A. Semashko, the first People's Commissar of Public Health, and Anatoly Lunacharsky, the first People's Commissar for Education. Those ties ceased with the Nazis' rise to power in January 1933, which resulted in the destruction of the institutions created by Hirschfeld, such as the Institute for Sexual Science and the World League for Sexual Reform, while in the Soviet Union itself Stalin recriminalised homosexuality in March 1934, shortly before Hirschfeld's death, linking homosexuality and fascism.

Keywords

Marxism – homosexuality – Social-Democratic Party of Germany – Bolshevik Party

Introduction

It is relatively well-known among Marxist and LGBTI militants and scholars that the Bolshevik government decriminalised homosexuality in 1922 and that Stalin recriminalised it in 1934, and those unfamiliar with these facts should begin by reading Dan Healey's masterly work *Homosexual Desire in Revolutionary Russia: The Regulation of Sexual and Gender Dissent*.¹ The problem for Marxists trying to understand the reasons for the decriminalisation of homosexuality by the early Soviet regime is that, given the absence of references to the subject not only in Marx and Engels' works, but also in those of Rosa Luxemburg, Clara Zetkin, Lenin, Trotsky and the rest of the authors of the Marxist canon, this measure adopted by the Bolshevik government, which indeed placed it at the forefront of homosexual liberation at that time, appears as a bolt from the blue, i.e. as a decision not anchored in the Marxist tradition. The purpose of the present article is to fill the gap in the scholarship that gives rise to that impression.

Our study attempts to show that there was a longstanding collaboration between the pioneers of homosexual liberation in Germany, namely Magnus Hirschfeld and the *Wissenschaftlich-humanitäres Komitee* (Scientific-Humanitarian Committee), and the Social-Democratic Party of Germany (*Sozialdemokratische Partei Deutschlands* or SPD), which before the First World War defined itself as a Marxist workers' party. Their collaboration centred around the issue of the decriminalisation of homosexuality through the elimination of Paragraph 175 of the German Penal Code, which in a perverse twist penalised both homosexual relations and bestiality (sex with animals). This article will document the legislative efforts of the SPD in the Reichstag, the parliament of the Second German Empire, to eliminate Paragraph 175, as well as the debates around this issue both in the journal of the Scientific-Humanitarian Committee, the *Jahrbuch für sexuelle Zwischenstufen unter besonderer Berücksichtigung der Homosexualität* (*Yearbook for Intermediate Sexual Stages with Special Consideration of Homosexuality*), and in the Social-Democratic press, particularly in the party daily *Vorwärts* and in the theoretical organs of the revolutionary and reformist wings of the party, *Die neue Zeit* and *Sozialistische Monatshefte* respectively. The thesis of this article is that the Bolsheviks derived their views on the decriminalisation of homosexuality from this historical experience, transmitted to the Marxist working-class parties of the other countries through the links forged by the Second International (1889–1914).

1 Healey 2001.

The collaboration between the Scientific-Humanitarian Committee and the SPD raises the question of why the first nationally-organised homosexual liberation movement found support in a working-class party whose theoretical founding fathers had not pronounced themselves either publicly or privately on this issue, and not in the liberal parties that traced their roots back to the bourgeois revolutions, which had decriminalised homosexuality. We argue that this paradox was due to the fact that the liberal parties overwhelmingly abandoned the demand for the decriminalisation of homosexuality, along with a host of other democratic demands, when the rise of the labour movement led the bourgeoisie to seek a compromise with landlords, clergy and monarchy, particularly in the two countries under consideration in this study, Germany and Russia. The demand to decriminalise homosexuality was therefore taken over, along with other planks of the democratic programme, like the republic and the replacement of the standing army by a people's militia, by the Marxist workers' parties, such as the Social-Democratic Party of Germany before the First World War and the Bolshevik Party in Russia after the Revolution of October 1917. We will show that the SPD and the Second International did something similar with regards to the organisation of working women around the demand for universal female suffrage, an effort out of which International Women's Day was born in 1910. The differences between the SPD's approaches to women's liberation and homosexual liberation will also be analysed.

The purpose of this article is therefore to describe the background to the early Soviet government's decriminalisation of homosexuality. This will force us to focus on Germany rather than on Russia before the First World War, which is not paradoxical given the internationalism of the Marxist organisations. After the First World War, although the article also deals with the relations of the SPD and the *Kommunistische Partei Deutschlands* (Communist Party of Germany, KPD) with Magnus Hirschfeld's new Institute for Sexual Science (*Institut für Sexualwissenschaft*), it shifts its focus to Russia and the newly-created republics of the Soviet Union. Throughout these sections we make extensive use of Manfred Herzer's masterly biography *Magnus Hirschfeld und seine Zeit*, the third edition of a book that is the product of a lifetime of work by a specialist on the subject.²

2 Herzer 2017. Herzer was also the editor, from 1987 to 2019, of *Capri – Zeitschrift für schwule Geschichte* (*Capri – Magazine for Gay History*). While many historians in this field are Foucauldians who reject any form of class analysis, although wage slaves constitute the vast majority of members of the LGBTI community, Herzer is the exact opposite. The original title of his book was more colourful and accurate: *Magnus Hirschfeld. Leben und Werk eines jüdischen, schwulen und sozialistischen Sexologen* (*Magnus Hirschfeld: Life and Work of a Jewish, Gay and Socialist Sexologist*), Frankfurt am Main: Campus Verlag, 1992.

In order to describe the decriminalisation of homosexuality by the early Soviet government in 1922 and its recriminalisation by Stalin in 1934, we briefly summarise the main findings of Dan Healey's work, but at the same time take issue with his characterisation of the anti-sodomy paragraphs of the Penal Codes of the Central Asian Soviet republics in the 1920s, which Healy attributes to a combination of survivals of homophobia and a colonialist mentality among Russians in the backward regions of the Soviet Union. We will attempt to show that this legislation was the product of an attempt to struggle against the practice of male prostitution involving minors in these regions. The Soviet government did not regard prostitution as 'sexual work' but as the most brutal form of exploitation and therefore fought against both male and female prostitution. This does not imply that there were no contradictions in the Soviet regime's policies towards homosexuality; our purpose is merely to point out that on this issue the Foucauldian and Marxist points of view do indeed lead to different analyses of the same historical process, as well as to indicate that the subject deserves further investigation.

To recapitulate: this article focuses on the SPD's relationship with the early homosexual-liberation movement and, regarding the early Soviet government in 1922, it attempts to show that the decriminalisation of homosexuality was not a bolt from the blue but the application of a policy elaborated by the Marxist workers' parties in the late nineteenth and early twentieth centuries, as part of a more general practice of taking over the democratic demands abandoned by the bourgeois parties. The recriminalisation of homosexuality by Stalin in 1934, in turn, was part and parcel of the counterrevolutionary process that led to the wholesale elimination of the Bolshevik 'old guard' in the Great Purges of 1936–8, and ultimately to the break-up of the Soviet Union and the restoration of capitalism.

The Decriminalisation of Homosexuality in the Bourgeois Revolutions

The decriminalisation of homosexuality began with the bourgeois revolutions. The first step in this process was the abolition, not of anti-sodomy legislation in general, but of the death penalty for homosexuality. In the thirteen English colonies that established the United States of America in 1776, this was a consequence of the American Revolution. As a result of the revolution, according to the historian Louis Crompton, 'the tradition of making sodomy a capital offense came to an end'. In Pennsylvania

'An Act Amending the Penal Laws' was passed on September 15, 1786, with a provision that anyone convicted of 'robbery, burglary, sodomy, or beggary' should suffer, not death, but the forfeit of all his lands and goods and servitude for a term 'not exceeding ten years.' During the post-Revolutionary period other states followed the lead of Pennsylvania whose code and penal practices provided a kind of national model.³

The Southern states, where plantation slavery prevailed until the Civil War, offered the most resistance to these reforms.

In *ancien régime* France, male homosexuality, legally defined as 'sodomy', was penalised by the stake, and, although this penalty was rarely applied, as late as 6 July 1750, two homosexuals, called Bruno Lenoir and Jean Diot, were hanged and burned at the Place de Grève in Paris because they were found having consensual sex on a January night in the Rue Montorgueil. As both were workers (*ouvriers*), with no connections to the court or to the ruling classes, the authorities publicly executed them as a warning to other homosexuals.⁴ Criticising this remnant of medieval barbarism, some of the *philosophes* of the Enlightenment, such as Helvétius, Condorcet and Diderot, undermined the Catholic Church's condemnation of sodomy, noting that the ancients saw nothing dishonourable in 'Greek love' and decrying the cruel punishment that law prescribed for it, thus contributing to its decriminalisation by the French Revolution.⁵

Revolutionary ideas on the decriminalisation of homosexuality were finally embodied in the Penal Code adopted by the French Constituent Assembly in 1791, which repealed the French laws against sodomy by simply failing to mention homosexuality as a punishable crime, like the Soviet Penal Code in 1922. The French Penal Code of 1791 did not include any sexual offence other than rape, which French jurisprudence defined as an aggression whose victim

3 Crompton 1976, p. 285.

4 'Bref, l'exécution a été faite pour faire un exemple, d'autant que l'on dit que ce crime devient très commun et qu'il y a beaucoup de gens à Bicêtre pour ce fait. Et comme ces deux ouvriers n'avaient point de relations avec des personnes de distinction, soit de la cour, soit de la ville, et qu'ils n'ont apparemment déclaré personne, cet exemple s'est fait sans aucune conséquence pour les suites.' Edmond Jean François Barbier, *Journal historique et anecdotique du règne de Louis xv*, publié pour la Société de l'histoire de France d'après le manuscrit inédit de la bibliothèque nationale par A. de la Villegille, Paris: Jules Renouard et cie., 1847, tome troisième, p. 149.

5 Ragan, Jr., 1996, pp. 21–5.

was necessarily a woman.⁶ The same happened with the Penal Code of 1810, adopted under Napoleon.

When the correctional courts condemned homosexuals, they did so for 'public crimes against decency', that is to say, for the same reasons that they condemned men and women who had sex in public. The penalty for this crime was usually several weeks of imprisonment and/or expulsion from their place of residence. Napoleonic courts seldom tried homosexuals: there were only four known cases, three of which involved men who sexually harassed minors. The number of documented cases is extraordinarily low for a country of 30 million inhabitants over a period of twenty-five years, which means that the overwhelming majority of French homosexuals must have conducted their sexual life completely free of police harassment and legal proceedings. The revolutionary and Napoleonic eras were a time of relative freedom for French homosexuals.⁷ Under French influence, Spain, the Italian states, the Netherlands, and, after 1830, Belgium, also decriminalised sodomy.⁸

Despite the combined character of the American Revolution (its leadership included not only Northern capitalists but also Southern slaveowners), it shared with the other bourgeois revolutions of the eighteenth and nineteenth centuries the theory of natural right as its ideological foundation. According to this theory, what we today call human rights are derived from the existence of an immutable human nature common to all people. The Declaration of Independence famously begins by stating: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights', etc. The French Revolution was also based on the theory of natural right; the first article of the Declaration of the Rights of Man and of the Citizen adopted by the National Constituent Assembly in 1789 says: 'Men are born and remain free and equal in rights.' This ideology provided the theoretical foundations for the democratic programme enacted by the bourgeois revolutions, as well as for the first proto-feminist writings demanding equality of civic and political rights for women, such as Judith Sargent Murray's 'On the Equality of the Sexes' (1790), Olympe de Gouges's *Déclaration des droits de la femme et de la citoyenne* (1791) and Mary Wollstonecraft's *A Vindication of the Rights of Woman* (1792).

Marxism differs both programmatically and ideologically from liberalism, which aspires to extend to homosexuals (and, via feminism, to women) 'the

6 Assemblée Nationale Constituante de France, *Décret concernant le Code Pénal du 25 septembre 1791*.

7 Sibalis 1996.

8 Beachy 2010, p. 807.

Rights of Man and of the Citizen' proclaimed by the bourgeois revolutions. The ideological foundation of Marxism is not the theory of natural right but the materialist conception of history, and it therefore sees the emancipation of women and homosexuals as a product of the revolutions in social and family relations operated by the capitalist mode of production. We will return to this subject in the section of the article that compares the treatment of women's and homosexual liberation by the SPD before the First World War.

The Criminalisation of Homosexuality in Prussia and the Second German Empire

In the German states during the Middle Ages, the crime of sodomy (*Sodomiterey*) was punishable by death. After the French Penal Code of 1791 decriminalised homosexuality, Prussia introduced the Code of 1794 (*Allgemeines Landrecht für die Preußischen Staaten*), which reduced the penalty for homosexuality from death to imprisonment and exile. As part of his conquests, Napoleon exported the Penal Code to the territories annexed to the west of the Rhine, where its validity was maintained until the introduction of the German Penal Code on 1 January 1872, as well as to the Netherlands. Bavaria also followed the French model, and in its Code of 1813 homosexual relations were decriminalised, except in cases where force was applied or where the sexual relations involved children under the age of twelve. By 1848 other German states, including Württemberg, Baden, Hanover and Brunswick, had followed suit. In Prussia, from 1 July 1851, the penal part of the Code of 1794 was replaced by the Penal Code for the Prussian States (*Strafgesetzbuch für die Preußischen Staaten*), which stipulated as a punishment for 'unnatural fornication' (*wider-natürliche Unzucht*) the temporary deprivation of civil rights – instead of exile – in its paragraph 143.⁹ Besides Prussia, a few other German states, such as the Kingdom of Saxony and the city-republics of Hamburg and Bremen, also maintained punishments for sodomy. Austria's anti-sodomy law generally mirrored the Prussian statute but was unique in German Central Europe for also criminalising sex between women.¹⁰

After Prussia's triumph in the Austro-Prussian War of 1866, the traditional party of the liberal bourgeoisie, the German Progressive Party (*Deutsche Fortschrittspartei*), split into a right wing, the National Liberal Party, which abandoned the historical programme of liberalism for the sake of a compromise

⁹ Thiele 1909a, p. 1787.

¹⁰ Beachy 2010, p. 807.

with the *Junker* (aristocrats) and the Prussian dynasty. The left wing formed in 1884 the German Liberal Party (*Deutsche Freisinnigen Partei*), which split again in 1893 when a fraction sought a compromise with the monarchy. The result of this progressive abandonment of the revolutionary programme by the parties of the German bourgeoisie was that a series of democratic demands (such as the republic, universal suffrage, the militia, the legal and political equality of women, the separation of church and state, the decriminalisation of homosexuality, etc.) were taken over by the political organisation of the workers, the then Marxist Social-Democratic Party of Germany.

Beginning in 1868, deliberations began on a Penal Code for the North German Confederation, created as a result of Prussia's triumph in the Austro-Prussian War. On that occasion, the government assembled a *Deputation für das Medicinalwesen* (Deputation for the Medical Sciences) to which famous doctors such as Rudolf Virchow and Bernhard von Langenbeck belonged, so that they could pronounce on paragraph 143. In its report of 24 March 1869, the commission declared itself 'unable to find reasons why, while other types of fornication do not appear in the legislation, sex with animals or between men is punished'.¹¹ However, the commission's ruling was rejected because 'public opinion' allegedly would not have accepted it, and paragraph 143 of the Prussian Penal Code reappeared in the draft of the Penal Code for the North German Confederation as paragraph 152.¹²

On 1 January 1871, after the German triumph in the Franco-Prussian War, the Second German Empire was proclaimed under the leadership of Kaiser Wilhelm I and the Chancellor Otto von Bismarck. The new state adopted a Penal Code based on the Penal Code of the North German Confederation, which had entered into force the previous year. Paragraph 175 of the new Imperial Penal Code (*Reichsstrafgesetzbuch*), which was adopted without debate by the Reichstag in 1873, read as follows: 'Unnatural fornication [*widernatürliche Unzucht*] committed between persons of male sex, or between men and animals, shall be punished with a jail sentence, civil rights may also be withdrawn.' Thus, besides conflating homosexuality and bestiality,¹³ consensual sex between men was recriminalised in places like Bavaria and Hanover. The minimum punishment was reduced from six weeks to one day, while the maximum

11 The *Gutachten der Königlichen wissenschaftlichen Deputation für das Medicinalwesen. Berlin, 24. März 1869* (Report of the Royal Scientific Deputation for the Medical Profession. Berlin, 24 March 1869) was reproduced in Kertbeny 1869b, pp. 6–10.

12 Thiele 1909a, p. 1487.

13 In 1905, 860 men were arrested and 605 were convicted in Germany under paragraph 175. 'Of the arrests, 374 were for sodomy and 486 for bestiality, and of the convictions, 289 were for sodomy and 316 for bestiality' (Fout 1992, p. 266).

penalty continued to be six months. The loss of civil rights could result in the loss of the title of Doctor or the prohibition upon taking part in elections.

Karl Marx and Friedrich Engels on Karl Heinrich Ulrichs

The founders of Marxism have been accused of homophobia in an article on the Lassallean leader Johann Baptist von Schweitzer, whose author described him as ‘the queer that Marx loved to hate’.¹⁴ In May 1862, Schweitzer had been arrested in a park in Mannheim for having homosexual relations with a teenager.¹⁵ In addition to the gratuitous claim that Marx, in a letter dated 10 March 1865, tried to induce Engels to circulate homophobic jokes about Schweitzer in order to tarnish his reputation, the main evidence adduced by Kennedy to accuse Marx and Engels of homophobia is a letter from Engels to Marx, dated 22 June 1869, where Engels scorned ‘the paederasts’ after reading a brochure by Karl Ulrichs.¹⁶

Karl Heinrich Ulrichs (1825–95) was a German lawyer, journalist, publisher, writer, pioneer of sexology and one of the first known campaigners for legal equality for homosexuals. He researched and published, under the pseudonym Numa Numantius, on same-sex love, which he called ‘uranism’ (*Uranismus*), and advocated the possibility of legal marriage between two men, which he called ‘Uranian marriage’ (*urnische Ehe*), since the word ‘homosexual’ did not yet exist at that time. In *Vindex*, the first of his writings on homosexuality, published in 1864 and entitled *Forschungen über das Rätsel der mann männlichen Liebe* (*Researches on the Riddle of Male–Male Love*), Ulrichs for the first time posited the existence of a ‘third sex’ (*drittes Geschlecht*) whose nature is inborn.¹⁷

This idea became the basis for Magnus Hirschfeld’s later writings on homosexuality. Indeed, the second edition of Ulrichs’s *Vindex* was published in 1898 with a foreword by Hirschfeld; the title of this edition reads in English

14 Kennedy 1995.

15 In a paragraph of his autobiography not included in the English version, August Bebel, who was critical of Schweitzer because of his behind-the-scenes deals with Bismarck, criticised, not the fact that he was homosexual, but that he was caught having sex in a public place with a minor: ‘No matter how freely one may think about same-sex love [*gleichgeschlechtliche Liebe*], it was under all circumstances a dishonour to try to satisfy it in a public park in broad daylight and with school-age boys [*schulspflichtigen Knaben*]’ (Bebel 2016, p. 211).

16 Engels 2010.

17 Ulrichs 1898, p. 25.

translation: *'Vindex.' Social-legal studies on male–male sexual love. First writing on male–male love. Proving, I. That it deserves just as little persecution as the love for women; II. That it cannot be legally prosecuted under the existing laws of Germany*, by Carl Heinrich Ulrichs (Numa Numantius), formerly Royal Hanoverian judicial official, with a preface by Dr Hirschfeld, doctor in Charlottenburg. Hirschfeld praised the work highly, particularly its attribution of 'male–male love' to an inborn biological condition:

Much research and writing has been done in this branch of science since Ulrichs's first appearance, but hardly any new points of view have been added, and many an author to whom these works were not available will now be amazed at how views are not only hinted at here, but rather worked out, which he regarded as completely new. This is especially true of the biological-embryological explanation of the contrary sexual sensation [*konträren Sexualempfindung*].¹⁸

On 29 August 1867, at a jurists' congress in Munich in front of more than 500 lawyers, alongside representatives of the royal Bavarian house and the Chamber of Deputies, Ulrichs publicly complained that the motion submitted by him and the Professor of Jurisprudence Dr Tewes from Graz had been removed from the agenda because it demanded 'that innate love for persons of the male sex should only be punished under the same conditions under which love for persons of the female sex is punished'. It was not just a question of 'the final abolition of an unjust criminal provision that has come down to us from earlier centuries' which resulted in 'the persecution of a guiltless class of people', but also of putting an end to an 'abundant source of suicides, and moreover of suicides of the most terrible kind'. Ulrichs was prevented from concluding his speech by the protests of the lawyers present.¹⁹

Ulrichs lived in Hanover, where homosexuality had not been criminalised until it was annexed by Prussia on 1 October 1866, immediately after the Austro-Prussian War. Subsequently Ulrichs addressed numerous petitions to the government to decriminalise homosexuality, which were equally neglected. Instead of the desired liberalisation, he had to witness increasing state repression against homosexuals after the creation in 1871 of the Second German Empire. In 1880 he therefore went into exile in Italy, where homosexuality was not a criminal offence, and died there in 1895.²⁰

18 Hirschfeld 1898a, p. 8.

19 Hirschfeld 1898a, pp. 10–12.

20 Kennedy 1997.

In his letter to Marx of 22 June 1869, Engels does not refer to Ulrichs's general theory on the 'Urning' (homosexual), but to the specific brochure that Marx had sent him, entitled *Incubus. Urningsliebe und Blutgier*.²¹ *Incubus: Uranian Love and Blood Thirst* is an attempt to explain the causes that induce certain men to commit rape and the murder of children. The particular incident that led Ulrichs to write this brochure was the case of the Prussian army lieutenant Carl von Zastrow, who in January 1869 was accused of the sex-murder of a 16-year-old boy and the attempted sex-murder of a 6-year-old boy named Emil Hanke. A direct link between the alleged sex-murder and Ulrichs's *Urning* theory was established, since Ulrichs's booklets were found in Zastrow's house, and Zastrow himself, during police interrogation and in court, declared that he was an Urning and a member of the third sex.²²

Ulrichs, who made it clear that he was not advocating acts of child rape and paedophilia accompanied by murder, nevertheless pleaded for mercy for such criminals on the grounds that they behaved in that way due to a 'defective natural disposition' (*fehlerhafte Naturanlagen*) or a 'pathological affection of the mind' (*krankhafte Gemütsaffection*) as he called it.²³ Ulrichs attempted to use the argument of his previous studies on the 'Uranian' (gay) male as a product of a natural disposition that makes him feel attracted to people of the same sex in order to prove that violent paedophiles should not be treated as criminals but as spiritually sick people, who cannot control the innate nature of their sexuality any more than a 'Uranian' or a 'Dionian' (*Dioning*), i.e. a heterosexual. According to Ulrichs: 'The Zastrow case is closely related to the sexual nature of the Urning that loves men' (*Der zastrow'sche Fall steht in engster Beziehung zur Geschlechtsnatur des mannliebenden Urnings*) because 'sometimes there is a longing, a wild and disordered desire in certain people to commit cruelties and to see blood flow without a clear reason, a thirst for blood that, apparently, goes far beyond a responsible mental state, and at the moment when it is present seems to press hard on the soul of the individual, like an incubus rising from the realm of darkness'.²⁴

In the course of his analysis, Ulrichs described fifteen cases of sexual 'perversion' in addition to the Zastrow case, many of which involved senior men of high rank in German society. Ulrichs wanted to highlight the brutality of these cases in order to prove his hypothesis that the behaviour of their perpetrators was uncontrollable. Therefore, he argued, the courts should not punish

21 Ulrichs 1869.

22 Herzer 1986, p. 12.

23 Ulrichs 1869, pp. 37, 39.

24 Ulrichs 1869, pp. 75, 49.

these people, but rather look for other means to curb that behaviour. It is for this reason that Engels described the work as something ‘very curious’ involving ‘extremely unnatural revelations’: he was not commenting on homosexuality in general, or on Ulrichs’s militancy in favour of the decriminalisation of homosexuality, but on the phenomena of violent pederasty described in *Incubus*. Zastrow was eventually sentenced, on 29 October 1869, to fifteen years in prison.

Karl Maria Kertbeny and the Origins of the Term ‘Homosexuality’

The German gay rights movement began to develop only in the 1870s and 1880s. Karl Maria Kertbeny, a Hungarian journalist born in Vienna, coined the term *Homosexualität* in a letter addressed to Ulrichs in 1868. In September 1865 Ulrichs had sent to Kertbeny the statutes of a proposed ‘Federation of Urnings’, which prefigured the creation of the Scientific-Humanitarian Committee but did not come to fruition.²⁵

The four-years-long correspondence between Kertbeny and Ulrichs ended in conflict: by 1869 Kertbeny referred to Ulrichs as ‘the thoroughly crazy author of *Incubus*’.²⁶ In that same year, 1869, Kertbeny published anonymously a pamphlet in Leipzig entitled *The public harm of paragraph 143 of the Prussian Penal Code of 14 April 1851, and therefore its necessary deletion as paragraph 152 in the draft Penal Code for the North German Confederation. As a result of a public invitation by the Commission to advise on the draft Criminal Code*. In that anonymous pamphlet Kertbeny used nouns like *Homosexualität* and *Homosexuellen*, as well as the adjective *homosexual*, 21 times.²⁷ In current German the adjective *homosexuell* has replaced Kertbeny’s *homosexual*, just as the noun *Homosexuelle* (homosexuals) has replaced Kertbeny’s *Homosexuellen*, but the filiation is clear.²⁸

A second pamphlet by Kertbeny, also published anonymously in Leipzig in 1869 and entitled *Paragraph 143 of the Prussian Criminal Code of 14 April 1851, and its maintenance as paragraph 152 in the draft Penal Code for the North German Confederation: Open, scientific letter to His Excellency Dr Leonhardt, Royal Prussian State and Justice Minister*, also mentioned the word ‘homosexuality’,

25 Ogilvy Pretsell 2020, pp. 173–4.

26 Kennedy 1997, p. 42, n. 14.

27 Kertbeny 1869a, pp. 23, 24, 30, 36, 57, 62, 75.

28 Herzer 1986, p. 16.

and its different variations, 40 times.²⁹ In 1905 Magnus Hirschfeld reprinted this pamphlet in the seventh volume of the *Jahrbuch für sexuelle Zwischenstufen*, with an introduction which said: ‘The long-lost and out-of-print pamphlet is regarded by experts as one of the best works on the homosexual problem and in fact contains a wealth of points of view which are today, when we are preparing to revise our criminal law, just as noteworthy as they were 36 years ago’.³⁰

Like Ulrichs (and Hirschfeld later on), Kertbeny asserted the ‘inborn nature’ of the homosexual drive: ‘homosexual instincts’ (*homosexuale Triebe*) were not arbitrary but ‘innate’ (*angeboren*).³¹ Elsewhere in his pamphlet he referred to the ‘innate character of the instinct’ (*Angeborenheit des Triebes*) and to the ‘innateness [*Angeborenssein*] of this enigmatic one-sided drive’.³² Unlike Ulrichs, who published two pamphlets defending Zastrow, Kertbeny distanced himself from the Zastrow case, although he noted that such a crime would not have led to the same public outcry if it had been committed by a heterosexual man, blaming this on the influence of Paragraph 143 of the Prussian Penal Code.³³

Kertbeny’s terminology was first used again eleven years later, in 1880, by the Stuttgart zoology professor Gustav Jäger in the second edition of his book *Die Entdeckung der Seele* (*The Discovery of the Soul*).³⁴ It was through Jäger’s mediation that Kertbeny’s nomenclature found its entrance into sexology, in Richard von Krafft-Ebing’s book *Psychopathia sexualis*, first published in 1887. Unfortunately, as the title of the book suggests, the new terminology began to circulate in connection with the psychopathologisation of homosexuality, which would be reversed only 86 years later, in 1973, with the decision to remove homosexuality from the American Psychiatric Association’s official diagnostic manual of mental disorders. The timing of the German gay liberation movement’s appearance explains the lack of references to the decriminalisation of homosexuality in Marx and Engels’ works, and the fact that this demand was rather upheld by their disciples within the German labour movement, who in 1865 founded the predecessor of what would later become known, in 1890, as the Social-Democratic Party of Germany (SPD).

Although, as we can see, it is an anachronism to pose the problem on those terms, it does remain the case that Marx and Engels did not pronounce themselves either publicly or privately in favour of the decriminalisation of

29 Kertbeny 1869b.

30 Hirschfeld 1905a, p. 1.

31 Kertbeny 1869b, p. 54.

32 Kertbeny 1869b, pp. 61 and 67; emphasis in the original.

33 Herzer 1986, pp. 12–13.

34 Herzer 1986, pp. 6–7.

homosexuality – just like, to take an example from another subject which became publicly prominent only in the last two decades of the nineteenth century, they did not develop a theory of imperialism.³⁵ This only goes to show that Marxism, both as a theory and as a guide to political action, goes beyond the writings of Marx and Engels, and indeed that it is the product of the collective revolutionary experience of the working class since the mid-nineteenth century.

The German Marxists and the Trial of Oscar Wilde

In 1895 Eduard Bernstein wrote two articles on the occasion of the trial of Oscar Wilde. Though originally published in German in the theoretical organ of the SPD *Die neue Zeit*, the articles have been translated into English as ‘On the Occasion of a Sensational Trial’³⁶ and ‘The Judgement of Abnormal Sexual Intercourse’,³⁷ and are available online at the Marxists Internet Archive. In the first of these articles, Bernstein judged Wilde’s writings harshly, considering them an imitation of the works of the French decadentists. Bernstein also criticised Wilde’s defence of the doctrine of art for art’s sake, which he regarded as frivolous and sterile. Regarding the trial itself, Bernstein considered that ‘love between men [*Männerliebe*], like abnormalities of sexual behaviour in general, has existed among the most diverse peoples and at very different levels of cultural development, and no conclusions can be drawn about the viability of a society as a whole from isolated cases of this type’.³⁸

In his second article, Bernstein rejected the idea that homosexual relations are ‘anti-natural’ (*widernatürlich*) because, as he pointed out, ‘if it was only a question of what was natural, then the worst sexual excess would be no more objectionable than, say, writing a letter – for conducting social intercourse through the medium of the written word is far further removed from nature than any way as yet known of satisfying the sexual urge’.³⁹ He also argued that ‘the oft-repeated theory that exclusively ascribes the more frequent occurrence of abnormal sexual intercourse to so-called times of decay cannot be sustained’, giving as an example the widespread practice of homosexual relations in classical Athens.⁴⁰ Whereas female homosexuality had been ignored

35 Day and Gaido (eds.) 2011.

36 Bernstein 1895a.

37 Bernstein 1895b.

38 Bernstein 1895a, p. 176.

39 Bernstein 1895b, p. 229.

40 Bernstein 1895b, p. 231.

by lawmakers in most places and ages, homosexual relations between males had been repeatedly penalised throughout history, a fact that he attributed paradoxically to the oppression of women: 'the liberty accorded to the female body characterises the *disregard* [*Nichtachtung*] for the woman, which took effect with the rise of the paternal-right'.⁴¹ Bernstein took over his outlook from the psychiatrist Richard von Krafft-Ebing, who argued that homosexuality between adult men ought not to be punished under any circumstances, for it was not the proper role of the state and the law to be guardians of morality, and that homosexuality could result from either 'dissolute licentiousness' or an endogenous pathology.⁴²

Besides Bernstein's two articles on the trial of Oscar Wilde, a third one appeared in *Die neue Zeit* in 1897, written by Johannes Gaulke, the German translator of Wilde's novel *The Picture of Dorian Gray*.⁴³ Gaulke had been a school friend of Hirschfeld's and was a member of the Scientific-Humanitarian Committee.⁴⁴ He argued that the 'scandalous trial of Oscar Wilde' had 'ended with the condemnation of one of the strangest poets in the English language because of his contrary sexual feelings [*auf Grund seines konträren Sexualempfindens*]. According to Gaulke, 'one can certainly not approve of his sexual confusion [*Verwirrungen*], but it would be foolish to condemn him for this reason alone'.⁴⁵ He offered 'an overview of the thoughts and beliefs of the now dethroned poet and aesthete'. He praised Wilde's essays, particularly *The Soul of Man under Socialism*, arguing with some exaggeration: 'Like the best English artists and writers, Bernard Shaw, Walter Crane, and the recently deceased William Morris, Wilde resolutely supported the cause of the proletariat'.⁴⁶ Gaulke criticised, however, Wilde's depictions of women, particularly in his play *A Woman of No Importance*, arguing that 'due to his contrary sexual feeling [*konträres Sexualempfinden*], from which the life tragedy of this brilliant spirit also resulted, he treats women with nothing but the utmost disdain. According to him, the woman is a wholly inferior being, just good enough to cook and, if necessary, give birth to children'.⁴⁷ Gaulke concluded by saying:

A philistinism impregnated with 'morality' will condemn the unfortunate English poet's world of ideas, just as the English court sent him to

41 Bernstein 1895b, p. 232; emphasis in the original.

42 Herzer 1995, p. 202.

43 Wilde 1901.

44 Panhuis 2006, p. 98.

45 Gaulke 1897, p. 143.

46 Gaulke 1897, pp. 145–6.

47 Gaulke 1897, p. 147.

prison to reform himself. In the near future the prison gates will open for him; time will then show what ‘educational’ effect this system is capable of exerting on such an unusually inclined person, who for this reason cannot be measured by the usual standards of morality.⁴⁸

Four years later, Gaulke wrote an article on ‘Oscar Wilde’s *Dorian Gray*’ for the *Jahrbuch für sexuelle Zwischenstufen*.⁴⁹

Although in 1895 Bernstein was still an ‘orthodox’ Marxist, it was not just revolutionary Marxists within the SPD that supported the decriminalisation of homosexuality. Indeed, some of the best articles on this question were published in *Sozialistische Monatshefte*, the theoretical organ of the revisionist (reformist) wing of the party that developed after 1898. This is not surprising, since the decriminalisation of homosexuality, like the rest of the democratic demands gradually abandoned by the bourgeois parties (such as universal female suffrage, the republic or indeed the replacement of the standing army by a militia), were in principle realisable under capitalism and could therefore be supported by advocates of gradual reform within the framework of bourgeois society. On the other hand, the transformation of the SPD into a government party as part of a bourgeois coalition after the First World War did result in the continued criminalisation of homosexuality during the Weimar Republic, and the demand for the decriminalisation of homosexuality was therefore taken up by the German Communist Party (KPD), as we shall later see.

The First Attempts by Hirschfeld and the SPD to Decriminalise Homosexuality (1898)

The Scientific-Humanitarian Committee originated in a meeting organised by Magnus Hirschfeld in his Berlin apartment in May 1897, which a year later gave rise to the world’s first national homosexual-rights organisation. The meeting included the publisher Max Spohr, whose editorial house issued in 1889 the first volume of Hirschfeld’s *Jahrbuch für sexuelle Zwischenstufen* (*Yearbook for Intermediate Sexual Stages*), the very first scientific journal of sexology devoted largely to the study of homosexuality. The Scientific-Humanitarian Committee adopted the motto ‘*Per scientiam ad justitiam*’ (‘Through science to justice’) and set as its first immediate goal the decriminalisation of homosexuality, arguing that it was congenital. In December 1897 Hirschfeld drafted a petition,

48 Gaulke 1897, p. 148.

49 Gaulke 1901.

signed by more than 800 people, to decriminalise homosexuality by eliminating Paragraph 175 of the German Penal Code.⁵⁰

Hirschfeld's direct motivation for founding the Scientific-Humanitarian Committee was the suicide of a homosexual patient, recounted in his brochure *Sappho und Sokrates: Wie erklärt sich die Liebe der Männer und Frauen zu Personen des eigenen Geschlechts?* (*Sappho and Socrates: How is the love of men and women for persons of their own sex explained?*), which he published with Spohr under the pseudonym 'Theodor Ramien' in 1896, when he was only 28 years old. In the preface Hirschfeld described the fate of a young military officer who, when pressured by his family to marry, killed himself on the eve of his wedding. The young man entrusted Hirschfeld with a farewell letter asking him to plea for the 'countless men who, like me, drag themselves through life under a double curse, that of life and that of the law'.⁵¹

The ultimate goal envisioned by the Scientific-Humanitarian Committee was the 'liberation of homosexuals', which implied far more than the repeal of a particular law targeting homosexual men. Alongside decriminalisation, liberation meant the elimination of 'the existing popular prejudice'. According to Hirschfeld:

The phenomenon of homosexuality, of love for people of the same sex, can only be properly grasped from a scientific point of view. The legal point of view that it is nobody's business what two adults do with each other consensually and in private, provided that they do not violate the rights of a third party, does not suffice to remove the existing popular prejudice. This is taught by experience in countries where the penal provisions which correspond to our Paragraph 175 have been abolished for legal reasons for almost a century. The observations in France, Italy, Holland and other countries, in which the prejudices, which are basically just negative judgments, continue to exist almost unchanged, show that homosexuals still have to suffer a lot there too.⁵²

The membership of the Scientific-Humanitarian Committee was never large. The Committee reported in its bulletin in late 1906 that it had 450 members

50 On the controversy surrounding Paragraph 17 of the Penal Code during the Second German Empire, see Taeger and Lautmann 1992. The original petition of the Scientific-Humanitarian Committee is available online as *An die gesetzgebenden Körperschaften des Deutschen Reiches* (To the legislative bodies of the German Empire), 1897, available at: <<https://www.digi-hub.de/viewer/fullscreen/BV042530362/5/>>.

51 Hirschfeld 1896, p. 3.

52 Hirschfeld 1907, p. 5.

or contributors. In 1905 it sent 1,800 copies of its monthly bulletin to members and supporters; that number increased to 3,000 by the end of 1907. In 1905, 300 people attended its annual conference. However, its influence increased over time: its petition for the abolition of Paragraph 175 of the German Penal Code, which was first submitted to the Reichstag in 1897 with 200 signatures, was resubmitted in 1899, 1904 and 1907, in the latter year with 6,000 signatures.⁵³

August Bebel and the Efforts to Eliminate Paragraph 175 of the Penal Code

In his memoirs Hirschfeld recalled having personally met Bebel and other prominent Social Democrats during his studies in Munich and Berlin: 'My own intellectual development put me in personal contact with the leaders of the German Social Democracy at that time, August Bebel and Wilhelm Liebknecht in Berlin, and Georg von Vollmar and Ludwig Viereck in Munich'.⁵⁴ His father had been an '*Achtundvierziger*' – that is to say, a participant in the revolutions of 1848 – and therefore he had inherited strong democratic traditions that brought him close to the Social-Democratic Party. Hirschfeld also recalled that 'already at the age of twenty' he became acquainted with Social-Democratic views by reading August Bebel's book *Woman and Socialism*. Hirschfeld subscribed on 1 January 1891 to the *Vorwärts*, the daily newspaper of the Social-Democratic Party, but he never pointed out when or if he joined the SPD.⁵⁵

On 13 January 1898, August Bebel delivered a famous speech in the Reichstag supporting the petition to decriminalise homosexuality. Bebel submitted and defended in parliament the petition despite upholding the point of view, already refuted by Bernstein, that male homosexuality could be linked to the decadence of the 'higher social layers' (*höheren Gesellschaftschichten*). Although he did distinguish this alleged phenomenon from those cases where homosexuality was natural or 'inborn', in the fiftieth edition of his book *Woman and Socialism* Bebel wrote:

The number of young and old *roués* is great, and because they have become dulled and over-saturated by excess, they have a need for special stimulations. Apart from those to whom the love of their own sex (homosexuality) [*die Homosexualität*] is innate [*angeboren*], many lapse

53 Ross Dickinson 2014, pp. 162–3.

54 Hirschfeld 1930, p. 81.

55 Herzer 2017, p. 34.

into the anti-natural practices [*Widernatürlichkeiten*] of the Greek age. Love between men [*Männerliebe*] is much more widespread than most of us can dream; the secret files of some police bureaux could publish terrifying facts about it.⁵⁶ But the anti-natural practices of ancient Greece are also being revived to a greater extent among women. Lesbian love, sapphism, is said to be fairly widespread among married women in Paris and, according to Taxel, even to an enormous extent among distinguished Parisian ladies. In Berlin, a quarter of prostitutes are said to be practising tribadism [lesbianism], but there is also no shortage of Sappho disciples in the circles of our distinguished women's world.⁵⁷

Like Bernstein's articles on the Oscar Wilde trial, Bebel's speech in the Reichstag has been translated and is available online as 'On Homosexuality and the Penal Code', so we will render its contents succinctly. Bebel pointed out that, despite the fact that the provisions of Paragraph 175 were 'systematically violated by a large number of people, both men and women, only in the rarest cases does the police bother to call for action on the part of the prosecutor.' The Berlin police did not bring before the District Prosecutor the names of men who committed crimes punishable by imprisonment under Paragraph 175, but rather added them to the list of those who, for the same reason, already appeared in their files. According to Bebel, 'the number of these persons is so great and reaches so far into all levels of society, that if the police here scrupulously carried out their duty, the Prussian State would immediately be compelled to build two new penitentiaries just to take care of those offenses against Paragraph 175 that are committed in Berlin alone.' Bebel concluded by saying that if Paragraph 175 of the Penal Code could not be applied, or could only be applied selectively, then it should not be preserved. To this end, he added,

we have before us a printed petition signed by me personally, among others, and by a number of colleagues from other parties, and further by people from literary and academic circles, by jurists of the most illustrious standing, by psychologists and pathologists, by experts of the highest rank in this field. The petition, for reasons that understandably I don't

56 'Since then, the Moltke, Lynar, and Eulenburg trials have turned up a much more terrible picture than one might have expected. They have shown how widespread this perversity is in higher social circles, especially in the military and court circles.' (Bebel 1910, p. 207, n. 1.)

57 Bebel 1910, pp. 206–7.

wish to go into fully at this moment, advocates a revision of the Penal Code so as to repeal the relevant provisions of Paragraph 175.⁵⁸

In an article published in the first issue of the journal of the Humanitarian-Scientific Committee, the *Jahrbuch für sexuelle Zwischenstufen*, Hirschfeld reproduced the petition, followed by the list of signatories and an appendix. Hirschfeld also reproduced Bebel's speech of 13 January 1898, pointing out that 'The press repeatedly and erroneously reproduced Bebel's statements as if the speaker had pleaded for a stricter application of Paragraph 175, while in reality he had advocated the repeal of the penal provisions in question, which already followed from the fact, which he himself mentioned, that he was one of the signatories of the petition.'⁵⁹

Hirschfeld also reproduced a speech by the Protestant priest and Reichstag deputy for the *Deutschkonservative Partei* Martin Schall, who confessed that he was 'downright shocked' as well as 'dismayed and deeply depressed' by Bebel's revelations, and asked to 'do everything possible to counter these unnatural vices, offences and crimes' through the 'ruthless implementation in practice' of Paragraph 175. Bebel replied, asserting 'the correctness of the information I offered with regard to the violation of Paragraph 175. If my information were inaccurate, you could rest assured that the government would have corrected it. That didn't happen.'⁶⁰ Hirschfeld pointed out that

The petition was then referred by the Petitions Commission to the Lex Heinze Commission, where it gave rise to lively, detailed discussions.

In addition to the official government representatives, the then head of the Berlin criminal police, Count von Pückler, was also involved in the debate. Apart from Bebel, it was above all the National Liberal Reichstag member of the Medical Council, Dr Kruse-Norderney, who, as a medical expert, supported the petition most vigorously. It was decided not to let the public know about the content of the deliberations, which produced a negative result.

As a result of the petition and the Reichstag debates, the homosexual question, which the press had previously considered a *noli me tangere*,⁶¹

58 *Reichstagsprotokolle*, 1897/98, 1. 16. Sitzung, Donnerstag den 13. Januar 1898, p. 410. Available at: <http://www.reichstagsprotokolle.de/Blatt_k9_bsb00002771_00462.html>.

59 Hirschfeld 1899, p. 275.

60 Hirschfeld 1899, pp. 275–6.

61 *Noli me tangere* ('touch me not') is the Latin version of a phrase spoken, according to John 20:17, by Jesus to Mary Magdalene when she recognised him after his resurrection.

was dealt with in numerous political, medical and legal journals, mostly in a benevolent sense.

After the parliamentary elections of 1898, the petition was once again distributed among outstanding contemporaries (not in broad sections of the population), with such success that the number of signatories quadrupled.⁶²

Hirschfeld's reference to the Lex Heinze (Heinze law) Commission alluded to a controversial bill to amend the Penal Code, which censored the public representation of 'immoral' acts in works of art, literature and theatre performances in Germany, and introduced pimping as a criminal offence. The bill, which was supported by the Catholic *Zentrum* party and opposed by the Social Democrats and the liberals, was named after the Berlin pimp Gotthilf Heinze (1864–?), who was convicted of 'bodily harm resulting in death' in 1887, and whose name stood for 'immorality' in the broadest sense (the Reichstag approved in 1900 a watered-down version of the law, which dropped the restrictions on theatre performances and lowered penalties).

During the debates in the Lex Heinze Commission, the question of Paragraph 175 was touched upon again in the first reading of the bill, by the Conservative, National Liberal and Social-Democratic deputies. During the debate, the Conservative deputy Ernst Himburg said: 'I believe that if we wanted to repeal this paragraph, the people would not understand us.' His statement was supported by the National Liberal deputy Wilhelm Endemann. Bebel answered them by stating:

Gentlemen, the local police, who let the greatest pieces of shame be performed unhindered in second-rate nightclubs and theatres ('Very correct!', from the left), that police, and that is the essential point of the whole question, has a degree of tolerance towards certain events and towards what happens on streets and in certain houses that goes far beyond what is permitted. ('Very true!', with the Social Democrats.)

If the law were to be handled here as it should be, then ten new penitentiaries and prisons would have to be built in Berlin alone. ('Very correct!', from the left.)

The police tolerate and remain silent, they hear and see nothing when it is a question of high ladies or gentlemen and their deeds. And the police remain silent and tolerate and close their eyes all the more, the higher those concerned stand. ('Very true! Very right!', from the left.)

62 Hirschfeld 1899, pp. 276–7.

We have had interesting information about this in the Commission. Because I had applied for the removal of Paragraph 175, which I do not want to talk about at the moment, the Berlin police headquarters were requested by the government at the express request of the [Lex Heinze] Commission to send the Department Head of the Moral Police [*Sittenpolizei*] to the commission. In the commission this gentleman [Count von Pückler], however, spoke out in favour of maintaining Paragraph 175; but the facts which I have cited, facts, events in which a number of the highest-ranking persons, including princes and princesses, were involved, this gentleman could not and did not refute. ('Hear! Hear!', from the left).⁶³

Hirschfeld considered this debate a sign of progress; in fact, it was enough to convince him that '*la vérité est en marche*' ('Truth is on the march').⁶⁴ And in his book *Berlin's Third Sex* he supported Bebel's argumentation, stating that 'if the criminal authorities, out of the several thousand names on the "Berlin Pederasts List" set up by Meerscheidt-Hüllessem, were to proceed against homosexuals as they proceed against real criminals, the existing criminal provisions would become completely impracticable in a very short time'.⁶⁵

The Treatment of Homosexuality in the Magazine *Die neue Zeit*

Karl Kautsky, the editor of the theoretical magazine of the 'orthodox' (revolutionary) wing of the Social-Democratic Party of Germany, *Die neue Zeit*, had been one of the original signatories of the petition of Hirschfeld's Scientific-Humanitarian Committee. In a very interesting article on homosexuality and Paragraph 175 of the Penal Code, published in July 1898 in *Die neue Zeit*, the author, W. Herzen, reported the incident already described in Hirschfeld's *Jahrbuch*: that in the 18 January 1898 session of the German parliament, the priest and deputy Martin Schall declared himself 'dismayed and deeply depressed' by Bebel's initiative to abolish Paragraph 175 of the German Penal Code, which had been subscribed by 'men with famous names of all professions'. According to Herzen, public opinion dealt with the 'homosexual question' (*homosexuelle Frage*) only from time to time, particularly on the occasion of some 'sensational judicial processes' such as the trial of Oscar Wilde, but

63 Quoted in Hirschfeld 1899, pp. 279–80.

64 Hirschfeld 1899, p. 277. Zola's quote concludes by saying: '*et rien ne l'arrêtera*': 'and nothing will stop it'.

65 Hirschfeld 1904a, pp. 72–3.

without disclosing anything that was contrary to ‘current morality in sexual matters’. What was discussed on these questions corresponded to prevailing hypocrisy, which sought to ‘prevent, through some kind of legal regulation, a public debate on these issues’. Only then ‘the honest bourgeois feels calm’, despite the fact that Paragraph 175 was unsustainable ‘from a medical, legal and ethical point of view’.⁶⁶

Herzen informed the readers of *Die neue Zeit* that medicine had begun to deal with the homosexual question in the 1850s. At that time, the laws of the different German states considered the *Urning* (homosexuals) as criminals, while medicine included them in the mentally-ill category. The author refuted this idea by referring to the work of Magnus Hirschfeld, *Paragraph 175 of the Reich Penal Code: The homosexual question in the judgement of contemporaries*,⁶⁷ about which Herzen said the following: ‘In this brochure the answers that the writer of the petition, Dr Hirschfeld, offered in order to substantiate its approval are gathered. It refutes the objections of the opponents to the petition.’⁶⁸ The author mentioned the ‘extremely common occurrence of homosexual love’, and added that in the female sex it was ‘no less common’.⁶⁹ Herzen cited Ulrichs’s estimate that one in every 200 men was homosexual, which yielded a total for Germany of between 50,000 and 60,000 ‘*Urninge*’. He also mentioned Hirschfeld’s statement that homosexuality could be found ‘in all races and in all nations of the earth, both in the upper and in the lower layers of the population, in cities and in the countryside, between educated and uneducated, honest and dishonest people’,⁷⁰ and listed some famous homosexual historical figures such as ‘Sophocles, Socrates, Alexander the Great, Julius Caesar, Virgil, Michelangelo, Shakespeare, Molière’, etc.⁷¹ Herzen cited Schopenhauer’s claim that the geographical and temporal extent of same-sex love proved that it must have its origin in human nature.⁷² He then tried to justify this position by reference to ‘the work of Magnus Hirschfeld, published under the pseudonym “Th. Ramien”, *Sappho und Sokrates: oder wie erklärt sich die Liebe der Männer und Frauen zu Personen des eigenen Geschlechts?* (Leipzig: Verlag von Max Spohr, 1896).’

After this ‘incursion into medicine’, Herzen went on to say that ‘also from a legal point of view Paragraph 175 is nonsense’ because ‘the expression

66 Herzen 1898, p. 555.

67 Hirschfeld 1898b.

68 Herzen 1898, p. 556, n. 3.

69 Herzen 1898, p. 556.

70 Hirschfeld 1898b, p. 43.

71 Herzen 1898, p. 557.

72 Ibid.

“unnatural” is totally wrong and false’, as had been shown by ‘Bernstein’s article on this subject’ in *Die neue Zeit*, which also proved ‘in an absolutely correct way, why homosexual love is penalised in most countries (with the exception of Austria) only among men.’ Paragraph 175 made a crime of an act in which no one’s rights were harmed. For that reason, homosexual love had been decriminalised in France as early as 1791, and in Italy, Belgium, Holland, and a whole series of German states. As for the claim that ‘public opinion’ (*Volksbewusstsein*) required the retention of Paragraph 175, the author recalled that the burning of witches had also been justified with similar arguments.⁷³

Following Hirschfeld’s thesis, Herzen affirmed that homosexual love was the result of a powerful natural impulse, and that therefore its criminalisation could not produce any result, either from the point of view of the ‘rehabilitation’ of the accused or from the point in view of ‘deterrence’. In Berlin there was an extensive and active homosexual community, with its meeting places and activities, including places where male prostitution was practised.⁷⁴ The author cited Bebel’s speech in the Reichstag on 13 January 1898, when he had stated that the revelation of the spread of homosexuality in the high circles of society and government would have generated a scandal worse than the Panama scandals of 1892, to argue that the existing legislation could only promote blackmail and extortion in criminal circles.⁷⁵ The author concluded by stating that ‘homosexual love must be fully equated with heterosexual love also in the Penal Code. This demand is the core of the petition. The quest on which the writer and the first signatories of the petition (Bebel, Wildenbruch, Krafft-Ebing and Franz von Liszt) have embarked is a meritorious and courageous initiative.’⁷⁶

Two years later, a review published in *Die neue Zeit* of the first two volumes of the fifth issue of the journal of the Scientific-Humanitarian Committee, *Jahrbuch für sexuelle Zwischenstufen unter besonderer Berücksichtigung der Homosexualität*, praised the article by Magnus Hirschfeld on ‘The causes and essence of uranism’, in particular ‘the chapter on the natural necessity of homosexuality’, and briefly described the rest of its contents, including a letter from Goethe on homosexual love in Rome and an ‘extremely interesting’ study by Dr Römer ‘On the androgynous idea of life’, concluding: ‘Hopefully the new issue of this publication will find many readers.’⁷⁷

73 Herzen 1898, p. 559.

74 Herzen 1898, p. 560.

75 Ibid.

76 Herzen 1898, p. 561.

77 Herzberg 1900, p. 124.

Another review of the journal edited by Magnus Hirschfeld, published in *Die neue Zeit* four years later, indicated that it was a publication of the Scientific-Humanitarian Committee that had begun to appear in Berlin and Leipzig in May 1897, with the aim of achieving the abolition of Paragraph 175 of the Penal Code. Its objective was, therefore, twofold: the scientific clarification of the situation of homosexuals, a category of people considered criminal or mentally ill, but who in reality should be considered only as persons with a different sex drive, and agitation against legislation that turned a natural impulse into a crime. The reviewer went on to describe the articles in the issue of the magazine: Magnus Hirschfeld's 'On the objective diagnosis of homosexuality', 'Four letters of Karl Heinrich Ulrichs (*Numa Numantius*) to his fellows' (whose writings were described as 'the foundations for all subsequent studies on the subject'), two articles on the legal status of homosexuality and one on its psychology, an extensive 'bibliography on homosexuality' and, finally, the petition presented to the Reichstag by the Scientific-Humanitarian Committee.⁷⁸

The 'Krupp Case' in 1902

Relations between the Scientific-Humanitarian Committee and the SPD experienced some friction in 1902, with the outbreak of the scandal around the homosexuality of steel magnate Friedrich Alfred Krupp, who lived on the Italian island of Capri for several months every year. The locals of Capri knew that Krupp was gay, that he had had a series of relationships with local youth, and stories about homosexual orgies circulated on the island. When those stories began to appear in the local press, Krupp returned to Germany, waiting for the storm to die down, but it never did. There continued to appear in Italian newspapers articles that mentioned a great German industrialist and the news finally arrived in Germany on 8 November 1902, when a newspaper of the Party of the Catholic Centre, the *Augsburger Postzeitung*, quoted reports on that matter by two Italian newspapers, without disclosing the name of the person involved.

On 15 November 1902, the Social-Democratic daily *Vorwärts* mentioned Krupp's name in an article entitled 'Krupp in Capri', which both revealed

78 Fuchs 1904. *Die neue Zeit* was not alone in German left-wing circles in providing summaries of the contents of Hirschfeld's journal: 'Within organized German anarchism, the Berlin anarchist weekly *Neues Leben* devoted an extended series of articles in 1902 to the first three volumes of Hirschfeld's *Jahrbuch für sexuelle Zwischenstufen*' (Fähnders 1995, p. 122).

Krupp's homosexuality and denounced Paragraph 175 of the Penal Code five times. Thus it affirmed, for example, that 'the case must be discussed in public, with the necessary caution, because it can provide the necessary impetus to finally eliminate from the German Penal Code Paragraph 175, which not only punishes vice [*Laster*] but also condemns the unfortunate predisposition of morally sensitive people to constant fear, and places them before the continual threat of falling into prison or becoming victims of blackmail.'

Then the *Vorwärts* article developed the argument that Paragraph 175 was not only unfair in itself, but also doubly unfair because it did not apply to members of the ruling classes. It affirmed, against the claims of the German bourgeois press, that 'Krupp did not choose Capri to provide the villagers with roads, but because the Italian Penal Code does not possess any Paragraph 175' – that is, because homosexuality was not criminalised in Italy. The article concluded by stating:

As long as Krupp continues to live in Germany, he is subject to the penalties stipulated in Paragraph 175 of the Penal Code. When perversity leads to a public scandal, the state must intervene immediately. Let us hope that the public will now reflect on the need to eliminate this contradiction between the law and the application of the law, which hurts the sense of justice, and on the need to eliminate Paragraph 175, which does not eradicate vice, but exacerbates the pain of misfortune. Social Democracy has repeatedly insisted in the Reichstag on the need for such reform.⁷⁹

Krupp sent a telegram on the day of the publication of the article to the attorney of district court number 1 of Berlin, requesting the prosecution of the *Vorwärts* for defamation, which led to the confiscation of the issue by the police. All the German press commented on these events; several other newspapers in Dortmund, Dusseldorf, Hanover, etc. were prosecuted for reprinting the article and searches were carried out on their editorial offices.

Then, in the middle of the scandal, on 22 November 1902, came the news of Krupp's death. The official telegraph office announced it as follows: 'Villa H \ddot{u} gel, November 22. His Excellency Krupp died this afternoon at 3 o'clock. The death occurred as a result of a stroke that occurred 6 hours earlier.'⁸⁰ On the day Krupp's death became known, Hirschfeld wrote a letter to Kurt Eisner, the chief editor of *Vorwärts*, in which he reaffirmed, among other things, his non-pathological conception of homosexuality in the following words:

79 *Vorwärts* 1902.

80 Hirschfeld 1903, pp. 1310–11.

Dear Mr. Eisner! I just received the news of Krupp's death. I can assume that he will be presented as a victim of Paragraph 175, which he certainly was, that is, one of the many victims [...]. The main purpose of these lines is to inform you that, as I have heard from a reliable source, Krupp had himself hypnotised years ago by a doctor in Berlin because of his condition. Of course, the treatment was unsuccessful, since [homosexuality] is not a disease at all, but rather a particular inborn predisposition, a spiritual transition, an intermediate stage between men and women.⁸¹

Immediately after the announcement of Krupp's sudden death at the age of 48, the press expressed doubts about the truthfulness of the official statements on his death. Those doubts intensified when no autopsy was performed. The funeral, which took place in Essen on 26 November 1902, was attended by more than 20,000 people, including the ministers of war, railways, commerce, foreign affairs and the navy, and, above all, the German Kaiser, whose wreath bore the inscription: 'My best friend, Wilhelm'. In his speech, the Kaiser attacked 'the men who want to become leaders of the German workers', accusing them of responsibility for the death of Krupp, 'whom the German working population has so very much to be thankful for', and expressing his desire that the German working class would put an end to its 'links with the authors of this shameful act'.⁸²

In its reply to the Kaiser's speech, *Vorwärts* emphasised that the emperor 'could not have read the article, because it was confiscated', and that the newspaper had not started a discussion of the Krupp case for (anti-capitalist) political reasons, but rather to encourage 'a legal reform':

We wanted to demonstrate, through the example of a particularly well-known name, the need to repeal Paragraph 175, which for many unfortunates is a constant scourge, that not only puts vice in the hands of blackmailers and judges, but constantly threatens with a catastrophe an error of nature and which, as has been scientifically proven, has caused a terrible number of suicides – the elimination of a legal provision that also results in a huge contradiction between the law and its application, and makes the fate of many people subject to the will of the police. That is why we mentioned the Krupp case; that is why we call attention to the fact that in Germany these people are totally at the mercy of the arbitrariness

81 The letter is kept in the 'Archiv der sozialen Demokratie der Friedrich-Ebert-Stiftung', Bonn, Signatur: Mikrofilme Moskau, Fonds 212 Bd. 43. Quoted in Herzer 2017, p. 110.

82 Hirschfeld 1903, pp. 1311–14.

of Paragraph 175. [...] We will be able to show in the trial, which we believe will take place publicly, convincing evidence as to the purity of our motives and the true intention of our action. [...] And because we do not have the slightest reason to doubt the absolute reliability and impartiality of our informants, we draw from this the necessary conclusion: if it is true that Krupp's tragic end is related in some way to the preceding two months of publications [about his case], he was not the victim of a ruthless slander, but one of the many victims of Paragraph 175.⁸³

The reference to blackmailers is probably due to Hirschfeld's letter, because in it, as in the annual report published in his magazine, he stated that Krupp 'was also in the hands of blackmailers (Rhode)'.⁸⁴

The SPD historian and theoretician Franz Mehring weighed in with a leading article in *Die neue Zeit* entitled 'The Krupp Case'. Mehring argued that 'The attack by a single party newspaper against certain personal predilections of Krupp was by no means a party concern; questions of principle did not come into play at all, and opinions could be divided about the tactical expediency of that attack – and, to our knowledge, they were indeed very divided in the party.' However, it was 'no longer possible to remain silent about the Krupp case because the Kaiser has turned it into a party issue'.⁸⁵

The situation, Mehring believed, was 'in some respects uncomfortable'. Krupp had been an insignificant man, 'a political and social nullity'.

The attack which was directed against him referred to a private passion [*Liebhaberei*], which, despite its tastelessness and objectionableness [*Geschmacklosigkeit und Widerwärtigkeit*], being the outflow of an overpowering natural instinct, has nothing to do with moral character as such, and if the purpose of the attack was also the removal of a criminal provision which is reprehensible from both an ethical and a legal point of view, one could argue whether the means were suitable for achieving that end. Now it happens that the attacked died immediately after the

83 Hirschfeld 1903, pp. 1314–16.

84 'For years, rumours have been circulating that Krupp is homosexual, not only in homosexual circles, where they would not have been given much importance, but among the blackmailers (Rhode case)' (Hirschfeld 1903, p. 1304). In the memoirs of the criminal commissioner of the 'pedophile section' of the Berlin police, Hans von Tresckow, Gustav Rhode was described as 'one of the worst extortionists in Berlin'. Rhode was finally sentenced to five years in prison for several acts of blackmail against homosexuals (Herzer 2017, p. 110).

85 Mehring 1903, p. 257.

attack, and thus all sorts of whispers were spread, in the sense that Krupp died not only *after*, but also *as a result of* this attack.⁸⁶

The circumstances surrounding Krupp's death were unfortunate, Mehring added, but he still defended the party's course of action:

Yes, we have said that the late Krupp was the victim of an unfortunate natural instinct [*unseligen Naturtriebs*]. Yes, we have accused his millions of turning this unfortunate natural instinct into a source of corruption for an entire island. Yes, we have inferred from this the need to repeal that criminal law paragraph which turns a pathological natural instinct [*einen krankhaften Naturtrieb*] into a dishonourable crime and does not even dare to draw the conclusion of its own absurdity, since it lets the rich victims of that instinct go and only punishes its poor victims.⁸⁷

Mehring then paraphrased the emperor's speech at Krupp's funeral, arguing that 'the most famous and most brilliant ancestor of the Kaiser', i.e. Frederick the Great, who ruled the Kingdom of Prussia from 1740 until 1786

committed countless times the 'murder' of accusing his fellow human beings, and particularly his fellow princes [*Mitfürsten*], of homosexual relations [*homosexuelle Beziehungen*]. He threw these 'venomous arrows' from a much safer hiding place than an editorial office is today, and we have never heard him called a 'murderer' because of that. He never had any serious purpose in doing so, but was solely guided by his desire to wipe out his fellow brothers by the grace of God. We very much regret not being able to provide some examples, particularly from his poems, but they are so spicy that in our tame times they can no longer be published.⁸⁸

Mehring went on to argue that 'in the second half of the eighteenth century the homosexuals [*die Homosexuellen*] were called in the diplomatic and court circles of Europe *les Potsdamistes*, after Frederick and his brother Heinrich, who had his Capri in Rheinsberg, like the king himself in *Sans-souci*.' Mehring pointed out that, when Voltaire explicitly detailed Frederick the Great's homosexuality and that of the circle surrounding him in his book *La vie privée du roi de Prusse, ou Mémoires pour servir à la vie de M. de Voltaire, écrits par lui-même*

86 Mehring 1903, p. 258; emphasis in the original.

87 Mehring 1903, p. 259.

88 Ibid.

(1784), they had merely quarrelled temporarily and, after resuming their correspondence, ended as friends once more.⁸⁹

Mehring closed his article arguing that the Kaiser's attempt to use the Krupp case to drive a wedge between the German workers and the Social-Democratic Party would end in failure. He was right about that, but his reluctance to be drawn into the discussion shows that the SPD leaders had something of a guilty conscience about the whole affair, and the clumsiness of his own positions shows the limitations of many of the SPD's theoreticians on the issue of homosexuality, which, despite their support for decriminalisation, was still linked in their minds with psychopathology.

Krupp's widow initiated legal proceedings against the *Vorwärts*, but she abandoned them on 15 December 1902. *Vorwärts* expressed its satisfaction, stating: 'We share the feelings of the widow, and it satisfies us humanely to be free from the need of bringing a dead man to justice.' At the same time, it insisted that

it was because of Paragraph 175 that we discussed the Krupp case. The truly impressive testimonies of people who suffered the scourge of Paragraph 175 and who approached us on the occasion of our publication, have further strengthened our conviction about the need for its elimination or amendment. We hope that, despite the cancellation of the trial, the Krupp case will not be forgotten in the next revision of the Penal Code.⁹⁰

As for the political consequences of the Krupp case, Hirschfeld believed that

the sad case has had positive consequences, in the sense of awakening and making reflect a large mass of people, who were indifferent or hostile to the homosexual question. In many thousands of newspaper articles, in numerous pamphlets, reference was made to Paragraph 175, and it should be noted that, with very few exceptions, there has been no newspaper or party, not even the Centre, which has defended Paragraph 175 or requested its retention.⁹¹

89 Mehring 1903, p. 259.

90 Quoted in Hirschfeld 1903, pp. 1316–17.

91 Hirschfeld 1903, p. 1318.

The SPD Brochure on the 'Krupp Case' and the Position of the Scientific-Humanitarian Committee

The following year, in 1903, a Social-Democratic publisher in Munich issued an anonymous 61-page brochure on the Krupp case, entitled *The Krupp case: Its course and its consequences. A collection of facts*,⁹² which recapitulated the SPD's position on homosexuality and the need for its decriminalisation in a chapter entitled *Die Homosexualität und der § 175* (Homosexuality and Paragraph 175), and offered the official party explanation of the rationale behind the SPD's actions in the Krupp affair.

The brochure began by offering a definition of homosexuality as 'the love of a person for another person of the same sex; thus, the love of a man for another man and of a woman for another woman', and by stating that it would only deal with male homosexuality. It went on to argue that the occurrence of love for persons of one's own sex could be traced back to ancient times, and that it had been judged in different ways at different times and among different peoples. Alongside the urge to eat, the sexual instinct was the most powerful human and animal instinct, but while the urge to eat was aimed at preserving the individual, that is to say, it was driven by the instinct of self-preservation, the purpose of the sexual instinct was reproduction, that is, the preservation of the species.

From that perspective, only those activities of the sexual instinct which had the purpose of procreation were 'natural', everything else was 'unnatural' from a biological point of view. But since very few people were able to, or wanted to, produce children with every act of sexual intercourse, the cases of 'unnatural' sexual activities significantly outnumbered the 'natural' ones. Thus, the terms natural and unnatural began to acquire a different meaning. People found that the intercourse between man and woman was *always* 'natural' or 'normal', in the sense of having as its aim the reproduction of the species, even if, strictly speaking, that was usually not the case, and employed the terms 'unnatural' or 'perverse' to denote homosexual intercourse (*homosexuellen Verkehr*) – as well as the intercourse between people and animals, according to Paragraph 175 of the German Penal Code. Strangely, that paragraph punished only male homosexuality, leaving female homosexuality untouched, while the Austrian penal code was more consistent on that issue, punishing both.

According to the brochure, the state had no reason whatsoever to intervene in a punitive manner in this issue. The law had to intervene when the rights of

92 *Der Fall Krupp* 1903.

another person had been violated, or when another person or the general public had been inflicted physical or mental, that is to say moral, damage. That was not at all the case with homosexual intercourse between adults, particularly between men – i.e., excluding all cases of rape and intercourse with minors, which were dealt with by other sections of the Penal Code. No physical harm was involved beyond the possible transmission of venereal diseases like syphilis and gonorrhoea, which could also be transmitted through ‘natural’ intercourse and were therefore not a peculiarity of homosexual intercourse.⁹³

The brochure went on to argue that, although the majority of homosexuals appeared ‘neuropathic’, that nervous affection was not a consequence of homosexual intercourse but of the adverse social conditions in which homosexuals had to live, and that as a consequence ‘*The homosexual is not a criminal, but in the worst case a sick person [Der Homosexuelle ist kein Verbrecher, sondern schlimmsten Falls ein Kranker]*’.⁹⁴

The brochure then distinguished between ‘innate homosexuality and acquired homosexuality’, explaining that there were also cases of homosexual intercourse ‘in people who were originally heterosexually inclined’.⁹⁵ The brochure attributed these cases of homosexual intercourse involving heterosexuals to ‘degenerate people whose senses have become blunted by excessive lifestyles and no longer react to normal stimuli, and are therefore always looking for new and increasingly perverse stimuli’, as well as to the impotence which supposedly was suffered in old age by the ‘so-called *bon vivants*’ (*Lebemänner*). The last two types of homosexual intercourse, the brochure argued gratuitously, were the expression of ‘pathological inclinations’ (*krankhaften Neigungen*) and therefore deserved the attention of ‘the medical doctor rather than that of the lawyer’.

It was ‘not so easy’ to prove the pathological nature of acquired homosexuality (*die krankhafte Natur der erworbenen Homosexualität*). It could happen that a person who originally was naturally inclined towards persons of the opposite sex, through the force of habit gradually began to obtain pleasure from people of his own sex and to feel disgust for people of the other, so that his sexual instinct took ‘a pathological direction’ (*eine krankhafte Richtung*), but that was not often the case, especially not when homosexual intercourse took place ‘between people of different social status’. In those cases, ‘the economically or

93 *Der Fall Krupp* 1903, p. 7.

94 *Der Fall Krupp* 1903, pp. 7–8; emphasis in the original.

95 *Heterosexuell*: since the term was unfamiliar to the readers in 1903, the author had to add a footnote which explained that it meant ‘with an inclination towards the opposite sex’ (*Der Fall Krupp* 1903, p. 8).

socially weaker person' often partook in homosexual acts, which 'contradicted his sexual predisposition', out of 'fear or self-interest'. Those cases therefore also had to be ruled out when assessing 'the pathological nature of homosexuals [*der krankhaften Natur der Homosexuellen*]'.⁹⁶

There remained to be examined the case of 'the innate homosexuals' (*die angeborenen Homosexuellen*), the so-called *Urnlinge*, that is, people who had felt a love for persons of their own sex from the first awakening of their sexual instinct and who felt exactly the same disgust for people of the opposite sex as a person of a 'normal, i.e. heterosexual inclination' towards people of one's own sex. This inclination was 'ineradicable' (*unausrottbar*); people could not shake it off by either medical or legal means, not even if the person concerned wanted to do that himself and honestly helped to fight against his 'abnormal inclination' (*abnormen Neigung*). *Naturam expellas furca, tamen usque recurret*: You can drive nature out with a pitchfork, but she always comes back. 'And homosexuality is natural with these people.'⁹⁷

Their sexual activity is natural for them and only unnatural and abnormal for us, because our nature is different. 'Normal' is what we call what the majority thinks is right over a certain period of time. If the attitudes of peoples change with the times, what is considered normal today will be abnormal later and vice versa. We still keep the terms 'normal' and 'abnormal' or 'perverse' because they are justified from a purely medical point of view.⁹⁸

While in the past homosexuality had been judged mainly 'from the standpoint of sin and vice', lately there had been a gradual tendency to examine the matter 'from a medical point of view'. It was the merit of the psychiatrist Krafft-Ebing to have treated that 'delicate subject fearlessly and scientifically objectively in a ground-breaking work' (Richard von Krafft-Ebing, *Psychopathia sexualis; eine klinisch-forensische Studie*, F. Enke, 1886).⁹⁹

The brochure then went on to describe in great detail the prevalence of male homosexuality in antiquity, particularly in Greece and Rome, and well as its continued existence in the Middle Ages and in modern times, giving numerous examples of famous homosexuals such as Plato, Socrates, Augustus, Tiberius and a large number of the subsequent Roman emperors, Bocaccio,

96 *Der Fall Krupp* 1903, p. 8.

97 *Der Fall Krupp* 1903, pp. 8–9.

98 *Der Fall Krupp* 1903, p. 9.

99 *Ibid.*

Michelangelo Buonarroti, Shakespeare, the Prussian king Friedrich the Great, the tsars Peter the Great and Alexander I, Lord Byron, Torquato Tasso, Molière, Walt Whitman, the famous chemist Justus von Liebig, etc.

The brochure confused homosexuality with pederasty and indeed used both terms as synonyms. Thus, for instance, it stated that

The contemporary *Italian* Penal Code has no provisions against homosexual intercourse. It is to this fact that *Italy* owes the large influx of wealthy homosexuals from all cultural countries. *Holland* knows no penalties for paederasty, and neither does *France*, only with the restriction that the use of force is prohibited. Before the founding of the German Empire, paederasty was unpunished in several individual German states, like *Bavaria* and in the former Kingdom of *Hanover*.

As already mentioned, *Austria* punishes both male and female intercourse.

Russia has very severe penalties: deprivation of all professional rights, deportation to Siberia and, under certain circumstances, flogging. Nonetheless, paederasty is very widespread among the Russian nobility and the officer corps.¹⁰⁰

It is very probable, however, that the author of the brochure understood by 'paederasty', not sex between adults and minors, but the practice of anal intercourse, since in the nineteenth and early twentieth centuries the term *Päderastie* was in some cases used to refer specifically to sexual contacts between adults and male children and adolescents, while in others it was also used to denote homosexuality itself or any anal intercourse, including anal sex between men and women.¹⁰¹ Thus, the brochure asserted, for instance, that 'the paederasty that a man exercises on a woman is unpunished under German law'.¹⁰²

In Germany the law only punished 'male–male love' (*mannmännliche Liebe*) and intercourse with animals. As far as sexual intercourse between two men was concerned, the criminal section was used relatively rarely. But

100 *Der Fall Krupp* 1903, p. 21; emphasis in the original.

101 For instance, in the thirteenth edition of Otto Dornblüth's *Klinisches Wörterbuch*, published in 1927, the term *Päderastie* was defined as follows: 'Pederasty (from the Greek *erastês*, lover), *active pederasty*: boyhood love, sexual abuse of boys, also insertion of the penis into the anus of men or women, *passive pederasty*: the enduring of pederasty, *Kināde*. – *Paediatrico*: Latin for pederasty. *Paediatrico mulierum*: Coitus per rectum of the woman.' The same *Clinical Dictionary* also defined separately the last expression as follows: '*Paediatrico* (lat. *Päderastie*) *mulierum*: Koitus per rectum der Frau.' (Dornblüth 1927.)

102 *Der Fall Krupp* 1903, p. 22.

if a denunciation occurred – and the denunciations were the most corrupting thing about Paragraph 175 – then the person concerned felt the whole the severity of the law. The brochure mentioned the example of a North German public prosecutor in Munich, who a few years before had been punished because of a denunciation and had lost ‘his office and his dignity’.

Paragraph 175 is therefore illogical and unjust. The law has to protect the youth, both male and female, from seduction, and the other paragraphs of the Penal Code are sufficient for this. The paragraph on rape provides sufficient protection against the use of force and threats. Paragraph 183 punishes the violation of *public morality*. Paragraph 175 can therefore disappear without the physiognomy of public morality changing in the least.

The abolition of Paragraph 175 must be demanded because this law is a grave injustice against a large number of honourable people. Paragraph 175 can no longer be brought into harmony with the views of science. This results in great contradictions between doctors and lawyers. Where the first group recognises a pathological mental state [*einen krankhaften seelischen Zustand*], the latter see depravity.

Paragraph 175 is also completely useless. There is not a single known case of a homosexual who had to go to prison for the satisfaction of his ‘natural’ sex drive who has been ‘reformed’ as a result. The instinct is too powerful for that.

If the bourgeois press has so far taken little or no part in the agitation for the abolition of Paragraph 175, the reason is to be found in the general sexual hypocrisy, which is usually falsely presented as a feeling of shame. And yet the nobility and the bourgeoisie would have every reason to defend themselves against a law that primarily affects members of their class.¹⁰³

The brochure defended the homosexuals while at the same time arguing that homosexuality was particularly prevalent among the upper classes due to their ‘excessive lifestyle’. It also reaffirmed that homosexuality was an illness, stating that the socialists had ‘only one legal interest’, namely, ‘that sick people be not prosecuted as criminals [*daß Kranke nicht als Verbrecher verfolgt werden*] and that an existing law either be applied equally to everyone or be repealed’.¹⁰⁴

Those had also been, according to the brochure, the motives that prompted the *Vorwärts* to bring up the Krupp case:

103 Ibid.; emphasis in the original.

104 *Der Fall Krupp* 1903, p. 23.

If *Vorwärts* had wanted to denounce an unpopular personality to the public prosecutor, it could have enumerated enough cases that happened on German soil and thus would have been in the area of jurisdiction of the German courts. The fact that it brought up a case that, according to the location of the crime scene – Italy, as is well known, does not punish homosexual intercourse – was beyond criminal prosecution, shows that, free from petty vindictiveness, it wanted to demonstrate the impossibility of applying Paragraph 175 in a sensational case.

If the bourgeois press had been conscious of its duty, it should have approached the examination of the case objectively. Instead, it preferred to stage a wild campaign against the *Vorwärts* with unanimous shouts and lying reports. When the campaign against the *Vorwärts* ended in a great retreat, the bourgeois press had only words of regret for the sad outcome. It tried zealously to rid the dead Krupp of the charge of homosexuality. No bourgeois newspaper dared to say that homosexuality was not a crime, that the charge of abnormal sexual inclination was not a disgrace.¹⁰⁵

The brochure then reproduced the declaration of the Scientific-Humanitarian Committee on this issue, which read:

On the occasion of the Krupp case, the opinion has often emerged in the press that the assertion that someone is *homosexual* is in itself a *serious insult and defamation*. Without discussing the question of whether Alfred Krupp was homosexual or not, the Scientific-Humanitarian Committee in Berlin and Leipzig emphatically takes issue against this view in the name of 1,500 homosexuals known to it, who are just as honourable in their character and moral behaviour as those born with a normal sex drive [*normalsexuell Geborenen*].

It demands that the consequences of humanity be drawn from scientific research, so that the serious misconceptions which so many people who are born homosexual [*homosexuell Geborene*] have fallen victim to can finally come to an end.

Scientific-Humanitarian Committee:

Dr med. E. Burchard.

Dr med. M. Hirschfeld.

Dr med. G. Merzbach.¹⁰⁶

¹⁰⁵ Ibid.

¹⁰⁶ *Der Fall Krupp* 1903, p. 24; emphasis in the original.

The brochure stated that '[t]he explanation comes from medical circles and is largely in line with our opinion on homosexuality', while at the same time it repeated the false assertion that homosexuality was more prevalent among the exploiting than among the working classes:

As can be seen from the preceding descriptions, the upper ten thousand are far more interested in the repeal of Paragraph 175 than the proletariat. If the Social-Democratic press is nevertheless at the forefront of the struggle against this Paragraph, this corresponds to its tradition of standing up for all the oppressed. The homosexuals are oppressed as long as Paragraph 175 exists. Everyone who knows about their condition is a danger to them. And so, they often live a miserable existence, full of pangs and dread, with eternal angst and fear of the persecution of the public prosecutor and the blackmailer's pistol.

Such conditions should be put an end to. Those who do not help this cause make themselves complicit in the injustice. What two adult people do with each other and every sexual act that they carry out by mutual free will is their private business and should not concern the public prosecutor or the public, just as little as any other intimate act taking place between two adults.

From this point of view, we demand the repeal of Paragraph 175 and hope that the *Krupp case* has done its part in getting the ball rolling.¹⁰⁷

An anonymous review of this equally anonymous pamphlet appeared in the *Jahrbuch für sexuelle Zwischenstufen*, VI. Jahrgang, 1904. The review began by offering a summary of the contents of the brochure, highlighting its most controversial aspects, such as the statement that 'Homosexuality is a disease that is particularly widespread in the upper classes of the population'; and that 'marriage between relatives, sexual diseases, alcoholism, and nervous overstimulation are its best breeding ground. A society that outlives itself creates diseases out of itself.' According to the reviewer: 'This declaration shows the endeavour to interpret the phenomenon of homosexuality from the perspective of socialist theories. It is overlooked, however, that homosexuality is just as widespread among the people as it is in upper-class circles.'¹⁰⁸

The review went on to highlight the fact that in the brochure 'The untenability of Paragraph 175 is emphasised sharply', and that 'Attention is drawn to the corrupting denunciations which it instigated, to its contradicting and

¹⁰⁷ Ibid.; emphasis in the original.

¹⁰⁸ *Der Fall Krupp. Rezension* 1904, p. 458.

subtle interpretations, to the fact that pedication [*Pädikation*: anal intercourse] between men and women is unpunished.' There could be no question of the protection of public morality through Paragraph 175, and its abolition had to be demanded both because it constituted 'a grave injustice against a large number of honourable people' and because it could 'no longer be reconciled with the views of science'.¹⁰⁹

The review then continued to summarise the contents of the brochure until it arrived at its actual point, namely the *Vorwärts*' treatment of the Krupp case. According to the reviewer, it attempted to demonstrate 'that the *Vorwärts* article appeared only for noble reasons, namely, to denounce the injustice of Paragraph 175, and that the *Vorwärts* was almost forced to publish it', because the rest of the press was already hinting at the case. The review concluded by stating:

It must be recognised that the Social-Democratic Party has so far been the only political party that, as such, has dealt with the homosexual question without prejudice and has called for a reform of Paragraph 175.

However, from an impartial point of view, I do not consider the Krupp article to be unobjectionable, since Krupp's private life, which did not harm the general public, was widely publicised and Krupp was unnecessarily stigmatised by its publication in Germany. I also believe that the aim of the *Vorwärts* was not simply to prove the need to repeal Paragraph 175, but that it also had a partisan political purpose, namely the exposure of a main representative of capitalism, as indicated by the form and content of the article. However, I admit that the temptation to publish the rumours of the Italian newspapers was very strong, and that the *Vorwärts* in any case did not deserve the storm of indignation that the newspapers of the other parties unleashed on the Social-Democratic organ.

The fault that *Vorwärts* committed in relation to Krupp would certainly have been committed by the newspapers of the other tendencies, namely the conservatives and the clericals, with the Social-Democratic leaders, with the only difference that they would not have waited as long as the *Vorwärts* did to hurl against them accusations that could have been read in foreign newspapers. Just assume that Bebel or Singer had associated with young people in a manner that aroused suspicion of homosexuality and that they were generally regarded as homosexuals abroad. Wouldn't

109 Ibid.

the Centre Party's newspapers and the feudal newspapers have crucified the Social-Democratic leaders, and would they not have denounced them as living examples of the effects of their doctrines?¹¹⁰

New Attempts by Hirschfeld and the SPD to Decriminalise Homosexuality (1905–7)

Although the petition of the Scientific-Humanitarian Committee was rejected by the Reichstag in 1898, interest in the issue had been so awakened by the petition and the parliamentary debates that, after new elections to the Reichstag were held in the summer of 1898, a second petition submitted by the Scientific-Humanitarian Committee gathered 3,000 signatures. The document arrived in the spring of 1900 to a hearing at the Petitions Committee, just after its former chairman, Dr Kruse, had died and a deputy of the Catholic Centre Party, Heinrich Wattendorff, an opponent of the petition, had taken his place. The majority of the commission, made up of conservatives, ultramontanes, antisemites and National Liberals, decided to declare the petition inadequate for debate. All the efforts of the Social Democrats for the petition to be debated in a plenary session of the Reichstag were in vain, although the Social-Democratic deputy Adolf Thiele gathered the signatures of 30 deputies for a statement which argued that the procedural rules had been fulfilled for the petition to be debated at a plenary session. Until the end of the legislative period of 1903, the petition for the elimination or limitation of Paragraph 175 was inscribed in each new list of petitions pending requests for treatment, but it was never debated.

After new parliamentary elections were held, the petition of the Scientific-Humanitarian Committee was again submitted to the Reichstag in the autumn of 1903, and on 20 April 1904 it reached the Petitions Committee. It was presented by the deputy of the Catholic Centre Party, Johann Thaler of Würzburg, who adopted a totally negative point of view, but finally the Commission decided that the petition should be discussed in the plenary session of the Reichstag at the insistence of the five Social-Democratic deputies who were part of the Committee. However, almost a year passed before that happened: it was not until 31 March 1905 that the petition was again discussed at a plenary session of the Reichstag.¹¹¹

110 *Der Fall Krupp. Rezension* 1904, pp. 459–60.

111 Thiele 1909a, pp. 1491–2.

Shortly before the debate on the petition in the Reichstag, an assassination attempt caused a public scandal and again put on the table the question of the decriminalisation of homosexuality. In January 1905, at the Hedwigskirche in Berlin, the director of the Breslau district court, Hasse, shot a blackmailer who had threatened to reveal his homosexuality. According to Magnus Hirschfeld, 'among the Social-Democratic press, which again unanimously defended the elimination of Paragraph 175, stood out the *Königsberger Volkszeitung* of 6 January 1905', which among other things wrote:

All attempts to eliminate Paragraph 175 of the Penal Code have failed so far. When that paragraph was copied from the Prussian Code to the Reich Penal Code, the scientific delegation decided to eliminate it, but the obscurantists in the Reichstag restored the threats of punishment. What do they care about science! Now a new victim of prejudice has fallen abruptly from the heights of society in sensational circumstances. Perhaps the director of the district court, Hasse, once had to use the terrible weapon against other unfortunate people, forced by the Penal Code, until the blackmailer raised his evil hand to strike! Hopefully this sensational case will finally contribute to eliminating, in the name of justice, a prejudice that claims many victims each year, and which unjustifiably brands new people as criminals all the time. We do not deny our compassion for the hard blow. Perhaps he himself once issued judgements against us and our comrades, we cannot say for the moment, but that does not stop us from considering him the innocent victim of a barbarism that we gladly lend our help to eradicate.¹¹²

The report on the petition of the Scientific-Humanitarian Committee, which had been signed by more than 5,000 people, was presented at the plenary session of the Reichstag by the Social-Democratic Deputy Adolf Thiele and reproduced in the magazine edited by Hirschfeld.¹¹³

112 Cited in Hirschfeld 1905b, p. 967.

113 Adolf Thiele (1853–1925): Born in 1853 in Dresden, worked as a primary school teacher in Saxony and in the agricultural district of Wurzen. In 1887 he gave up teaching in order to devote himself to journalism and political activism. From 1894 to 1908 he was editor of the *Freie Volksblatt* newspaper in Halle, an activity for which he spent a total of 33 months in prison. From 1888 to 1892 Thiele was a councillor of the city of Wurzen and from 1903 to 1912 of Halle. From 1898 to 1907 and from 1912 to 1918 he was also a deputy in the Reichstag for the electoral district of Liegnitz 8 in Naumburg (Saale). With the outbreak of the revisionist controversy in 1898, Thiele supported the revisionist wing and published articles in the journal edited by Eduard Bernstein, *Sozialistische Monatshefte*. After the split between the SPD and the USPD in 1917, Thiele remained in the Social-Democratic Party and in 1919

In his report on ‘the question of homosexuality and bisexuality’ (*Die Frage der Homosexualität und der Bisexualität*), Thiele pointed out that ‘trying to judge such a question from the point of view of mere morality, of tradition, recalls the Middle Ages, the time when witches were burned, heretics were tortured and the gallows were used against those who thought differently.’¹¹⁴ Thiele pointed out that the petition did not require the deletion of Paragraph 175 but its modification, in the sense that homosexual relations would be penalised only ‘if they are carried out by force or with persons under 16 years of age or in a way that constitutes a “public scandal”’.¹¹⁵ After pointing out the absurdity of Paragraph 175 criminalising homosexual relations between men but not women, Thiele recalled that the decriminalisation of homosexuality had been the norm for a long time in ‘France, Holland, etc.’¹¹⁶

Following Hirschfeld’s thesis, Thiele stated that ‘science has recognised that not only are there male and female individuals among humans, as among all other living beings, but there are also large numbers of intermediate stages, in which neither the masculine nor the feminine sex predominates. In the physiological aspect this is recognised; but some people do not want to draw the necessary consequences for emotional and sexual life. It is well known that there are many intermediate psychological or physiological stages.’¹¹⁷ Recalling the phrase attributed to Diogenes, ‘*naturalia non sunt turpia*’ (‘Natural things are not shameful’), Thiele maintained that, although he did not share Hirschfeld’s theory about the existence of a third sex,¹¹⁸ ‘undoubtedly, it is the merit of the Scientific-Humanitarian Committee to have emphatically initiated a public debate on this psychological aspect of the homosexual question’.¹¹⁹ Thiele drew from the research of the Scientific-Humanitarian Committee the conclusion that the natural disposition which drives some people to homosexuality was such that with it free will ceases, and that therefore society has no right

was a deputy for that party in the National Assembly that drafted the constitution of the Weimar Republic.

114 Hirschfeld 1905c, pp. 972, 974.

115 Hirschfeld 1905c, pp. 976.

116 Hirschfeld 1905c, pp. 978–9.

117 Hirschfeld 1905c, p. 98.

118 A reference to the book of Magnus Hirschfeld, *Berlin’s Third Sex* (Rixdorf Editions, 2017). The original German edition appeared in 1904 as *Berlins drittes Geschlecht* (Berlin und Leipzig: Verlag von Hermann Seemann Nachfolger: Hirschfeld 1904a). A French version was published four years later as *Les homosexuels de Berlin: Le troisième sexe* (Paris: Librairie médicale et scientifique Jules Rousset, 1908).

119 Hirschfeld 1905c, p. 981.

to require these people to be forced to give up the operation of this natural disposition.¹²⁰

Thiele went on to describe the results of the three surveys carried out by the Scientific-Humanitarian Committee on the issue of homosexuality, among 3,000 students at the Charlottenburg polytechnical institute (*Technische Hochschule*), in Amsterdam and among 5,721 men affiliated with the metalworkers' union in Germany.¹²¹ In the questionnaire, which was answered voluntarily and anonymously, the informants had to state whether they were homosexual, heterosexual or bisexual. The survey showed the following results: heterosexuals constituted 94% of the students at the Charlottenburg polytechnical institute, 94.1% of the inhabitants of Amsterdam who answered the questionnaire and 95.7% of the metalworkers. Homosexuals and bisexuals constituted 6% of the students at the Charlottenburg polytechnical institute, 5.8% of the inhabitants of Amsterdam and 4.3% of the metalworkers, while homosexuals constituted 1.5% of the students at the Charlottenburg polytechnical institute, 1.9% of the inhabitants of Amsterdam, and 1.1% of the metalworkers. That is to say, the three surveys showed very similar percentages.¹²²

Thiele offered, based on these percentages, the following estimates about the number of homosexuals in Germany:

One percent of the 56 million inhabitants of Germany would be about 560,000 people, and, gentlemen, this estimate of the number of homosexuals in Germany is probably too low rather than too high. Homosexual women are not included. If we assume the same percentage for women, and there is no reason to use a different number, we have more than 1 million inhabitants in Germany, 2.2% according to the calculations of the Scientific-Humanitarian Committee, which have not been made out of thin air. These people, without any personal fault of their own, are subject to an exceptional law and must expect the most severe penalties to be visited upon them, without being able to change their nature or the criminal responsibility for their actions. It is a scandalous condition to subject more than 1 million people to the provisions of Paragraph 175, to

120 Hirschfeld 1905c, p. 994.

121 Six of the students at the Charlottenburg polytechnical institute (an independent city to the west of Berlin until 1920) brought a suit against Hirschfeld for libel (*Beleidigung*, or insult), on the grounds that asking them whether they were attracted to men implied that they might be. Hirschfeld was convicted and had to pay a heavy fine (Ross Dickinson 2014, p. 161).

122 Hirschfeld 1904b.

threaten them with punishment even though they cannot be attributed any personal guilt.¹²³

Under the provisions of Paragraph 175 of the Penal Code, the following number of people had been punished for ‘unnatural fornication’ in Germany: 585 in 1900, 491 in 1899, 484 in 1895, 412 in 1890, and 391 in 1885. This was a stable and at the same time a ridiculous and completely arbitrary percentage of the homosexual relations that actually took place in Germany. Thiele offered the following estimates:

Let’s assume with the Scientific-Humanitarian Committee – and the calculations are not arbitrary – that there are 1,260,000 homosexual people in Germany. If half of these are women, then there are 600,000 homosexual men left. If we estimate that only two fifths of these 600,000 homosexual men are old enough to be criminally responsible, then we have 240,000 homosexual, adult, male people in Germany – about a quarter [of all homosexuals]. Assuming that each of these 240,000 men practises once a week the homosexual act, multiplying by 52 we have a number of 12.48 million homosexual acts committed annually in Germany by men who are potentially punishable, of which only 500 or 600 are actually punished.¹²⁴

To the Conservatives’ assertion that the decriminalisation of homosexuality would weaken the army, Thiele replied by saying that ‘the military force of the empire, if we are going to go into this, is weakened by the brutal housing shortage in the big cities, by the poor nutrition due to the low wages of the workers, by many other health abuses in large and small communities, and not by the actions of homosexuals.’¹²⁵

After recalling the number of suicides, as well as the crimes of blackmail, to which the criminalisation of homosexuality gave rise, Thiele recalled that ‘homosexual tendencies can be found in all strata of the population, in all ages, in both sexes, in all occupations.’¹²⁶

The revisionist leader Georg von Vollmar, while supporting the decriminalisation of homosexuality, distanced himself from Thiele’s speech and described it in the Reichstag on 31 March 1905 as a purely personal statement, saying:

123 Hirschfeld 1905c, p. 984.

124 Hirschfeld 1905c, p. 987.

125 Hirschfeld 1905c, p. 888.

126 Hirschfeld 1905c, pp. 990–1.

As for the matter itself, I am far removed from condemning or in some way criticising those who support the removal of Paragraph 175, and I advocate the most favourable treatment of the present petition. I regard this question as a very serious one, and I am one of those who have followed the pamphlets made available to us and the other relevant literature, as far as I was able to, with attentiveness. I also recognise the great zeal that animates this movement, although on the other hand I must frankly admit that certain things connected with the agitation have in recent times often assumed a form that makes it extremely difficult to advocate for their petition. (Very right!)

Nevertheless, that cannot prevent me from recognising the importance of the matter and coming to the conclusion that at least there is much to be said for the elimination of Paragraph 175.

By restricting myself to these brief words, I want to emphasise again, in order to avoid any misunderstandings, what has already been said by deputy Thiele, namely that Mr Thiele, like every other colleague, regardless of party membership, who speaks on this matter, is only taking a personal stand, and that the Social Democrats have as little to do with this matter as any other party. (Very correct! Left. Hear! Hear! Right.)¹²⁷

Thiele's report was vehemently rejected by the deputy of the Catholic Centre Party, Johann Thaler, in an intervention also reproduced by Hirschfeld in his magazine. In his reply, after asking Thaler not to confuse homosexuality with paedophilia as the right-wing parties used to do,¹²⁸ Thiele summed up his arguments in the following way:

As Social Democrats, other paragraphs of the Penal Code seem to us even more dangerous, much more fateful and more unjust than Paragraph 175. But that does not prevent us from defending a change in the law that we consider legitimate. And when we are told that morals, that the common good requires that the paragraph remain as it is – Ah! gentlemen, everything in the world has been justified by referring to the alleged 'morality' and the concern for the alleged 'common good'; the Inquisition, the witch hunts, everything; and those who have faced outdated institutions have always been presented as disturbing elements, as enemies of morality.

127 *Stenographische Berichte über die Verhandlungen des Reichstags, XI. Legislaturperiode, I. Session. 177. Sitzung. Freitag den 31. März 1905*, p. 5839 (quoted in Hirschfeld 1905c, pp. 1022–3).

128 Hirschfeld 1905c, p. 1026.

Now it is the same with Paragraph 175. Finally, we must break with the vestiges of the Middle Ages that we still have in our legislation, and the modification of Paragraph 175 is a change in that sense. Therefore, we urge you to accept our petition.¹²⁹

The petition was rejected by the Reichstag with the votes of the right, the Centre Party and the majority of the National Liberal Party deputies, but this time with a perverse turn: the Catholic Centre Party proposed that Paragraph 175 be replaced by a new paragraph, which would have carried the number 250 and extended the criminalisation of homosexuality to lesbian women.¹³⁰ Even so, Hirschfeld saw the debate as ‘an important step forward for our movement: this is the first time that the German parliament, perhaps the first time that any parliament, has discussed the welfare and problems of homosexuals in open sessions’.¹³¹

The SPD and the Eulenburg Affair (1907–9)

In 1907, the Scientific-Humanitarian Committee again submitted its petition to the Reichstag, in the context of the Eulenburg affair, a series of courts martial and of five civil trials concerning accusations of homosexuality against prominent members of the cabinet and the environment of Kaiser Wilhelm II during the years 1906–9. The scandal centred on the accusations of homosexuality launched by the journalist Maximilian Harden in his journal *Die Zukunft* against Philipp, Prince of Eulenburg-Hertefeld, and General Kuno, Count von Moltke.

In an unsigned article published in *Vorwärts* on 18 June 1907, before the beginning of the first trial, entitled ‘Harden’s retreat’, the SPD journal argued that Harden’s intention had clearly been to start ‘the “gossip” about [Eulenburg’s] camarilla and homosexuality [*dem ‘Klatsch’ über Kamarilla und Homosexualität*]’ that had been raging through the German press in the previous weeks, ‘even if Mr Harden did not know about violations of Paragraph 175 [*selbst wenn Herr Harden nichts von Verstößen gegen den §175 wissen sollte*]’. Harden’s aim had been to show that the Eulenburg circle had tried to influence government affairs and to overthrow the highest Reich officials. But in order to denounce the political activity of this camarilla, Harden had aimed

129 Hirschfeld 1905c, p. 1029.

130 Thiele 1909b, p. 1564.

131 Hirschfeld 1905c, p. 1037.

at ‘the sexual qualification’ of its members, whereas for the SPD ‘the normal or abnormal satisfaction of their sexual instinct, in our opinion, is of no concern to the public, unless young people are harmed. This is a purely private matter for those involved.’¹³² Harden’s refusal to testify showed that he was simply acting in the interests of a competing court camarilla. But the court manoeuvring had gotten out of hand and had given rise to a public scandal that could end up harming not just Eulenburg’s camarilla but also the one whose interests Harden represented – hence his retreat, according to the *Vorwärts*.

The first of the civil trials, *Moltke v. Harden*, was held from 23 to 29 October 1907. For both Moltke and Eulenburg, the testimony of the witness Lilly von Elbe, Moltke’s divorced wife, proved catastrophic. She claimed under oath that Moltke had described the institution of marriage as a ‘dirty business’ and the matrimonial bedroom as ‘nothing more than an institution for rape’. A woman, Moltke had said to her, was ‘just a toilet’. On the other hand, her ex-husband had passionately loved his male friends, especially Eulenburg, who had been his superior as ambassador in Vienna from 1897 to 1899. Moltke had used pet names for Eulenburg like ‘my soul’ and ‘my dear old boy’. She then told an anecdote that became the subject of a famous homophobic caricature: ‘One day,’ she recalled, ‘Count Philipp Eulenburg had left his handkerchief in Count Moltke’s room after a visit. When Count Moltke found it, he pressed it ardently to his lips and said, “My dear! My love!”’ After his separation from her in November 1898, Moltke had said that he wanted to return to court because Eulenburg needed someone close to the Kaiser to be kept well informed. He and Eulenburg had formed a ring around the Kaiser that no one else could enter.¹³³

While the *Moltke v. Harden* trial was taking place, on 26 October 1907, *Vorwärts* published a three-page-long article, entitled ‘The shadow government of Paragraph 175’, which reproduced the complete court proceedings of day three of the trial (25 October 1907), including Hirschfeld’s testimony as expert witness. Harden’s lawyer, Max Bernstein, accused Eulenburg of being ‘homosexually predisposed’ (*homosexuell veranlagt*) and of having been identified by Bismarck as ‘a pederast’ (*ein Päderast*), thus conflating the meaning of these two terms.¹³⁴ When asked whether he believed that Moltke ‘was aware of the homosexual tendencies of the other members of the group’, Harden answered: ‘I am convinced that Count von Moltke knew that Prince Eulenburg is homosexually inclined.’¹³⁵

132 *Vorwärts* 1907a.

133 Röhl 2014, p. 566.

134 *Vorwärts* 1907b, p. 1.

135 *Vorwärts* 1907b, p. 2; emphasis in the original.

The court then asked Hirschfeld ‘whether he wanted to give an expert opinion on the basis of the previous proceedings as to whether the accused (Moltke) was homosexual and whether he had acted upon this predisposition.’ Hirschfeld was then sworn in as expert witness and declared:

I have to say that I have gained the scientific conviction from the hearing of evidence that there is objectively a deviation from the norm or from the feeling of the majority in Count Kuno Moltke’s emotional life, through no fault of his own, due to an undoubtedly innate and, according to my conviction, to him even unconscious disposition, which one usually calls homosexual. By homosexual we mean someone who is drawn in love to members of the same sex; whether or not he is actively homosexual is irrelevant from a scientific point of view. According to the statements of Frau von Elbe and her son, I have become convinced that the plaintiff’s symptoms of homosexuality are quite clear.¹³⁶

Vorwärts did not reproduce Hirschfeld’s full deposition, which at this point continued as follows:

Just as there are normal [i.e. heterosexual] people who live chastely, there are homosexuals whose love has a markedly spiritual, ideal, ‘platonic’ character. The objective diagnosis of homosexuality is not easy in individual cases; it is essentially based on three points: first on the behaviour towards people of the opposite sex, then [on the behaviour] towards people of the same sex, and third on the overall mental and physical personality, which in a homosexual man is characterised by feminine traits, in a homosexual woman by masculine traits. There are clear signs of this trinity of symptoms: With regard to the feeling for the female sex, I place the main emphasis on the words of the plaintiff such as: ‘I do not dislike you as a person, but as a woman’, furthermore ‘the wife should live contented [*wunschlos*] next to him like a fairy tale’.¹³⁷

Vorwärts did, however, reproduce the next section of Hirschfeld’s deposition, which said:

In the present case I see the whole terrible tragedy of the marriage of a homosexual, as I have had the opportunity to see it many times, but

¹³⁶ *Vorwärts* 1907b, p. 2.

¹³⁷ Friedlaender (ed.) 1911, p. 204.

here particularly complicated by the fact that it was concluded with a 26-year-old woman who had previously been married to a normal-sex [*normalsexuellen*] man for 8 years and evidently, since she loved the plaintiff extraordinarily strongly, she fell into a highly nervous, irritable state of exaltation due to a lack of sexual satisfaction.¹³⁸

Vorwärts again did not reproduce the following part of Hirschfeld's deposition, which recalled the testimony of Moltke's wife. This part is interesting, because Hirschfeld drew a parallel between the *Moltke v. Harden* trial and the trial of Oscar Wilde:

When Count von Moltke emphasises, against this testimony, that he made no secret of his admiration for his friends because his conscience was pure and his friendship noble, I can fully agree with him. Homosexual love can be just as pure as normal love, and in the case in question there is nothing to suggest otherwise. When the Count exclaimed: 'My friendship is clear and pure as the sun', this reminded me of a passage from another trial in which the homosexual question also played a role, the trial of the unfortunate English poet Oscar Wilde. When the Prosecutor Charles Gill asked him: 'What kind of love are you talking about?' [Gill actually read some verses from the poem 'Two Loves' by Alfred Douglas, and then asked Oscar Wilde: 'What is the "Love that dare not speak its name"?'], Wilde replied: "'The Love that dare not speak its name" in this century is such a great affection of an elder for a younger man as there was between David and Jonathan, such as Plato made the very basis of his philosophy, and such as you find in the sonnets of Michelangelo and Shakespeare. It is that deep, spiritual affection that is as pure as it is perfect. It dictates and pervades great works of art like those of Shakespeare and Michelangelo, and those two letters of mine, such as they are. It is in this century misunderstood, so much misunderstood that it may be described as the "Love that dare not speak its name," and on account of it I am placed where I am now.'

The feminine element in homosexual men is, generally speaking, usually characterised by the fact that there is greater sensitivity and receptivity, furthermore a predominance of emotional life, a strong artistic sense, especially with regard to music, often also a tendency towards mysticism and all kinds of feminine inclinations and habits in a good and a less good sense. However, this mixture does not make the homosexual as such

138 *Vorwärts* 1907b, p. 2.

inferior; he is not of the same kind as the heterosexual, but he is of equal value. To what extent the feminine element is present in Count Kuno von Moltke, I cannot judge with any certainty today. I don't know him well enough for that; it would require much longer observation. In any case, there is no lack of serious clues in the complex of character traits described here. I therefore summarise my report as follows: The objective evidence of the defendant's alleged abnormal feelings and behaviour and a male friendship that deviates from the norm appears to me without a doubt to be provided, but against the norm is not against nature.¹³⁹

Vorwärts summarised that part of Hirschfeld's deposition as follows: 'I am convinced that the *proof has been provided that there is a feeling that deviates from the norm*. But against the norm is not synonymous with against nature'.¹⁴⁰ It did, however, reproduce in full the following sentences of Hirschfeld's deposition, which said:

According to my observations, I have come to the conviction that homosexuality is not a disease, but part of nature's plan. I wish therefore that one may also be able to say about this process that it led out of the darkness about this question and into the light. In order to protect the soldiers from the abuse of official [military] authority, there is no need for Paragraph 175, which is based on false assumptions and which really has already claimed more than enough victims.¹⁴¹

Clearly, for Hirschfeld his testimony was part and parcel of the Scientific-Humanitarian Committee's efforts to decriminalise homosexuality through the elimination of Paragraph 175 of the German Penal Code. However, his deposition was damning not only for Moltke but also for the members of what Harden called the 'Trio Eulenburg–Moltke–Lecomte'. Hirschfeld stated:

I have come to the conclusion that the other gentlemen of the circle named here may have understood how to hide their inclinations. Homosexuals in particular are always willing to hide their inclinations. It often happens that a man with a homosexual disposition behaves in such a way that his immediate environment does not notice his disposition. When

139 Friedlaender (ed.) 1911, pp. 205–6.

140 *Vorwärts* 1907b, p. 2; emphasis in the original.

141 *Vorwärts* 1907b, p. 2.

suddenly this becomes known, one often hears that nobody would have believed that he was 'like that'.¹⁴²

The physician Georg Merzbach (1868–1939), second chairman of the Scientific-Humanitarian Committee, was then sworn in as an expert witness, and he argued, contrary to Hirschfeld's opinion, that Moltke was not homosexual but 'led a completely normal life for years until he developed so-called psychological impotence, which is likely due to some characteristics of the woman'.¹⁴³ But the court accepted Hirschfeld's point of view and, on 29 October 1907, found Moltke homosexual and Harden innocent of libel.¹⁴⁴

Immediately after the verdict of the *Moltke v. Harden* trial was handed down, Franz Mehring wrote an article in *Die neue Zeit* entitled 'The Moltke–Harden Trial', dated 30 October 1907, where he compared it with the high treason process to which Karl Liebknecht had been subject in October 1907 for his brochure *Militarism and Antimilitarism, with special regard to the International Young Socialist Movement*, and which resulted in him being sentenced to one-and-a-half years' imprisonment for high treason. According to Mehring, it was not easy to imagine greater contrasts than those that existed between the Liebknecht trial and the Moltke–Harden trial. In one case there was a champion of the working classes, who struggled for the greatest aims of mankind, who boldly defied the highest court of justice and the highest prosecutor of the empire and stepped victoriously into prison after winning the sympathy of millions, while in the other case there was the dirty brawl of two court camarillas, which 'together exposed the moral abyss yawning beneath the vaunted civilisation of the ruling classes and left behind a general disgust shared equally between the vanquished and the victor'.¹⁴⁵

The weapons with which the brawl had been fought were worthy of the goal. Eulenburg and his comrades were dangerous politicians, who had been overthrown, not because they constituted a public danger, 'but because they were, or supposedly were, pederasts [*weil sie Päderasten gewesen sind oder gewesen sein sollen*]'. And according to Harden's assertions, that was not a new

142 Ibid.

143 Ibid.; emphasis in the original. Shortly afterward, Merzbach published a 44-page-long pamphlet entitled *On the Psychology of the Moltke Case*, of which three editions appeared between 1907 and 1908 in German (Merzbach 1907).

144 At about this time, the *Vorwärts* editorial house published a sixteen-page pamphlet entitled *Sodom and Gomorrah: The Kingmaker's Trial*, number six of the series 'Portrayals of the Times from the Class State' (*Zeitbilder aus dem Klassenstaat*) (*Sozialdemokratische Partei Deutschlands* 1907).

145 Mehring 1907, p. 145.

discovery; four Chancellors knew about it, without any of them having made any attempt to remove these people from the emperor's surroundings. Mehring then added, uncritically reproducing the identification of homosexuality with pederasty that had been employed in the trial:

As opponents of the monarchy, we leave aside the delicate question of whether pederasty is in insoluble contradiction with the necessary characteristics of a monarchical adviser, but if so, what does this say about the Chancellors who quietly watched the monarch have pederasts in his immediate vicinity for decades, what does this say about the present Chancellor [Bernhard von Bülow], who, according to Harden, was elevated to his dignity by a group of pederasts, and who, when he fell out with that pleasant company, thought it better to dissolve the Reichstag to strengthen his position than to appear before the emperor and demand that the pederasts' clique be chased away?¹⁴⁶

Harden had been acquitted by the jury of having insulted Count Moltke by accusing him of homosexual tendencies (*homosexuelle Neigungen*), but from a legal point of view this judgement was about as astonishing as the judgement of the Court of Justice on Liebknecht, because, while the jury had granted Harden's evidence a wide leeway, it cut off the counter-evidence of the plaintiff Moltke and then passed a verdict that was completely invalid. All this proved, in Mehring's opinion, 'that the victorious court camarilla is of the same moral calibre as the defeated one'.¹⁴⁷

The *Moltke v. Harden* trial was quickly voided on procedural grounds, and the state prosecutor decided to allow a criminal libel trial. The *Harden v. Moltke* retrial took place from 18 to 25 December 1907. Lili von Elbe and Hirschfeld were placed back on the stand: her earlier testimony was disqualified through a diagnosis of 'classical hysteria', and Hirschfeld was therefore forced to retract his initial 'forensic' opinion. On 4 January 1908 Harden was convicted of libel and sentenced to four months' imprisonment.¹⁴⁸

¹⁴⁶ Mehring 1907, p. 147.

¹⁴⁷ Ibid.

¹⁴⁸ On the Eulenburg affair (1907–9) see, in English, Domeier 2015 and Steakley 1991. The historian Norman Domeier sees in Hirschfeld's report as expert witness in the Eulenburg trial a case of 'outing' *avant la lettre* and thus a violation of ethical principles, although it was not Hirschfeld, but Harden in *Die Zukunft*, that 'outed' Eulenburg, and Hirschfeld's report at most only worsened his misfortune. Domeier's thesis is that Harden fought Eulenburg because he considered him a harmful, 'pacifistic and internationalist' influence on the emperor. Domeier believes that Harden's fight against Eulenburg was mainly

As regards the resubmission of the Scientific-Humanitarian Committee's petition to the Reichstag in 1907, according to Hirschfeld:

The petition was discussed in the Petitions Commission and in the Reichstag earlier than would have been expected, but at the instigation of the opponents, at a time which could not have been chosen less favourably for its purpose, namely when the passion of the people had been violently stirred up through the sensational trials. The press and the parties behaved partly with hostility, partly indifferently. A great many newspapers that had previously advocated homosexuality on various occasions suddenly fiercely opposed the Scientific-Humanitarian Committee's views.¹⁴⁹

We have already seen that in the fiftieth edition of his book *Woman and Socialism* Bebel wrote that 'the Moltke, Lynar, and Eulenburg trials' had 'shown how widespread this perversity is in higher social circles, especially in the military and court circles'.¹⁵⁰ Despite this reference to homosexuality as *Perversität*, according to Hirschfeld, during the Reichstag debates on the Eulenburg affair, 'The only one who raised his voice again in the Reichstag in favour of homosexuals was the old, unfortunately ill, Bebel.' Hirschfeld recalled that 'in the 61st session on Friday, 29 November 1907, deputy Bebel said, among other things, the following, which we reproduce here after the shorthand report':

In discussing these camarilla affairs, other very unpleasant things came up, sexual matters of the most unpleasant kind. And these things, as is well known, have been discussed in the broadest possible way. In themselves they are nothing new in the Reichstag. As early as 1898, I pointed out in a detailed speech how dubious things are in this regard for us. To the great surprise of the majority of the House, I said in that speech that, if all those who violated Paragraph 175 here in Berlin alone were to be arrested,

a proxy fight against the Kaiser, but argues that Eulenburg was only fought by Harden because of his unwillingness to go to war. In 1933, in his exile in Paris, Hirschfeld had a view of Eulenburg that came very close to Domeier's (Hirschfeld 1933, p. 3). The historian Manfred Herzer, on the other hand, believes that Harden's struggle could essentially have been the execution of Bismarck's revenge on his dismissal from the Chancellery ordered by the Emperor in 1890, and that 'it is doubtful that Eulenburg would not have shared the emperor's enthusiasm for war and armaments or even dared to dissuade the emperor from his will to fight on the war question' (Herzer 2017, p. 166, n. 520).

149 Hirschfeld 1908a, p. 632.

150 Bebel 1910, p. 207, n. 1.

two new prisons the size of Plötzensee would not be able to accommodate them. (Hear! Hear! Left.) I also stated that there were many people like this in high and very high society. I went on to say that if the Morals Police [*Sittenpolizei*], which knows these things very well and which has its own dossiers on these things, made use of its position, did its duty and prosecuted all these gentlemen, a scandal would arise against which the Panama scandal, the Dreyfuss scandal, the *Tauschprozeß* and everything else would be child's play. I declared at that time, also, that all classes in the Reich were involved. The Lex Heinze commission, which was also referred to yesterday, met. I was a member of that commission and there I repeated my accusations even more sharply. At my request, the commission decided that a senior police officer in charge of the department concerned should be summoned to testify about the actual state of affairs. I was hoping that Mr Meerscheidt-Hüllessem would come; he didn't, Count von Pückler came instead. I then repeated my accusations, stating that the matter not only affects men's circles, but also women's circles, only that Paragraph 175 does not apply to them (shouts on the left: 'that's also probable!'). I said that this is true of all men's circles, Mr Mugdan; it is estimated that in 2 percent of men, if not more, this tendency is innate.¹⁵¹

After being interrupted, Bebel continued:

Count von Pückler then stated that he had to confirm everything I said. (Hear! Hear!) He also confirmed that at times high-ranking strangers who came to Berlin would be taken by the police to certain places where this world of men [*Männerwelt*] came together, and frequented it as a tourist attraction [*Sehenswürdigkeit*]. Then colleague Kruse from the National Liberal Party came and stated, when a member said that certain things that I had communicated were probably an exaggeration: Mr Bebel did not exaggerate, he still said too little, I'm telling you this in my capacity as a doctor in Norderney. ('Listen! Listen!', among the Social Democrats.) How someone can say, in the face of such things, that the matter has little importance, is rather strange.

The names of the men who violate Paragraph 175 are registered with the police, as are the names of those who prostitute themselves in such cases, take money for it and in so many cases become blackmailers. A lot of misfortunes have already resulted from this. In the last few years, as one man writes to me, no less than 20 officers, a whole series

¹⁵¹ Hirschfeld 1908a, pp. 634–5.

of non-commissioned officers and enlisted men, have been sentenced; a number of noble officers from various regiments have committed suicide to avoid extortion and accusations; I know that, the Minister of War probably also knows that. In all these respects the situation is sad; this has to be stated openly, all the more ruthlessly, since an improvement can finally occur in this matter only by not covering it up! ('Quite correct!', with the Social Democrats.)

The Chancellor said yesterday that these incidents are not evidence of the decay of bourgeois society [*bürgerlichen Gesellschaft*]. I want to admit that up to a point. What we see and lament on a very large scale today once existed on a large scale in Greece and elsewhere. That is why one speaks of Greek love, just as one calls a similar kind of love in the female sex lesbian love. So, we have Greek and lesbian love in the German Reich, but not a Periclean age. ('Quite correct!', from the Social Democrats – laughter.) But it is necessary to talk about it. I was extremely astonished when, before the Chancellor made his statement yesterday, he did not call for the responsible police officers, for example Herr von Tresckow, and ask them to submit their dossiers to him – as they would have had to. He would have been amazed at what he would have learned. In the trial into which he was shamefully drawn, he himself declared that he had heard a lot about Prince Eulenburg, but not in a way that he could act upon. I too will leave Prince Eulenburg out of the picture for the time being – other gentlemen from court society are also affected; I remember Counts von Lynar and von Hohenau, etc., who are supposed to be still in military service. A number of other gentlemen – I can incidentally mention more – were also involved here. It cannot be entirely unknown to the Chancellor that there was much evidence available in this respect, because the gentlemen were dismissed from military service on the basis of charges made against them – only they were discharged with a pension (lively shouts: 'Hear! hear!') and no charges under Paragraph 175 have been brought against them; indeed, we haven't even got a Court of honour called against them. That is characteristic of how much we measure with two different standards when it comes to people above or below. ('Very right!', from the Social Democrats – shouts.) – Mr Mugdan, if [homosexual] workers are caught, they will be charged (repeated shouts.) – I just want to say: people shouldn't behave like this and deny what cannot be denied. Here we must finally strike while the iron is red-hot. Regardless of who is involved! (Shouting) – *Yes, in my opinion Paragraph 175 is untenable.* (Repeated shouting – Bell.)¹⁵²

¹⁵² Hirschfeld 1908a, pp. 633–7; Hirschfeld's emphasis.

After being interrupted again, Bebel concluded:

*Mr colleague Heckscher, on the day in which Paragraph 175 comes up for discussion, you will find me at the post. I shall then place at your disposal quite a different material. In the present case there are two forms [of homosexuality] to be observed. In one case the quality is innate [angeboren], so here we are dealing with personally innocent people. Among them is a Prussian prince [Philipp, Prince of Eulenburg-Hertefeld], who by nature has this disposition (Acclamation) –, in my eyes, this man is not punishable, so I do not mention his name. There are others in whom this quality is acquired; these are worse. But, gentlemen, you have no idea how many respectable, honourable and good men, even in high and indeed in the highest positions, are driven to suicide year after year, some out of shame, others out of fear of the blackmailer. I don't want to get into that today. All I ask is that a thorough clean-up is finally carried out, that everyone who is guilty is prosecuted. In doing so, you will inevitably come to the question: can Paragraph 175 remain in effect in such circumstances?*¹⁵³

The petition was again rejected in November 1907, among other things due to the equivocal attitude of three SPD deputies in the Reichstag (Geck, Sachse and Schwartz), who, according to Hirschfeld, 'dragged by the momentary mood, completely abandoned the traditional positions of their party'.¹⁵⁴ Hirschfeld's main biographer, Manfred Herzer, correctly points out that 'Hirschfeld's interpretation of this voting behaviour erroneously presupposes that there was a deeply rooted tradition in the SPD of supporting the aims of the Scientific-Humanitarian Committee. However, there was neither a resolution' adopted by a Social-Democratic Party Congress to support the Scientific-Humanitarian Committee's petition in favour of the abolition of Paragraph 175, 'nor was it customary to share the Party Chairman Bebel's views on all issues'.¹⁵⁵ Indeed, as we have seen, already in 1905 Georg von Vollmar had distanced himself from Thiele in this respect.

Harden set out to prove Eulenburg's homosexuality by having Anton Städele publish an article claiming that Harden had taken hush money from Eulenburg. Harden then sued his accomplice for libel, and Städele was found guilty and charged a hundred mark fine, which was repaid to him by Harden. During the *Harden v. Städele* trial, which began on 21 April 1908, Georg Riedel and Jacob

153 Hirschfeld 1908a, p. 637; Hirschfeld's emphasis.

154 Magnus Hirschfeld, 'Einleitung und Situations-Bericht', *Vierteljahrsberichte des Wissenschaftlich-humanitären Komitees*, Jg. 1, 1909, 20. Cited in Herzer 2017, pp. 177–8.

155 Herzer 2017, p. 178.

Ernst testified to having had sexual relations with Eulenburg. In a sardonic article entitled 'The Prince and His Public Prosecutor', published on 30 April 1908, *Vorwärts* denounced the inequities of the class justice system, and contrasted the reluctance of the public prosecutor's office to judge Eulenburg for perjury due to his alleged ill-health with the hastiness with which Social-Democratic editors were thrown into prison.¹⁵⁶

Due to the pressure of public opinion, however, Eulenburg was nonetheless charged with perjury and brought to trial on 7 May 1908. Harden's conviction was then overturned, and on 29 June 1908 a second trial began. After the deposition of 41 witnesses, the trial was delayed because of Eulenburg's alleged ill health. During the course of these proceedings, *Vorwärts* published, on 7 July 1908, an article entitled 'The Secret Trial', in which it denounced the gagging order issued by the court around the process.¹⁵⁷ The trial was moved to Eulenburg's hospital bed on 17 July 1908, but it was delayed again and again, until it was finally postponed indefinitely in 1919.

Homosexual and Women's Liberation in the SPD before the First World War

There are some parallels as well as striking differences between the policies pursued by the SPD towards the homosexual liberation movement and towards women's liberation.

The movement of proletarian women of the Social-Democratic Party of Germany, and by extension of the Second International, was structured by Clara Zetkin around the principle of a 'clean break' between the women of the exploiting and exploited classes. Marxism, as a working-class political tendency that aspired to the liberation of women through the conquest of political power by the workers, and feminism, as a multi-class movement which aspired to improve the situation of women within the framework of

156 *Vorwärts* 1908a. Being an editor of a Social-Democratic newspaper was a hazardous job. Andrew Bonnell points out that throughout the 1890s, *Vorwärts* carried a monthly register of party members' convictions, prison sentences and fines, with Social-Democratic newspaper editors being especially at risk, and that in the 1890s there was scarcely a trade-union or party editor who did not spend several months in gaol for libel and slander (*Beleidigung*) against the Kaiser, the sovereign of the particular state, state officials or employers. Given these facts, it is not surprising that in the 1890s it was sometimes suggested that the position of legally responsible editor of a Social-Democratic newspaper be rotated amongst younger, unmarried comrades, without families to support, who could afford to spend a few months in gaol (Bonnell 2021, pp. 179–80).

157 *Vorwärts* 1908b.

capitalist society, were incompatible, and therefore working-class women had to have their own organisations within socialist parties which also included working-class men.¹⁵⁸

At the congress of the SPD held in the city of Gotha in 1896, Zetkin submitted a report which described women's liberation as the product of the economic transformations brought about by the capitalist mode of production. She rejected the belief that there was a single 'women's movement' and postulated the existence of a 'woman question' for each class of capitalist society, asserting that the emancipation of proletarian women could not be the work of the women of all classes, but only the work of the entire proletariat, regardless of sex. The report concluded by rejecting the idea of an abstract equality between the sexes, as postulated by the theory of natural right, and demanded special protective legislation for female workers, particularly for pregnant and lactating women and women with small children.¹⁵⁹ This was part of a larger programme for the organisation of working women, which included the introduction of female factory inspectors, equal pay for equal work without distinction of sex, and, crucially, the demand for universal female suffrage – a democratic demand that had been abandoned by the main bourgeois parties in Germany.

This programme was articulated and applied through the holding every two years of socialist women's conferences immediately before the opening of the SPD congresses. The SPD managed to celebrate six *Frauenkonferenzen* before the outbreak of the First World War. At the Fourth Conference of Socialist Women held in the city of Mannheim on 22–3 September 1906, simultaneously with the congress of the SPD held in the same city, Zetkin submitted a report on women's suffrage which laid the theoretical and programmatic foundations for the adoption by the First International Conference of Socialist Women, held in Stuttgart in 1907, of universal female suffrage as the main demand around which the proletarian women's movement had to be organised. According to Zetkin, democratic demands, betrayed by bourgeois parties, had been taken over by the socialists, giving them a transitional character, as slogans around which the party could mobilise and organise the working masses towards the goal of a workers' government – whereas for bourgeois feminists, whose ultimate goal was to strengthen bourgeois society, those democratic demands were an end in themselves. In Zetkin's words: 'the alpha and omega of our demand for women's suffrage remains: we demand equal political rights with

158 Zetkin 1894.

159 Zetkin 1896.

men, so that we can take part without legal restrictions in the struggle for the destruction of this society'.¹⁶⁰

In her brochure, Zetkin also pointed out the theoretical differences that separated Marxists from feminists in their defence of female suffrage: whereas feminists appealed to the theory of natural right, upon which the declarations of rights of the bourgeois revolutions of the eighteenth century were based and according to which those rights followed from the existence of an immutable human nature common to all persons, Marxists based their analysis on the materialist conception of history, and therefore saw female suffrage as a result of the revolution in the economic situation of women brought about by the capitalist mode of production. Zetkin came to the conclusion that 'also with regard to the justification of our demands we are completely separated from the bourgeois women's movement'.¹⁶¹

The agitation around this programme was accompanied by systematic unionisation work, closely linked to the construction of the party, as a result of which the number of unionised working women in Germany grew exponentially: whereas in 1892 the German trade-union federation had 237,094 members, of which only 4,355 (1.84%) were women, shortly before the outbreak of the First World War in 1914 the number of unionised women in Germany reached almost 216,000. On the basis of this work, the SPD also built a movement of proletarian women (*proletarische Frauenbewegung*) which had 141,115 members by 1913. In that year, the fortnightly magazine of the SPD women's movement, *Die Gleichheit*, edited by Zetkin, which began appearing in 1892, reached a circulation of 112,000 copies.¹⁶²

The SPD's organisational work among German working women was accompanied by international work which resulted in the creation of the Socialist Women's International. It held its first conference in Stuttgart in 1907, which adopted universal female suffrage as its central transitional slogan, and was responsible for the proclamation of International Women's Day at its second conference held in Copenhagen in 1910. The Russian working women held their first women's day demonstration in 1913; four years later, the February Revolution started with a demonstration organised by the working women of Petrograd to celebrate International Women's Day on 8 March, i.e. 23 February in the Julian calendar of the Russian Orthodox Church.¹⁶³

160 Zetkin 1907, p. 12

161 Zetkin 1907, pp. 3–4.

162 Thönnessen 1973, p. 57.

163 Gaido and Frenca 2018.

Clearly the SPD supported the cause of the decriminalisation of homosexuality on the same basis that it upheld the demand of universal female suffrage: the workers' party had to raise the democratic demands that the bourgeois parties had abandoned as part of their adaptation to the existing political and social structures, which despite their feudal survivals protected capitalist exploitation. On the other hand, it is also clear that the SPD never regarded homosexual liberation as a question as significant as women's liberation. The main differences between the SPD's treatment of women's liberation and homosexual liberation were:

- 1) Women's liberation was included as a goal in the party programmes and in congress resolutions, while homosexual liberation was not. Party support for the latter was rather the result of the initiative of individual leaders, most notably August Bebel.
- 2) In the SPD programmes and resolutions, women's liberation was articulated in ways that went beyond the legal and political equality demanded by the bourgeois revolutions and the feminist organisations, and included the material, economic liberation of women through the socialisation of household work and the education of children. By contrast, homosexual liberation was reduced in practice to the decriminalisation of homosexuality through the elimination of Paragraph 175 of the German Penal Code, and to popularisations of the sexual theories of the Scientific-Humanitarian Committee in the party press.
- 3) While the SPD undertook a massive and very successful campaign to pry working-class women away from feminist organisations and to organise them on a class basis, through their unionisation and by integrating them into special women's organisations, both within the German party and by creating the Socialist Women's International, the SPD did not attempt to organise working-class homosexuals on a class basis and limited itself to supporting the initiatives of the Scientific-Humanitarian Committee, which was a multi-class organisation despite the socialist inclinations of its leader, Magnus Hirschfeld. The SPD never attempted to create an organisation for homosexuals similar to that of the Women's Office (*Frauenbüro*) within the party or to the Socialist Women's International.
- 4) While there was a strong association between the left wing of the SPD and its women's organisation – whose creator and leader, Clara Zetkin, was since 1898 a prominent member first of the 'orthodox' camp and then, after 1910, of the SPD left wing led by Rosa Luxemburg – support for the decriminalisation of homosexuality and the Scientific-Humanitarian Committee came from all wings of the party, and indeed some of its most articulate defenders, like Adolf Thiele, came from the revisionist

right wing (although other revisionist leaders, like Georg von Vollmar, expressed their reservations in parliament).

- 5) The SPD, and particularly Clara Zetkin, developed a theory of women's liberation which went beyond the theory of natural right of the bourgeois revolutions and the liberal organisations and posited the question within the framework of historical materialism, arguing that the need for women's liberation was the necessary result of the transformations operated in the family structure and in the economic position of women brought about by capitalism. As a result of these efforts, the SPD did *not* base its agitational and organisational efforts on behalf of women's liberation on the idea that men and women are equal; indeed, the whole effort to enact special legislative protection for pregnant and lactating women was based on the idea of the physiological *inequality* between the sexes. This, of course, was no obstacle for the party to demand legal and political equality between men and women (notably around the demand of universal female suffrage), but it did lead to agitation demanding the complete overhauling of the family structure and child-rearing as one of the goals of the socialist revolution, and as the only way to truly achieve the liberation of women. No similar efforts were made to provide a theoretical foundation for homosexual liberation based on historical materialism, and indeed, as we have seen, it was not uncommon for party spokesmen to justify the need for the decriminalisation of homosexuality by reference to its innate nature in psychopathological terms.

In other words, while on the one hand the SPD stood at the forefront of the struggle for the decriminalisation of homosexuality in the Second German Empire and was the main supporter in parliament of the Scientific-Humanitarian Committee's initiatives, on the other hand homosexuality was mostly regarded as 'a minor and tangential topic', which in some cases (such as the Krupp and Eulenburg affairs) was even identified with the decadence of the bourgeoisie and the aristocracy, and which tended to divert attention away from the core issues of the class struggle.¹⁶⁴

As we will see, the Bolshevik government had a similar attitude, decriminalising homosexuality and supporting Hirschfeld's efforts, but not attaching to the question of homosexual liberation the same significance as women's liberation: there was nothing similar in the Bolshevik party or in the Communist International to the Zhenotdel (the women's department of the Secretariat of

164 Herzer 1995, p. 202.

the Central Committee of the All-Russian Communist Party) or the Communist Women's International, also presided over by Zetkin.¹⁶⁵

The Treatment of Homosexuality by the SPD and the KPD during the Weimar Republic

The outbreak of the First World War resulted in the collapse of the Second International, particularly after the Social-Democratic fraction at the Reichstag voted in favour of war credits on 4 August 1914, thus betraying (like the *Section française de l'Internationale ouvrière*) the anti-militarist resolutions adopted by successive congresses of the party and the International. During this period, in which the SPD leaders who remained faithful to internationalism, like Rosa Luxemburg and Karl Liebknecht, were thrown into jail, 'Hirschfeld tried to play the role of a patriotic party worker and agitator for the SPD's new war-like course'.¹⁶⁶ Early in 1915 he published a pamphlet called *Why do Peoples Hate Us? A War-Psychological Study*, which elaborated on the idea that the peace-loving German empire and the even more peace-loving German Social Democracy had been forced into a defensive war by an Anglo-French-Russian attack, and that Germany therefore deserved an early victory.¹⁶⁷ Although the predominant theme in Hirschfeld's wartime writings was the emphasis on the obligation to serve in the war and defend the country, sometime in the course of 1915 he joined the *Neues Vaterland* League, which, though it did not demand the end of the war, did call for a peace without annexations and without indemnities, and was therefore banned by the German government in the autumn of 1915.¹⁶⁸ Otherwise, he followed closely the line of the SPD and later, after the creation of the Independent Social-Democratic Party of Germany in April 1917, of the majority SPD: the so-called *Burgfriedenspolitik* ('truce policy') and the continued support for the Hohenzollern regime in its imperialist war of conquest of 1914.

The Bolshevik revolution in Russia took place on 25 October (7 November) 1917. The first phase of the German revolution began a year later, in November 1918, with a series of events that began with the mutiny of the sailors at Kiel, the collapse of the German army and the end of the First World War, the formation of councils (*Räte*: soviets) of workers' and soldiers' delegates, the flight from

165 Taber and Dyakonova (eds.) 2023.

166 Herzer 2017, p. 252.

167 Hirschfeld 1915.

168 Herzer 2017, pp. 257–8.

Germany of Kaiser Wilhelm II and the proclamation of a republic. From 16 to 21 December 1918, the National Congress of Workers' and Soldiers' Councils (*Reichskongress der Arbeiter und Soldatenräte*) met, after the SPD leader and future President of the Weimar Republic, Friedrich Ebert – whom historian Carl Schorske called 'the Stalin of Social Democracy'¹⁶⁹ – persuaded the majority of the delegates to hand over power to a bourgeois provisional government ironically called, after the Soviet example, the Council of People's Commissars (*Rat der Volksbeauftragten*). The Congress of German Soviets came out decisively, at the behest of the SPD, against the 'power of the councils', which led Ernst Däumig to sarcastically call it the 'suicide club'.¹⁷⁰

The founding Congress of the Communist Party of Germany (Spartacus League) took place from 30 December 1918 to 1 January 1919. Four days after the founding congress of the KPD(S), on 5 January 1919, the failed Spartacist uprising in Berlin – the German equivalent of the July Days in the Russian Revolution – resulted in the assassination of Rosa Luxemburg and Karl Liebknecht by paramilitary gangs (*Freikorps*) on 15 January 1919, with the complicity of SPD minister Gustav Noske. Four days later, on 19 January 1919, elections were held to a Constituent Assembly which convened in Weimar, a provincial city far removed from the revolutionary upheavals of the capital. This assembly confirmed Ebert's position as *Reichspräsident* and drew up a bourgeois constitution for the new German republic.

In other words, after the collapse of the Second German Empire in November 1918 and the formation of workers' and soldiers' councils throughout Germany in November 1918, the German bourgeoisie made a 180-degree turn and embraced the principles of republicanism and democracy, previously abandoned in favour of an alliance with the monarchy and the Junkers, granting women the right to vote and setting the constituent assembly in Weimar against the power of the soviets of workers' delegates. In the framework of this policy of democratic counterrevolution, whose ideologue both inside and outside of Germany was Karl Kautsky, the demand for universal female suffrage, adopted by the revolutionary labour movement as a transitional demand in the struggle for socialism, was used as a barrier against the socialist revolution by the SPD and the trade-union bureaucracy. Hirschfeld contributed to this campaign with a December 1918 pamphlet, written in collaboration with his sister Franziska Mann, calling on women to vote for the Weimar Constituent Assembly and entitled *What Every Woman Needs to Know about the Right to Vote!* In it, he mentioned the fate of the Russian National Assembly of 1917,

169 Schorske 1955, p. 124.

170 Broué 2005, p. 187.

‘which was broken up by the Bolsheviks and replaced by the dictatorship of the proletariat’.¹⁷¹

A homosexual community did flourish in Germany, and particularly in Berlin, during the Weimar republic. This enabled Hirschfeld to set up a new Institute for Sexology (*Institut für Sexualwissenschaft*) in 1919, which was primarily a training and educational facility, initially for doctors but later also for teachers and lawyers, and made him the target of right-wing nationalists. In mid-March 1920, during the so-called Kapp Putsch, a leaflet was distributed in Berlin containing a list of those who had to be ‘rendered harmless’ after the coup; Hirschfeld’s name was included ‘because of the introduction of oriental customs in Germany’. On 4 October of the same year, he was physically attacked by Nazi thugs in Munich and had to be hospitalised.¹⁷² Besides the physical attacks of the right, the democratic rights enshrined in the constitution were not extended to the gay community by the successive coalition governments of the Weimar republic: West Germany inherited from it Paragraph 175, which continued to be part of its Penal Code until 1969, while Stalinist East Germany repealed its anti-sodomy legislation only in 1968.

Manfred Herzer, the foremost biographer of Hirschfeld, has argued that, when portraying the Weimar era, historians of the gay movement ‘have consistently suffered from the deficiency of affirming, by turns indignantly and smugly, the “homophobia” of the political left during the Weimar era.’¹⁷³ Herzer suggested that it is a methodological anachronism to apply a concept like ‘homophobia’, which was only coined in 1970s, back to a time when it did not exist, and then went on to show that ‘more than any other social group, it was the German left, “Marxists of all shadings,” who embraced the demands of the homosexual liberation movement as their own’.¹⁷⁴

We have seen that in 1914 the SPD betrayed its revolutionary programme. Although a resolution adopted by the SPD congress held in Kiel in 1927 demanded the ‘Abolition of punishment for adultery and unnatural intercourse

171 Hirschfeld and Mann 1918, p. 31. Since International Women’s Day was a tradition that had originated from the left wing of the proletarian women’s movement, the leadership of the SPD stopped celebrating it on the grounds that, after the adoption of universal female suffrage in 1918, the objectives that gave rise to it had already been achieved. The German Communist Party, on the other hand, continued to celebrate International Women’s Day under the slogan ‘All power to the councils! All power for socialism!’ (Notz 2008, p. 217).

172 Herzer 2017, pp. 291–2.

173 ‘See, for example, Wilfried U. Eissler, *Arbeiterparteien und Homosexuellenfrage: Zur Sexualpolitik von SPD und KPD in der Weimarer Republik* (Berlin: Rosa Winkel, 1980), and Hans-Georg Stumke, *Homosexuelle in Deutschland: Eine politische Geschichte* (Munich: C.H. Beck, 1989): (Herzer 1995, p. 220, n. 1.)

174 Herzer 1995, p. 217.

[*widernatürlichen Verkehrs*],¹⁷⁵ it did so on the basis that homosexual relations were pathological and that it was useless to attempt to use the Penal Code to combat illnesses. In the words of this resolution:

Sexual criminal law is backward. Pathological [*krankhaften*] sexual relations should finally be removed from their almost medieval treatment by the criminal law. Protection of young people, of course, protection from abuse in socially dependent relationships! But homosexuality cannot be eradicated by penal laws. It has existed at all times, also despite the existence of Paragraph 175, and it will continue to exist despite all punishment. We do not think it is right to use the Penal Code to combat illnesses [*Krankheiten*].¹⁷⁶

The German Communist Party (KPD), which took up the mantle of revolutionary Marxism from the SPD during the Weimar era, did not formulate a policy towards homosexuality either in its programme or in resolutions adopted by party congresses, reacting instead to external events such as the case of the homosexual serial murderer Fritz Haarmann (1924), the Reichstag debate on penal law reform (1928–9), and the public disclosure of the SA leader Ernst Röhm's homosexuality (1931–2), scandals which recalled the Krupp (1902) and Eulenburg (1907–8) affairs during the Wilhelmine era.

In February and March 1919, the Scientific-Humanitarian Committee had sent letters of congratulation to all personalities at the head of the new German Republic, while at the same time expressing its wishes for a reform of the Penal Code. The answers given by the Social-Democratic president, Friedrich Ebert, and his justice minister, Gustav Landsberg, were reproduced in the *Jahrbuch für sexuelle Zwischenstufen*. Both Ebert and Landsberg asserted that they too considered 'a modern reform of our criminal law' to be necessary, but the new government had no sympathy for the Scientific-Humanitarian Committee's demand for an 'emergency law' that would have immediately abolished Paragraph 175. The situation soon got worse. In 1921, the Ministry of Justice published a new draft Penal Code, drawn up by senior government officials and lawyers, whose Paragraph 325, dealing with male homosexuality, for the first time provided a prison sentence of 'up to five years' for male prostitution and 'seducing a young person'.¹⁷⁷

175 *Sozialdemokratische Partei Deutschlands* 1927, p. 264.

176 *Sozialdemokratische Partei Deutschlands* 1927, p. 153.

177 Herzer 2017, pp. 340–3.

In 1924, the Communist Reichstag fraction introduced a motion to halt the enforcement of Paragraph 175, but it was never brought up for a vote.¹⁷⁸ In 1925, a new official draft Penal Code was published, Paragraph 267 of which continued to punish 'fornication between men' with imprisonment, while 'seducing young people' and male prostitution 'in particularly serious cases' were punishable by five years in a penitentiary (*Zuchthaus*), otherwise with 'imprisonment for not less than six months'. As a result, a new version of the Scientific-Humanitarian Committee's petition was drafted, which was submitted, with the accompanying signatures, to the legislative bodies, the Reichstag and the Reichsrat, in early 1926. Nonetheless, the tightening of the Criminal Law against homosexuals was retained in the new draft version of the Penal Code that was submitted to the Reichstag in May 1927. Paragraphs 296 and 297 referred to the same offences that were previously numbered Paragraphs 267 and 297 ('Serious fornication between men': '*Schwere Unzucht zwischen Männern*'), with the addition: 'In particularly severe cases, the penalty is penitentiary for up to ten years'.¹⁷⁹ On 16 May 1927, the Communist deputy Wilhelm Koenen spoke in the Reichstag against Paragraph 175 and the government's plans to bolster it in the reformed Penal Code, arguing that the anti-sodomy law was as reactionary as the laws punishing abortion and adultery.¹⁸⁰

When the new official draft Penal Code became available, the Reichstag formed a Criminal Law Committee whose task was to revise the paragraphs and vote on each one of them, in order to prepare a final draft, which would have become the new German Penal Code after an overall vote by a Reichstag plenum. On 16 October 1929, the Criminal Law Committee deliberated on Paragraph 296 ('Fornication between men'), which replaced the old Paragraph 175, and decided to delete it without replacement by 15 votes to 13 (it should be emphasised that the old Paragraph 175 remained in force after that vote, for to remove it would have taken a second vote in the committee and a vote before the full Reichstag). The majority that voted against Paragraph 296 was made up of the parties that had long supported decriminalising male homosexuality – Communists, Social Democrats, and the left-liberal German Democrats – joined by Wilhelm Kahl of the right-liberal German People's Party (*Deutschen Volkspartei*). Communists and Social Democrats argued for decriminalisation because of its biological innateness (although, as we have seen, the SPD now officially held it to be an illness), while others, like Kahl,

178 Herzer 1995, p. 205.

179 Herzer 2017, pp. 343–5.

180 Herzer 1995, p. 206.

voted to remove Paragraph 296 out of concerns about blackmail and to put an end to the 'homosexual propaganda' against it.

The following day, the Criminal Law Committee discussed Paragraph 297 of the draft Penal Code and decided, by 20 votes to 3 (of the KPD committee members), to retain it, but reducing the ten-year prison sentence to five years. Had the committee's draft been voted by a Reichstag plenary, sexual relations between men over the age of 21 would have been decriminalised, but male prostitution would have been criminalised for the first time, with prison terms of six months to five years, along with men over twenty-one who had 'seduced' a man under twenty-one (thus setting an absurdly high age of consent for homosexuals), and men who had used their position at work to pressure another man to have sex.¹⁸¹

The KPD criticised the proposed paragraph 297, arguing that male homosexuality ought, like lesbianism, to have been decriminalised. An article published in the party daily *Die Rote Fahne*, on 18 October 1929, entitled 'Paragraph 175 eliminated – and reintroduced', argued that 'the punishment of homosexuality was reintroduced in a roundabout way' by the draft Paragraph 297, which threatened with a penalty of up to 10 years imprisonment 'so-called male prostitution and the seduction of a male youth'. The Reichstag deputy Eduard Alexander (1881–1945), the legal policy spokesman for the KPD parliamentary group, argued that the draft paragraph, 'under the pretext of fighting prostitution' was in reality 'only directed against homosexuality, against deviations from the sexual drive as such [*gegen die Homosexualität, gegen die Triebabweichung als solche*]'. Alexander also opposed the extension of the age of consent for male adolescents to 18, or even, as it was subsequently decided by the committee, to 21 years, arguing that a girl who was seduced by a man was only protected until she was 16 years old, while a girl of 17 years, or a young boy of 19 years, who were seduced by a woman, remained completely unprotected. Only the Communists had voted against Paragraph 297; the Social Democrats had contented themselves with a reduction of the sentence to five years in a

181 Marhofer 2015, pp. 120–8; Herzer 2017, p. 345. Following the tradition established by the *Jahrbuch für sexuelle Zwischenstufen* of reproducing in full the parliamentary debates on homosexuality, the new organ of the Scientific-Humanitarian Committee reprinted the official text of the two-day debate in the Reichstag Criminal Law Committee: 'Die Verhandlungen des Strafrechtsausschusses des deutschen Reichstages über die Strafwürdigkeit der Homosexualität' (proceedings of the 85th session, 16 October 1929), *Mitteilungen des Wissenschaftlich-humanitären Komitees*, Nr. 24, September–Oktober 1929, pp. 176–91; 'Deutscher Reichstag: Beratungen des Strafgesetzausschusses des Deutschen Reichstags über den §297 des Amtlichen Strafgesetzentwurfs' (proceedings of the 86th session, 17 October 1929), *Mitteilungen des Wissenschaftlich-humanitären Komitees*, Nr. 26, Dezember 1929–Januar 1930, pp. 209–23.

penitentiary. Alexander also demanded the deletion of the section of the draft paragraph dealing with 'offences against public decency', arguing that, of the 3,760 cases punished in 1926, at least 95 percent had been due to 'the so-called exhibitionists', who were people suffering from a mental illness.¹⁸²

Shortly before that, from 3 to 19 July 1929, had taken place in Moscow the Tenth Enlarged Plenum of the Executive Committee of the Communist International, which had unfolded against the background of the brutal acceleration of industrialisation and the increase in the figures of the first five-year plan, but also of the beginning of peasant resistance, which pushed Stalin to launch a forced collectivisation drive by the end of 1929. The Tenth Enlarged Plenum represented a turning-point towards the ultra-left policy known as the 'Third Period', which lasted until 1934, in the framework of which the united-front policy was rejected and the Social-Democratic parties were denounced as 'Social-fascists'. Through the purge of the moderates of the Comintern, the Communist Parties were instructed to sever their links with the Social-Democratic movements and to establish rival unions. All this resulted in a split in the labour movement that paved the way for Hitler's rise to power.¹⁸³

The sectarian turn of the Communist International had repercussions in the Scientific-Humanitarian Committee, whose executive was increasingly passing into the hands of the KPD functionary Richard Linsert, who had been elected vice-secretary in 1923 and was increasingly marginalising Hirschfeld. After the debates and votes in the Criminal Law Committee on 16 and 17 October 1929, the official organ of the Scientific-Humanitarian Committee repeated the arguments of the KPD in *Die Rote Fahne*: its official declaration carried the title 'Paragraph 175 has not been abolished!'¹⁸⁴ Hirschfeld had a more nuanced attitude, calling the decisions adopted by the Criminal Justice Committee 'a partial success'. He asked rhetorically: 'Has the goal of our work been achieved on 16 October of this year? Not yet [...] All the same, for 50 percent of the homosexuals it would already have represented the release from infinite torment', if the deletion of Paragraph 296 had been confirmed by a Reichstag plenum, since it would have decriminalised consensual sexual relations between homosexual men over the age of 21.¹⁸⁵ As a result of these disputes, on 24 November 1929 Hirschfeld resigned from the chairmanship of

182 *Die Rote Fahne* 1929.

183 Broué 1997, pp. 492–521.

184 'Kundgebung des Vorstandes des W.H.K. Der §175 nicht gefallen!', *Mitteilungen des Wissenschaftlich-humanitären Komitees*, Nr. 26, Dezember 1929–Januar 1930, pp. 208 ff. (Herzer 2017, p. 49).

185 Magnus Hirschfeld, 'Der Kampf um den § 175', *Die Aufklärung*, Jg. 1, 1929, p. 291 (quoted in Herzer 2017, p. 347).

the Scientific-Humanitarian Committee, after 32 years of service. As part of his 'smear campaign', Linsert also tried to push Hirschfeld out of the World League for Sexual Reform, whose first congress Hirschfeld had organised in 1921, but failed in this attempt.¹⁸⁶

Despite these differences with Linsert and the KPD, Hirschfeld agreed with their criticism of the proposed Paragraph 297, which stipulated heavy jail terms for male prostitutes. He argued that male prostitution and blackmail were in no way identical, and that it would be unjust to send every male prostitute to prison because some of them were guilty of asocial behaviour. Hirschfeld opposed criminalising male prostitution because it injured no third party, arguing that the men who prostituted themselves did so out of economic need, and that destitute men chose prostitution over worse crimes, such as robbery, fraud, and murder.¹⁸⁷ In the end, Paragraph 175 was never eliminated from the German Penal Code and Paragraph 296 was never adopted, because during the last years of the Weimar Republic the frequent elections to the Reichstag, which led to an ever-growing Nazi parliamentary faction, brought the criminal-law reform process to an end.¹⁸⁸

The KPD thus supported the decriminalisation of homosexuality, but it did not go any further. Its official position on this issue was expressed by the jurist Felix Halle in his volume *Geschlechtsleben und Strafrecht* (*Sexual Life and Penal Law*, Mopr Verlag, 1931), to which Magnus Hirschfeld contributed a preface. According to Halle, while 'the working class' adopted 'a tolerant approach' toward homosexuality, it was 'far removed from cultivating same-sex inclinations and activities'.¹⁸⁹ Despite these limitations, partly inherited from the pre-WWI SPD and partly due to anti-homosexual positions of the Stalinist parties,¹⁹⁰ in 1930 Kurt Hiller, the Scientific-Humanitarian Committee's second chairman, who followed Richard Linsert's lead, after conducting a survey of the German political parties' views on Paragraph 175, concluded:

The sole party which has represented the Scientific-Humanitarian standpoint without any reservations and, so far as humanly possible, will again

186 Herzer 2017, p. 348.

187 Hirschfeld 1929b.

188 Herzer 2017, p. 345.

189 Herzer 1995, p. 203.

190 See Kurt Hiller's 'Appeal to the Second International Congress for Sexual Reform on Behalf of an Oppressed Human Variety', written for a Congress held in Copenhagen in 1928, and delivered in his stead by Magnus Hirschfeld, because Hiller could not afford the trip. The speech is a criticism of a homophobic tirade by Henri Barbusse, a prominent member of the French Communist Party, in 1926 (Hiller 2004).

represent it in the new Reichstag, is the Communist Party of Germany. I note this because I acknowledge and honour the truth, and despite the fact that I don't belong to this party and I'm critical of it in various respects.¹⁹¹

This evidence has led Magnus Herzer to conclude that 'during the Weimar era, the KPD was the one political force which most consistently and unreversibly helped the homosexual movement in its "liberation struggle." Thus, Kurt Hiller's 1930 assessment applies to pre-Hitler Germany in its entirety'.¹⁹² Moreover, 'only the KPD fully supported the Cartel for the Reform of the Sexual Penal Code's and the Scientific-Humanitarian Committee's proposals, which included not only the abolition of the German sodomy law but also the public advertisement of contraceptives, the legalisation of abortion, and the decriminalisation of male prostitution (the repeal of Paragraphs 184, 218, and 297, respectively).¹⁹³ The KPD justified its support for unconditional decriminalisation of male homosexuality (with the exception of cases of assault and the seduction of minors) by regarding it as part of the unfinished tasks of the bourgeois revolution toward full civil rights.¹⁹⁴

The main conclusion to be drawn from our analysis so far, however, does not relate to Germany but to Russia. The evidence we have presented shows that the decriminalisation of homosexuality by the Bolshevik government in 1922 was neither a casual nor a specifically Russian event, but a product of the positions adopted by the Marxists in this regard already at the time of the Second International – more precisely, a result of the taking over of the democratic programme of the bourgeois revolutions by the socialist and communist parties after its abandonment by the bourgeoisie, which adopted increasingly reactionary positions due to the rise of the labour movement. In the final sections of our article we will attempt to summarise briefly the achievements and the limitations of the Soviet government in this regard, again directing readers interested in delving deeper into this question to Dan Healey's masterly

191 Kurt Hiller, 'Die Reichstagswahl', *Mitteilungen des Wissenschaftlich-humanitären Komitees*, no. 28 (April–August 1930), p. 278, quoted in Herzer 1995, pp. 204–5.

192 Herzer 1995, p. 206.

193 The Cartel for the Reform of the Sexual Penal Code was a broad alliance of sexual reform movements. In 1927 it presented a *Counter-draft to the Criminal Provisions of the Official Draft of a General German Penal Code on Sexual and Sex-Related Acts (Sections 17, 18, 21, 22 and 23)*, which argued that punishment should only be applied in cases where sexual intercourse took place using threats or violence, when it was carried out on immature or mentally impaired people, or when it was practised in a manner which caused 'public scandal' (*öffentliches Ärgernis*) (*Kartell für Reform des Sexualstrafrechts* 1927).

194 Ramsey 2008, p. 107.

work *Homosexual Desire in Revolutionary Russia: The Regulation of Sexual and Gender Dissent*.¹⁹⁵

The Decriminalisation of Male Homosexuality by the Bolshevik Government in Russia

The military prohibition of sodomy was introduced in Russia by Peter the Great in 1716, in the framework of the imposition upon the soldiers and sailors of new forms of discipline inspired by the example of the Western European countries. The criminalisation of male homosexuality outside the army dates back to 1835, when Tsar Nicholas I extended this regulation to the male civilian population in a new Penal Code. In this code, and in the one which superseded it in 1845, consensual sodomy was punished with exile to Siberia (under what was then article 995 of the Penal Code), and aggravated sodomy, that is to say, homosexual sex practised with minors or through the use of force or abuse of a position of authority, was punished with exile and forced labour (Article 996).¹⁹⁶

Article 995 of the Russian Penal Code of 1845 against voluntary sodomy was practically a dead letter in Russian cities towards the end of the imperial era. Cases of rape (*изнасилование*) of men and boys constituted the sex offence between males more often prosecuted by the tsarist courts. It was estimated that for each conviction due to article 995, there were four due to article 996 (which penalised the use of force or the abuse of the dependence of the victim or of a minor) during the years between 1874 and 1904. Tsarist law said nothing about sex between women, probably due to their inferior legal status: women only achieved legal equality with men as a consequence of the Bolshevik revolution.¹⁹⁷

The bourgeois Provisional Government born of the revolution of February 1917 did nothing for the liberation of Russian homosexuals; the decriminalisation of homosexuality only began to be debated after the Bolshevik revolution of October 1917. Already the first draft of the Penal Code, written during the period of the coalition government between the Bolsheviks and Left-Wing Socialist Revolutionaries in 1918, decriminalised homosexuality. A few weeks

195 Healey 2001.

196 Hirschfeld's magazine published a study on the legal status of male homosexuality in Russia, originally written on the occasion of the draft of a new Penal Code, which still penalised male homosexuality and in the end was never adopted (Nabokoff 1903).

197 Healey 2001, pp. 80–1, 95.

after the October 1917 revolution, the Justice Commissariat, headed by Isaak Shteinberg, a Left-Wing Socialist Revolutionary, drafted a Penal Code as part of an ambitious Code of Laws of the Russian Revolution. The relevant article in Shteinberg's draft Penal Code was entitled 'sodomy' (мужеложство), and was included within a chapter specifically devoted to sexual crimes headed 'On indecent conduct' (неприличие). The resulting sodomy law legalised consensual homosexual relations between adults, defined as persons of sixteen years or more, although the informed consent of adolescents of fourteen and fifteen years could exonerate from punishment homosexual relations with certain young people as well.¹⁹⁸

The first Soviet Russian Penal Code, finally adopted on 1 June 1922 (Уголовный кодекс РСФСР 1922 года), decriminalised male homosexuality. Sodomy and incest were not mentioned at all in the new Penal Code. The explicit age limits for consent were abandoned, and instead the concept of 'puberty' (зрелости: sexual maturity) was introduced, which would be determined by medical opinion in each case. When a revised Penal Code of the RSFSR was adopted in 1926, the same language and principles were reaffirmed, including the absence of a prohibition on consensual sexual relations between persons of the same sex. The decriminalisation of homosexuality turned Soviet Russia into the most important power since revolutionary France to decriminalise sexual relations between males, while sentences for similar 'crimes' ranged from five years in Germany to life imprisonment in England (for 'buggery').

The Bolshevik Struggle against Prostitution

In apparent contradiction to this new legal attitude towards homosexuality stood the anti-sodomy laws of the Transcaucasian and Central Asian Soviet republics in the 1920s, although it can be argued that the reason for this ostensible incongruity was that the anti-sodomy statutes of the Central Asian Soviet republics were aimed against the practice of male homosexual relations between adults and minors, which were regarded by the Bolshevik government as pederasty rather than consensual sex, and moreover in a context that often involved prostitution.

The Bolsheviks waged a fierce struggle against prostitution in both its female and male variants, let alone prostitution involving minors, in consonance with the traditional Marxist position on this issue. Marxists never

¹⁹⁸ Healey 2001, p. 116.

regarded prostitution as 'sex work' but as the most extreme form of exploitation and degradation, that is to say, as a product of the social inequalities of class society, destined to disappear with them. The original edition of Bebel's book on women and socialism included an entire section entitled 'Prostitution a necessary social institution of the bourgeois world' (*Die Prostitution eine nothwendige soziale Institution der bürgerlichen Welt*), which he compared to 'the police, the permanent army, the church and the capitalist class'.¹⁹⁹

At the same time, the socialist parties of the Second International opposed transforming the struggle against prostitution into a fight against prostitutes, whom they considered victims of capitalist society, arguing that the eradication of prostitution was an unrealisable utopia if exploitation and class differences were not abolished along with it. They were abolitionists in the double sense of struggling both for the abolition of the legal regulation of prostitution by the bourgeois state common in the late nineteenth and early twentieth centuries (before the Bolshevik revolution, Russian prostitutes had been compelled to register with the police, to forfeit their internal passports in exchange for the notorious 'yellow ticket', and to submit to medical check-ups), and for the abolition of prostitution as a social phenomenon.²⁰⁰

The Russian Social-Democratic Labour Party (RSDLP) had the same principled position on prostitution. In the very first writing on the 'woman question' published by the RSDLP, the pamphlet *The Woman Worker*, written in 1899, Nadezdha Krupskaya recalled how from the 5 to 15 of May of that year a series of strikes had turned Riga into 'a battlefield' between the soldiers and the workers. But 'the greatest fury of the workers' had been 'directed against the brothels and eleven of them were destroyed in one night', because, when the workers had argued that it was impossible for their wives to live on the earnings they received, the authorities had told them that they could supplement their income in the brothels. 'In that way prostitution was openly stated to be the only way in which a woman living only on her own earnings could supplement her miserable pay!' According to Krupskaya, the whole attitude of bourgeois society towards prostitution reeked of hypocrisy:

Bourgeois professors shamelessly go into print to assert that prostitutes are not slaves but are people who have chosen to take that road! It is the same hypocrisy that insists that no one prevents a worker from leaving a given factory where it is impossible to breath, what with the dust,

¹⁹⁹ Bebel 1883, pp. 77–89.

²⁰⁰ Waters 1992, p. 162.

poisonous vapours, heat, and so on. They ‘voluntarily’ remain working there for 16 to 18 hours a day.²⁰¹

After the Bolshevik revolution, Soviet legislation placed women legally and politically on an equal footing with men.²⁰² However, this in itself did not eliminate prostitution. In a July 1920 article entitled ‘The woman worker in Soviet Russia’, Inessa Armand, the leader of Zhenotdel, the Women’s Department of the Secretariat of the Central Committee of the Communist Party of Russia, described prostitution as the ‘ugliest, most heinous phenomenon of the wage slavery of the proletariat’, and reported that the First All-Russian Congress of Worker and Peasant Women, held in Moscow from 16 to 21 November 1918, had adopted a resolution pledging ‘to fight prostitution not just by closing brothels, not just by punishing procurers ... but by eradicating all the survivals of the capitalist regime, by means of the application of maternity insurance, the achievement of children’s education, and the replacement of the bourgeois family by free marriage’.²⁰³

The first Penal Code of Soviet Russia, promulgated in 1922, abolished the tsarist regulation of prostitution and did not criminalise its practice, much less the prostituted women themselves, but in line with a decision of the People’s Commissariat of Justice of 1921, Article 170 prohibited pimping and Article 171 penalised running a brothel. The references to prostitution in the Code were as follows:

Article 170: Constraining a person from selfish or other personal motives to engage in prostitution, by the use of physical or psychological influence, is punished by deprivation of freedom in strict isolation for a period of not less than three years.

Article 171: Procuring, the maintenance of dens of vice, and the recruitment of women to prostitution are punished by deprivation of freedom for a period of not less than three years with the confiscation of all or a part of property.²⁰⁴

If the people involved in prostitution were under the guardianship of or dependent on the accused, or if they were minors, the punishment worsened

²⁰¹ Krupskaya 2017, p. 11.

²⁰² *The Marriage Laws of Soviet Russia* 1921.

²⁰³ Armand 1920, pp. 12–13.

²⁰⁴ Waters 1992, p. 175.

to imprisonment for a minimum period of five years.²⁰⁵ Courts imposed severe penalties on people convicted under these articles.²⁰⁶ The 1926 Penal Code combined the two articles as Article 155, and replaced the minimum sentence with a maximum sentence of five years.

With the resurgence of prostitution, along with class differences, after the adoption of the New Economic Policy (NEP) in March 1921, Alexandra Kollontai delivered a speech to the third all-Russian conference of heads of the Regional Women's Departments entitled 'Prostitution and Ways of Fighting it'.²⁰⁷ As reported by Kollontai, in the autumn of 1919, the Russian Communist Party reorganised its 'Commission for agitation and propaganda among women workers' (Комиссии по агитации и пропаганде среди работниц) into the Women's Department of the Secretariat of the Central Committee (Zhetnodel) (Отдел по Работе Среди Женщин (Женотдел)). The Working Women's Departments (Отделы работниц) not only involved working-class and peasant women in the activities of the party and the organs of Soviet construction, but also posited before the party and the soviets problems related to the emancipation of women. Thus, according to Kollontai, it was at the initiative of Working Women's Departments that the law on the legalisation of abortion had been adopted on 18 November 1920,²⁰⁸ and that a Commission for the Struggle against Prostitution (комиссия по борьбе с проституцией) had been formed, 'composed of representatives of the competent commissariats'.²⁰⁹

On 26 December 1922, *Izvestia*, the daily newspaper of the Soviet government, published a decree on measures to fight prostitution, issued by the People's Commissariat for Internal Affairs, the People's Commissariat for Public Health and the All-Russian Central Council of Trade Unions, which summoned the people 'to wage a radical struggle against procurers, those who help prostitution, brothel-keepers under whatever banner they hide, by applying all the means of administrative and judicial repression'.²¹⁰ In order to coordinate the fight against prostitution, councils or soviets for the struggle against prostitution (советов по борьбе с проституцией) were created. In 1922 the People's Commissariat for Public Health established a Central Council or Soviet for the Struggle against Prostitution (Центральный совет по борьбе

205 Bronner 1936, p. 35.

206 Quigley 1991, p. 1211.

207 Kollontai 1978.

208 People's Commissariat of Health, 'On the Protection of Women's Health' (18 November 1920), in Nikolai A. Semashko, *Health Protection in the U.S.S.R.*, London: Victor Gollancz, 1934, pp. 82–4.

209 Kollontai 1921, pp. 9–10.

210 Bronner 1936, p. 30.

с проституцией), with Nikolai Semashko, the People's Commissar of Public Health, at the helm, because the soviets for the struggle against prostitution were meant not only to protect vulnerable women but also to prevent the spread of venereal diseases.

The Anti-sodomy Legislation of the Transcaucasian and Central Asian Soviet Republics in the 1920s

Dan Healey has argued that the Transcaucasian republics of Azerbaijan and Georgia had anti-sodomy articles in their first Soviet Penal Codes during the 1920s, and that the first Criminal Code of the Azerbaijan Soviet Republic of February 1923, unlike the 1922 Criminal Code of the Russian Soviet Republic, prohibited 'sodomy' (мужеложство).²¹¹ Healey further argued that anti-sodomy provisions were included in the Penal Codes of the soviet republics of Central Asia, particularly Uzbekistan and Turkmenistan, adopted in 1926 and 1927 respectively. The background to this legislation was the Bolshevik legislators' determination to eradicate what they regarded as the practice of male prostitution, to which were subjected above all 'dancing boys' (i.e. minors) known as *bacha* (Бача). These crimes, which the Bolsheviks regarded as a form of paedophilia, were grouped with others that constituted 'survivals of primitive customs', in contrast to sexual crimes, which were placed in a separate subsection of the Central Asian republics' Penal Codes dealing with crimes against the person. 'Just as revolutionary jurists had rejected the criminalization of female prostitutes in the Russian republic, in Uzbek and Turkmen law the male prostitute himself was not banned, but virtually every other aspect of the masculine sex trade was prohibited'.²¹²

In article 217 of the Uzbek criminal code of 1926, the 'Procuring and also recruitment of men for sodomy' was penalised similarly to the recruitment of women for prostitution in articles 171 and 155 of the Penal Code of the Russian Soviet Republic. Also unique in Soviet legislation was article 278 of the Penal Code of the Soviet Republic of Uzbekistan, which prohibited sexual harassment of men. Its language reversed the gender of the pioneering statute of the

211 It would appear that his evidence is inconclusive, since he stated that 'These articles *apparently* prohibited consensual and aggravated forms of sodomy between adults' (Healey 2001, p. 159; emphasis mine).

212 Healey 2001, p. 160.

1926 Penal Code of the Russian Soviet Republic, whose article 278 prohibited the sexual harassment of women.²¹³

Article 157 of the Turkmen criminal code of 1927 forbade ‘unnatural sexual intercourse in the form of sodomy’ *with children or minors*, while article 163 prohibited the maintenance of *bachi* or dens for their exploitation, and article 164 forbade the conclusion of contracts between parents and procurers.²¹⁴

Healey has argued that ‘[t]he *bachi* tradition was the local variant of a more general Asian Islamic pattern of love between men and youths.’ According to his analysis, the Central Asian Soviet republics of Uzbekistan and Turkmenistan added anti-sodomy articles in their early criminal codes because ‘their views welded the socialist mission to rescue the (normally female) prostitute with Marxist dogma establishing historical hierarchies of civilized versus primitive societies.’ In his view, ‘The socialist determination to stop culturally produced forms of same-sex eros in non-Slavic republics’ was born out of the fear of ‘inversions of masculinity in “primitive” republics.’²¹⁵

In our view, Healey’s depiction of the laws on male prostitution as simply evidence of ethnocentrism is off the mark, because the practice known as *bachchabozlik* was not simply a ‘pattern of love’ between adult men and underage youths, but could, and in many cases did, involve sexual coercion against minors, whom the Bolshevik legislators were trying to protect. An examination of this question obliges us to make a brief excursus into the practice of *bachchabozlik*, to which will now turn.

According to testimony reported by Shoshana Keller in her book *The Soviet Campaign Against Islam in Central Asia*, in pre-revolutionary Turkestan it had become acceptable ‘for adolescent boys to take on the role of public sexual objects for men. These *bacha* boys, as they were called, would dance suggestively in public gathering places and were sometimes acquired by wealthy patrons for sexual services.’ This form of prostitution of male minors often took place in brothel-like contexts: ‘*Bacha* boys were often to be found in “*chaykhonas* and in opium dens ... beardless boys for the satisfaction of a perverted form of sexual passion.” Often the boys were recruited by force: ‘For example, they seize upon shepherds herding sheep in the field, who are exclusively juveniles.’²¹⁶

Since this subject falls beyond our expertise, we have asked the opinion of specialists in Soviet policy towards women in the Central Asian Soviet

213 Healey 2001, pp. 159–61, 319–20.

214 Healey 2001, p. 320, n. 28; emphasis mine.

215 Healey 2001, p. 319, n. 23, and pp. 159–62.

216 Keller 2001, pp. 65, 194.

republics in the 1920s. In reply to our query, Marianne Kamp, the author of *The New Woman in Uzbekistan: Islam, Modernity, and Unveiling under Communism*,²¹⁷ argued that, in order to avoid misconstruing Soviet policy towards *bachchabozlik* (in Uzbek the ch letter is repeated, as it is in the original Arabic script), it is fundamental to keep in mind the pre-revolutionary Central Asian views and practices, and the ways those shaped law and its enforcement in Central Asia after the Bolshevik revolution.

Jadids (Uzbek modernisers) and *ulama* (religious scholars) conducted polemics in the Uzbek language press between 1905 and 1917, discussing and condemning *bachchabozlik* along with female prostitution. In the pre-revolution Uzbek language press, the concept of prostitution was linked to women, and the condemnations tended to conceive of women in prostitution as victims and owners of brothels as exploiters. There were calls for changing laws (i.e. the Russian administrative laws in Turkestan) in order to ban brothels and make prostitution illegal. *Bachchabozlik* was not associated with the term prostitution or with the Imperial legal framework for prostitution. The same writers discussed *bachchabozlik* as deviant and exploitative, with the shared understanding that underage (beardless) boys did not enter this sphere of work voluntarily but did so either through enslavement or due to family debt.

Jadid authors tended to view *bachchas* as at the mercy of exploitative men who patronised the teahouses. According to Adeeb Khalid's book *The Politics of Muslim Cultural Reform: Jadidism in Central Asia*:

The road to death and destruction passed through immorality, and the *Jadids* saw plenty of evidence of that in their society. Russian rule had brought with it legal prostitution and the sale of alcohol, both of which were quite popular in Turkestan. We read of a brothel in Samarqand with 'nearly 400 Turkestani, Bukharan, Tatar, and Russian prostitutes,' without any indication that it was at all unusual. Even more troubling to the *Jadids*, however, was the widespread practice of dancing boys (*bachcha, jawän, besaqqäl*) who, dressed as women, figured in evenings of entertainment (*bazm, maraka*) and who were often also prostituted. This form of pederasty was a widespread practice (and perhaps had become more widespread under Russian rule). For the *Jadids*, the practice was a sign of the worst depths of degradation to which Central Asia had sunk.²¹⁸

²¹⁷ Kamp 2006.

²¹⁸ Khalid 1999, p. 145.

According to Kamp, that was the background to what happened in the early 1920s: *ulama* and *Jadids* were participants in the early constructions of mixed Bolshevik/Uzbek law, though the *mahqama'i shariya*. There was a meeting of minds between Russian/Bolshevik lawmakers and *Jadid* plus *ulama* in outlawing *bachchabozlik* in the early 1920s, and in targeting owners of those teahouses that were associated with boy dancers as quintessential exploiters to be charged with crimes and deprived of their properties. Similarly, the early-1920s cases regarding prostitution focused on brothel owners as exploiters.

Kamp thus argues that it is erroneous to simply assume that the impetus for Soviet law in Central Asia originated in Russian members of the Bolshevik party, and their combination of Marxist and orientalist views of Central Asians. This may have been the case in some places, but it was not the case in the Turkestan ASSR or in the subsequent Uzbek SSR, where Central Asians played fundamental roles in forming law. Those Central Asians in the Party and on the commission that worked to reconcile Soviet and Islamic law (a project lasting until 1924; Islamic *qazi* courts were shut down in 1927) were actually bringing in the same views that they had expressed in the Uzbek press before the revolution: *bachchabozlik* was exploitative and criminal pederasty.

The Practice of *bachchabozlik* in Central Asia and Sex with Minors (Pederasty)

Rather than making a one-sided value judgement on whether *bachchabozlik* was a form of socially-accepted pederasty connected to prostitution or a 'culturally produced form of same-sex eros', we will summarise the only monograph available on this subject, which deals with the practice among the Uzbek population of Afghanistan and was written by Ingeborg Baldauf on the basis of field work carried out in the 1970s, in order to enable our readers to reach their own conclusions about this complex phenomenon.²¹⁹

Its author, Ingeborg Baldauf, reported that in Islamic tradition, Central Asia 'had the reputation of being the region of boy-love' and that 'paederasty' was said to have been introduced into Baghdad from north-eastern Iran as early as the ninth and tenth century CE.²²⁰ She rendered the Uzbek term *bachchabozlik*

219 The field work was undertaken between 1975 and 1978 and the original report was written in German (Baldauf 1988), although an English translation of all the main passages was published in 1990 in *Paidika: The Journal of Paedophilia* under the title '*Bacabozlik: Boylove, Folksong and Literature in Central Asia*' (Baldauf 1990).

220 Baldauf 1990, p. 12.

(in Persian, *bachbozi*) as ‘boy-game’, while the *bachchaboz* (i.e., the male adult whose ‘hobby’ was their association with boys) she translated as ‘boy-game player’. A boy could only be a *bachcha* or ‘dancing boy’ during physical puberty, which roughly applied ‘to the period between the 11th and 18th year’, although the ‘best’ years were ‘considered the time from 12 to 16 years’, since a youth whose facial hair was clearly visible and whose voice had assumed adult timbre was denoted as ugly, and was no longer acceptable as a *bachcha*. Those boys were made to look like girls in their dress and make-up. She estimates that one third to half of the male Uzbek population in Afghanistan in the 1970s had been involved in the ‘boy game’ at some point in their lives, be it as a ‘dancing boy’ (*bachcha*), as a ‘boy lover’ (*bachchaboz*), or first as *bachcha* and later as *bachchaboz*.²²¹

There were two main routes ‘to enter the *bachchaboz* scene’. In the first, normative one, the *bachchaboz* asked the father for his consent, or the father himself took the initiative in introducing his son into the scene, because he did not want ‘to pass up the social and financial possibilities that present themselves to boys in the scene’. The father negotiated ‘the terms of erotic-financial transactions’ and retained the money, passing on only a certain amount to his son for spending. There was also an ‘involuntary path’ by which boys entered the *bachchaboz* scene, namely ‘boy-prostitution’, the pawning of a boy to a creditor of the family, who in turn turned the boy into a *bachcha*. Small farmers and wage-labourers without land very easily became debtors, dependent on a creditor. One method of paying off their debts – analogous to selling girls for marriage – was pawning boys. In ‘the best case’ the creditor was a *bachchaboz* himself, who took pleasure in the boy and took him as his *bachcha* without, however, the boy receiving any financial benefits. In ‘the worst case’, the boy fell into the hands of a professional pimp or was passed on to such a person by the creditor. Boys who were the property of a pimp were always taken to other parts of the country, where they did not have any family contacts and could be exploited by the pimp as he pleased. Baldauf heard about pimps who kept ‘a whole string of *bachcha* like animals in hole-like stables, making them available in the most degrading conditions’ to anyone who came along. After the pimp had made as much as he could out of those boys, he left them to fend for themselves in strange surroundings, without any financial compensation or the possibility of returning to their families. She believed that, in Afghanistan in the 1970s, this sector was atypical and ‘quantitatively irrelevant to the total phenomenon of *bachchabozlik*’.²²²

221 Baldauf 1990, p. 13.

222 Baldauf 1990, p. 14.

The social obligations of the *bachcha* were to spend considerable time with the *bachchaboz*, even though he normally continued to live with his family, and accompany him to social gatherings in the scene (called *majlis*, 'meetings') where he would dance and sing if the situation called for it. As far as 'physical favours' were concerned, the *bachchaboz* expected at least 'little kisses and small acts of tenderness'.²²³ Baldauf observed that 'the demand for passive participation by the *bachcha* in anal-genital or intercrural (between the thighs) intercourse' was 'an exception' and seemed to signal 'the end of a relationship', the point after which the relationship between *bachcha* and *bachchaboz* was no longer maintained. She also observed, however, that where prostitution was involved, intercourse obviously played 'a far greater role than in the mainstream of the subculture'.²²⁴

Baldauf believed that 'apart from making up for sexual deficiencies that arise from financial problems' (namely the impossibility of young men without money to marry and have sexual relations with girls) the *bachchabozlik* phenomenon also made up 'for psychological deficiencies'. Since marriages were arranged by the parents while the bride was still a little girl, usually 12 to 14 years-old, and heterosexual extramarital relations of any kind were strictly forbidden, there was little emotional attachment between husband and wife (or wives), and therefore those *bachchaboz* looked for 'a replacement for personal bonds' that marital- and family-life could not offer, and found it 'in association with boys'.²²⁵

In addition, in the 'boy game' the *bachchaboz* could 'publicly display his wealth in a conspicuous manner, such as otherwise could be done only by pious donations like the construction of a mosque or a bridge, which would be too much for the purse of almost all Uzbeks.' The 'boy game' therefore gave the *bachchaboz* 'the opportunity to squander vast sums of money, thereby winning prestige within his peer-group'.²²⁶

Baldauf believed that these relations could not be called homosexual in any meaningful sense. In her opinion, the question of 'whether prospective *bachchaboz* might have pre-existing homosexual inclinations' played 'a lesser role' than other factors because homosexual acts among adult men were seen as very grave offences, and were subject 'to the same heavy sanctions as illegal heterosexual intercourse'. Because of this, it was possible that men with homosexual inclinations in fact took refuge in *bachchabozlik*, but it was 'not obvious

223 Ibid.

224 Baldauf 1990, p. 15.

225 Baldauf 1990, p. 17.

226 Baldauf 1990, p. 18.

how primary, pre-existing, and secondary, cultivated, inclinations should be distinguished'. Indeed, she believed it was 'doubtful whether those concerned either could or do make such a distinction themselves', and therefore she did not try to direct questions about this issue.²²⁷

As for the boys' attitude, Baldauf noticed that the *bachcha* were only interesting in the *bachchaboz* 'as sources of money', whose worth was 'measured by their willingness and ability to pay'. Personal attraction played a minor role, and the boys themselves were generally satisfied with the *bachchaboz* their father had approved. She also noticed that 'all of the aggression' that the *bachcha* could not 'express physically', because they had to appear passive when dressed as girls and had to allow physical advances by the *bachchaboz*, erupted 'sharply in cognitive-verbal form in their songs'. As soon as they were among themselves, the favourite songs of the *bachcha* were 'filled with mockery' as well as 'aggressive homoerotic macho-mannerisms'.²²⁸ On the whole, she concluded, 'dark elements clearly overshadow the happy ones in the boy game'.²²⁹

In the final section of her monograph, Baldauf shifted the geographical focus of her investigation and described the fight against the practice of *bachchabozlik* in Uzbekistan by both the tsarist authorities and the Bolsheviks in the last quarter of the nineteenth and the first quarter of the twentieth century. She noticed that an article in the Russian press in 1873 referred to the phenomenon under the title 'Prostitution in Central Asia' and linked it to the role of the Islamic clergy and to the oppressed status of women in the region. Also 'the indigenous Jadidist press' dealt with the subject of the *bachchabozlik* in a critical light, mentioning it as one of the causes of 'the increase of syphilis in Central Asia' along with 'sexual relations with Russian immigrant prostitutes and the communal smoking of waterpipes'. It was also referred to in articles concerning the interrelation between social structures and economic backwardness: the squandering of capital was deplored, with wedding-feasts and *bachchabozlik* as particular examples. Finally, the Uzbek Jadidist criticised *bachchabozlik* for making the Central Asian Muslims look ridiculous and despicable to the rest of the Islamic world.²³⁰ Though arguing from a completely different, 'vaguely pan-Islamic' perspective, the Jadidist writers agreed with the Russians in their critique of the traditional clergyman, whom they described as a *bachchaboz* par excellence.²³¹

227 Ibid.

228 Baldauf 1990, p. 20.

229 Baldauf 1990, p. 19.

230 Baldauf 1990, pp. 27–8.

231 Baldauf 1990, p. 28.

Baldauf concluded by describing the influence of the Bolshevik revolution and the early stages of Stalinism on the approach to the question of the *bachchabozlik*. She argued that ‘after the October Revolution’, the issue of the *bachchabozlik* was dealt with primarily in the humoristic-satirical magazines *Mashrab* and *Mushtum* ‘whose editors until 1924 were Jadidists’. From the late 1920s onward, *bachchabozlik* played only a very marginal role in Uzbek narrative literature, but still appeared, for instance, in the satirical poems of Abdulhamid Majidi (1902–38), who described the *bachchaboz* as an enemy of the modern school system, of women’s emancipation and, in more general terms, ‘of progress and therefore of society’, always present when governmental campaigns were obstructed, whether it was the NEP in 1925, the campaign against the clergy in 1927, or collectivisation in 1928. Baldauf also noted that Majidi’s was a somewhat extreme position, and that for most writers and journalists the *bachchaboz* was ‘still symbolized by the torpid Islamic clergyman’, being ‘entirely a symbol of everlasting backwardness’. Baldauf concluded by stating that ‘after several years in which *bachchabozlik* was granted an exaggerated social importance’, mention of the phenomenon faded away ‘around 1930’, and that ‘the generation who are now thirty do not know anything concrete about the term.’²³²

The state archives of Uzbekistan probably have considerable material relating to investigations and prosecutions of those who practised the ‘boy-game’ under the early Soviet regime: Marianne Kamp pointed out that, when she did serious archival research in Uzbekistan in the early 1990s, she found a few court cases from the early 1920s where the defendant was charged with *bachchabozlik*. But so far this remains an unexplored avenue of research that deserves further investigation.

Magnus Hirschfeld’s Relations with Soviet Russia

After this excursus on the *bachchabozlik* phenomenon in the Soviet republics of central Asia, which influenced Bolshevik legislation on homosexuality in those regions, let us return to the subject of Magnus Hirschfeld and analyse his relations with Soviet Russia.

In January 1923, during a visit to Berlin, N.A. Semashko, the first People’s Commissar of Public Health, told the German members of the international movement for sexual reform that the Soviet legalisation of homosexual relations between men was a deliberately emancipatory measure, part of the sexual

²³² Baldauf 1990, pp. 28–9, 12.

revolution. The research and sexual reform activities of Hirschfeld's *Institut für Sexualwissenschaft* (Institute for Sexual Science), founded in Berlin in 1919, were followed with interest by the Soviet 'social hygienists'. Semashko visited the Institute with a delegation of Soviet doctors, who asked for the screening of the film *Anders als die Andern* (*Different from the others*), a documentary on homosexual love made in 1919 with the participation of Hirschfeld. According to the Institute's magazine, the Soviet viewers expressed amazement at the fact that the film had been banned in Germany, and Semashko said that he was proud of the fact that in the new Russia the previous criminalisation of homosexuality had been abolished. He also explained that there had been no unhappy consequences of any kind as a result of the elimination of the paragraph of the Russian Penal Code that criminalised homosexuality, nor had anyone raised the desire for the penalty to be reintroduced.²³³

In 1925, the 'social hygienist' at Moscow University Grigori Batkis published in Berlin a booklet in German entitled *The Sexual Revolution in Russia*. In it, Batkis said the following about homosexuality in Soviet legislation:

Legislation does not interfere with any sexual relation, provided that it takes place between two adults without any compulsion. The nature of the sexual activities resulting from such a relation is a private matter among the people involved. The question of public morality does not exist for legislation in this case.

Soviet legislation considers homosexuality, sodomy and all other forms of sexual gratification that European legislation presents as a public offence against morality in exactly the same way as so-called 'natural' sexual relations. All forms of sexual intercourse are private matters. The issue of criminal prosecution only arises when force and coercion are used, as in the case of an assault or an injury to the interests of another person.²³⁴

Later, Batkis and other Soviet representatives spoke at the conferences of the World League for Sexual Reform created in 1928, the international face of Hirschfeld's Institute for Sexual Science.

At the end of June 1926, Hirschfeld travelled to Moscow and Leningrad as a guest of the Soviet government, probably at Semashko's initiative. Hirschfeld gave the first report of his trip to Russia on 4 November 1926, at an event

233 Semashko's remarks were reproduced in 'Jahresbericht 1922/23', *Jahrbuch für sexuelle Zwischenstufen*, Band 23, 1923, pp. 211–12.

234 Batkis 1925, p. 22.

organised by the 'Society of Friends of the New Russia' at the Berlin Hotel *Russischer Hof*. His conference, entitled 'The reorganisation of sexual life in Soviet Russia', dealt not only with homosexuality but also with the legal equality of women and men, the Soviet laws on civil marriage and divorce, state protection for women and children, the equalisation of the rights of legitimate and illegitimate children, the prohibition of domestic violence, the provisions for single-parent families, the planning of pregnancy through contraceptive methods, the legalisation of abortion, the prevention of sexual diseases, the social rehabilitation of prostitutes, the right granted to prisoners to have heterosexual sexual relations in prisons and, finally, coeducation. On that occasion, Hirschfeld said that 'since the revolution Soviet Russia has done a gigantic work', and that 'the dismantling of the old system and the construction of a new society, of a new relation between sex and society, is an epoch-making achievement.' On the position of homosexuals, he made the following critical observation: 'Homosexuality is not penalised in Russia (however, the seduction of minors, for whom sexual maturity is specified as the individual age of consent, is penalised). The evaluation of homosexuality in Russia corresponds completely with the generalised view among us: homosexuality is considered something degenerate, not proletarian.' Hirschfeld considered that prejudice completely meaningless.²³⁵

Anatoli Lunacharsky, the first People's Commissar for Education, visited Hirschfeld's Institute for Sexual Science in 1927 and reported his visit with enthusiasm in the Leningrad newspaper *Krasnaya gazeta*, stating that learning should be mutual:

The visit of Prof. Hirschfeld and his friendship with Red Russia are necessary, not only because he can find the realisation of his ideas among us, but also because we can learn a lot from him. State legislation, of course, does not in itself mean a cure for all the open wounds of our individual and social sexual life, and we also need large-scale, attentive, exhaustive, and probably also organisationally coordinated research of these problems, as well as the institutions needed for their proper practical solution.²³⁶

235 Hirschfeld 1926, p. 40. In an article published three years later, entitled 'New Morals for Old in Soviet Russia' and published in the *Illustrated London News*, Hirschfeld made no mention of homosexuality (Hirschfeld 1929a).

236 Anatoli Lunatscharski, 'Das Institut für Sexualwissenschaft in Berlin', *Krasnaya gazeta*, 28 February 1928. Translated into German by Siegfried Tornow, and quoted in Herzer 2017, p. 338.

The proposals to create a Soviet Institute of Sexology and a chair in sexual sciences at a Soviet university, which Lunacharsky made in that article, never materialised

At the end of the 1920s, Soviet 'social hygienists' played a prominent role in the World League for Sexual Reform, due to the radical Bolshevik legislation on sexual matters. In the first conferences of the League, the Soviet decriminalisation of male homosexuality was routinely acclaimed. The presence of Alexandra Kollontai, along with Batkis and the Ukrainian professor Nikolai Pasche-Oserski, on the 'International Committee' of directors of that organisation gave the appearance of Soviet official support, although Kollontai, unlike Semashko and Lunacharsky, never met Hirschfeld personally nor participated in the congresses of the World League for Sexual Reform.²³⁷

The Recriminalisation of Homosexuality in the Soviet Union by Stalin in 1934

Magnus Hirschfeld's relations with the early Soviet government ceased with the Nazis' rise to power in January 1933, which resulted in the destruction of the institutions he created. Meanwhile, in the Soviet Union itself, Stalin's regime, which represented a reaction against the conquests of the Bolshevik revolution, apparently believing that homosexual groups were linked to espionage, recriminalised homosexuality in 1934.

In September 1933, Genrikh Yagoda, the People's Commissar for Internal Affairs (НКВД), suggested to Stalin that legislation against 'pederasty' was necessary for all Soviet republics. Yagoda informed Stalin that the secret police had carried out raids in Moscow and Leningrad, arresting 130 men allegedly linked to 'networks of salons, centres, dens, groups, and other organized formations of pederasts'. Stating that 'these scoundrels must receive exemplary punishment', Stalin ordered Yagoda to draft a new decree.²³⁸ According to article 54-a added to the Penal Code of the RSFSR on April 1, 1934, 'Sexual intercourse between a man and a man (sodomy) – Половое сношение мужчины с мужчиной (мужеложство) – was to be punished with 'imprisonment for a term of three to five years.'²³⁹

²³⁷ Healey 2001, p. 309, n. 33.

²³⁸ Healey 2002, p. 184.

²³⁹ Уголовный Кодекс РСФСР редакции 1926/Редакция 11.01.1956 [The Criminal Code of the RSFSR in 1926 / Edition 11.01.1956]. Available online at <<https://ru.wikisource.org/>>.

Stalin's recriminalisation of 'sodomy' in 1934 was preceded by a secret campaign against homosexuals in Moscow and Leningrad, which identified homosexuality with pederasty, and was followed by the ban on abortion in 1936. The results of the secret campaign against homosexuals in Leningrad in 1933 were summed up by a Stalinist functionary at that time as follows:

In August 1933 there were nearly 40 hideouts for homosexualists disclosed in Leningrad, comprising around 400 pederasts. The pederasts developed a broad recruiting network to their hideouts in the public gardens and parks of Leningrad and in public restrooms; they organised orgies in their hideouts, dragged the working youth and Red Army servicemen into them, engaged in perverted forms of sexual intercourse with minors, and infected those involved with sexually transmitted diseases. The hideouts were organised by the representatives of hostile classes and there was active counterrevolutionary organising and agitation work conducted in all of these hideouts.²⁴⁰

Meanwhile, in Germany, on 30 January 1933 President Paul von Hindenburg had appointed Adolf Hitler as Chancellor, and on the morning of 6 May 1933 the Nazis had stormed into the building of Hirschfeld's Institute for Sexual Science, looted the library, with its 20,000 volumes, and the institute's collection of some 35,000 photographs, along with works of art and the medical files and questionnaires. The Nazis boasted about this 'cultural deed' in their newspaper *Der Angriff*. Four days later, the institute's books and other materials were consumed in the infamous *Bücherverbrennung* (book-burning) of 10 May 1933, which was staged as a propaganda spectacle at the Opernplatz along Unter den Linden. *The Brown Book of the Hitler Terror and the Burning of the Reichstag* edited by Willi Münzenberg described the looting of the institute and the book-burning as follows:

On the morning of May 6th, the *Berliner Lokalanzeiger* reported that the cleansing of Berlin libraries of books of un-German spirit would be begun that morning, and that the students of the Gymnastic Academy would make a start with the Sexual Science Institute. This institute was founded by Dr. Magnus Hirschfeld in 1918, in the house formerly occupied by Prince Hatzfeld, and was shortly afterwards taken over by the Prussian Government as an institution of public importance. Its unique collection of exhibits, its research work, its archives and its library won for it an international reputation and international connections. Many

240 Quoted in Roldugina 2018, p. 11.

foreign scientists, doctors and writers came to Berlin for the purpose of working at the institute.

On the publication of the press notice referred to, an attempt was made to remove for safe-keeping some of the most valuable private books and manuscripts; but this proved to be impossible, as the person removing the books was arrested by a guard which had evidently been placed round the institute during the night. At 9:30 a.m. some lorries drew up in front of the institute with about one hundred students and a brass band. They drew up in military formation in front of the institute, and then marched into the building with their band playing. As the office was not yet open, there was no responsible person there; there were only a few women and one man. The students demanded admittance to every room, and broke in doors of those which were closed, including the office of the World League for Sexual Reform. When they found that there was not much to be had in the lower rooms, they made their way up to the first floor, where they emptied the ink bottles over the manuscripts and carpets and then made for the book-cases. They took away whatever they thought was not completely unobjectionable, working for the most part on the basis of the so-called 'black list.' But they went beyond this, and took other books also, including for example a large work on Tutankhamen and a number of art journals which they found among the secretary's private books. They then removed from the archives the large charts dealing with intersexual cases, which had been prepared for the International Medical Congress held at the Kensington Museum in London in 1913. They threw most of these charts through the windows to their comrades who were standing outside.

They removed from the walls other drawings and photographs of special types and kicked them around the room, leaving it strewn with torn drawings and broken glass. When one of the students pointed out that this was medical material, another replied that it was of no importance, that they were not concerned with the confiscation of a few books and pictures, but that they were there to destroy the Institute. A long speech was then made, and a life-sized model showing the internal secretion process was thrown out the window and smashed to pieces. In one of the consulting rooms they used a mop to smash a pantostat used in the treatment of patients. They also took away a bronze bust of Dr. Hirschfeld, and a number of other statues. On the first occasion they only seized a few hundred books out of the library of the Institute.

The staff was kept under observation during the whole of the proceedings, and the band played throughout, so that a large crowd of inquisitive people gathered outside. At 12 o'clock the leader made a long speech,

and then the gang left, singing a particularly vulgar song and also the *Horst-Wessel* song.

The people in the Institute assumed that this concluded the robbery proceedings, but at three o'clock in the afternoon a number of lorries filled with storm troopers appeared and explained that they would have to continue the work of confiscation, as the men who had been there in the morning had not had time to make a proper clearance. This second troop then proceeded to make a careful search through every room, taking down to the lorries basket after basket of valuable books and manuscripts – two lorry-loads in all. It was clear from the oaths used that the names of the authors whose books were in this special library were well known to the students. Sigmund Freud, whose photograph they took from the staircase and carried off, was called 'that Jewish sow Freud'; Havelock Ellis was called 'that swine.' Other English authors wanted by them were Oscar Wilde, Edward Carpenter and Norman Haire; and also the works of Judge Lindsay, the American juvenile judge, Margaret Sanger, and George Silvester Viereck; and of French writers, the works of André Gide, Marcel Proust, Pierre Loti, Zola, etc. The sight of the works of the Danish doctor Leunbach also made them break out into oaths. Many bound volumes of periodicals were also removed. They also wanted to take away several thousand questionnaires which were among the records, but desisted when they were assured that these were simply medical histories. On the other hand, it did not prove possible to dissuade them from removing the materials belonging to the World League for Sexual Reform, the whole edition of the journal *Sexus* and the card index. In addition, a great many manuscripts, including unpublished ones, fell into their hands.

They repeatedly enquired when Dr. Hirschfeld would be returning; they wanted, as they expressed it, to be given the tip as to when he would be there. Even before the raid on the Institute, storm troopers had visited it on several occasions and asked for Dr. Hirschfeld. When they were told that he was abroad, owing to an attack of malaria, they replied: 'Then let's hope he'll die without our aid: then we shan't have to hang him or beat him to death.'

On May 7th, the Berlin and foreign press reported the attack on the Sexual Science Institute, and the Executive Committee of the World League for Sexual Reform sent a telegram of protest, pointing out that a considerable portion of the material was foreign property, and asking that it should at least not be burnt. No attention was paid to this telegram, which was addressed to the Minister of Education, and three days later

all the books and photographs, together with a large number of other works, were burnt on the Opera square. More than ten thousand volumes from the special library of the Institute were destroyed. The students carried Dr. Hirschfeld's bust in their torchlight procession and threw it on the fire.²⁴¹

Hirschfeld's life was only spared because he had embarked on a world tour in November 1930; he died in exile in France in 1935.²⁴² Gay Berlin had been, in the late nineteenth and early twentieth centuries, the birthplace of the first homosexual liberation movement; its physical obliteration by Nazism is a stern reminder of the constant threat of relapse into barbarism under capitalism.²⁴³

In the light of these events, and the systematic persecution of homosexuals under the Third Reich, it is paradoxical that the Stalinist regime justified the recriminalisation of homosexuality by asserting, through Maxim Gorky, that there was a connection between fascism and homosexuality. Gorky's article 'Proletarian Humanism', published in *Pravda* and *Izvestiia* on 23 May 1934, placed the question in terms of a war between fascism and communism and included the notorious phrase 'Destroy the homosexuals – fascism will disappear' ('Уничтожьте гомосексуалистов – фашизм исчезнет').²⁴⁴ In the German version of Gorky's article, published in Basel as 'Gegen der Faschismus: Proletarischer Humanismus', the sentence reads: '*Man rotte alle Homosexuellen aus – und der Faschismus wird verschwunden sein!*' The writer Klaus Mann

241 World Committee for the Victims of German Fascism 1933, pp. 158–61.

242 Beachy 2014, Epilogue.

243 Lautmann 1981. In his posthumously published book *Racism*, Hirschfeld observed that heterosexuals 'hypocritically incline to pretend that homosexual practices cannot have arisen spontaneously in their own happy land and among their own fortunately endowed "race." Hence the canting insinuation that homosexuality must have been introduced from without, from the foreign land or by the foreign people with whose name it is associated. Throughout the ages this has been done, for homosexuality and its stigmatisation by heterosexuals are perennial phenomena.' He then recalled that 'in a Nazi pamphlet the curious may find a reference to my own studies with a caricature of myself beneath which is written: "He introduced the oriental vice into Germany." But for Magnus Hirschfeld, I gather, there would have been no homosexual scandal at the court of the last Hohenzollern emperor of Germany, and no Röhm, Hitler's chief of staff and oldest friend, whose butchery was excused by the chancellor after the blood-bath at the end of June 1934 on the ground of Röhm's "notorious sexual perversion"' (Hirschfeld 1938, pp. 150–3).

244 Gorky's article is available online as Максим Горький, 'Пролетарский гуманизм', 'Правда', номер 140 от 23 мая 1934, и 'Известия ЦИК СССР и ВЦИК', номер 119 от 23 мая 1934. Available at: <<http://gorkiy-lit.ru/gorkiy/articles/article-361.htm>>.

quoted this statement in his 1934 article ‘The Left and the “Vice”, condemning the attempt ‘to turn “the homosexuals” into the scapegoat’ as ‘hideous’ (*abscheulich*) and concluding:

Homosexuality cannot be ‘eradicated’ – and if it could, one would only deprive mankind of something to which it owes incomparable things. The meaning of a new humanism – for the fulfilment of which we want socialism as its prerequisite – can only be not just to tolerate everything human that does not criminally disturb the community, but to include it, to love and nurture it, and thus turn it into something that is useful for the community.²⁴⁵

In May 1934 Harry Whyte, a member of the British Communist Party, wrote a letter to Stalin where he posed the question: ‘Can a homosexual be in the Communist Party?’. Whyte had been born in Edinburgh in 1907 and, after working as a journalist for Edinburgh’s *Evening News*, had become a militant of the Communist Party of Great Britain and a correspondent for the Moscow *Daily News* during the early 1930s. In his letter to Stalin, Whyte viewed the condition of homosexuals as ‘analogous to the condition of women under the capitalist regime and the coloured races who are oppressed by imperialism’. To this argument Stalin reacted by writing: ‘To the archive. Idiot and degenerate. J. Stalin’ (‘В архив. Идиот и дегенерат. И. Сталин’).²⁴⁶ Whyte was expelled from the Communist Party; he had to leave Moscow in 1935 and return to London.²⁴⁷

The Stalinist campaign blaming homosexuals for fascism or for secretly conspiring against the regime had no more connection with reality than the Nazi campaign blaming the Jews for the ills of capitalism and the results of the First World War, but it did have a ‘rationale’ of sorts in helping to create the paranoid atmosphere required for the massive purges of 1936–8, which wiped out the generation of Bolsheviks that carried out the October Revolution and thus helped consolidate the counterrevolutionary regime of Stalin, just as the persecution of homosexuals in Nazi Germany was part and parcel of the fascist counterrevolution then sweeping over Europe.

245 Mann 1990, pp. 12–13.

246 Harry Whyte’s letter to Stalin has recently been translated to English and is available online at: <www.marxist.com/letter-to-stalin-can-a-homosexual-be-in-the-communist-party.htm>.

247 Meek 2015, pp. 83–8.

Conclusion

The decriminalisation of homosexuality was a measure originally adopted by the bourgeois revolutions, which was abandoned by the bourgeois parties as the rise of the labour movement led the bourgeoisie to seek a compromise with landlords, clergy and monarchy in different countries. The demand to decriminalise homosexuality was therefore taken over by the Marxist workers' parties, such as the Social-Democratic Party of Germany before the First World War and the Bolshevik Party in Russia after the Revolution of October 1917. In this article we have outlined the cooperation between the Scientific-Humanitarian Committee led by Magnus Hirschfeld and Social Democracy to decriminalise homosexuality by removing Paragraph 175 of the German Penal Code before the First World War. We have also described the decriminalisation of homosexuality in Russia under Lenin, with the adoption of the first Soviet Penal Code in June 1922, as well as Magnus Hirschfeld's relations with prominent figures of the early Soviet government such as N.A. Semashko, the first People's Commissar of Public Health, and Anatoly Lunacharsky, the first People's Commissar for Education. Those ties ceased with the Nazis' rise to power in January 1933, which resulted in the destruction of the institutions created by Hirschfeld, such as the Institute for Sexual Science and the World League for Sexual Reform, while, paradoxically, in the Soviet Union itself Stalin recriminalised homosexuality in March 1934 (shortly before Hirschfeld's death), linking homosexuality and fascism.

There was no 'naturalness' in the process by which the liberal parties in the nineteenth century rejected those parts of the democratic programme that had become dangerous for bourgeois class rule and by which the Marxist workers' parties inherited the mantle of the bourgeois revolutions, since no historical process is 'natural' or linear but rather is the outcome of a clash of living class forces. Indeed, since the final quarter of the twentieth century, as a result both of the renewed women's and gay liberation militancy and of the extreme weakness of the revolutionary working-class organisations, the bourgeoisie, which of course also includes women and homosexuals among its ranks, has finally deigned to make extensive to women and homosexuals the full panoply of human rights, thus granting them their 'liberation', in the imperialist countries at any rate, insofar as that is at all achievable within the framework of wage slavery. Unfortunately, an analysis of the actual meaning of legal and political equality for women and the LGBTI community in a context of growing economic and social inequality, and of the precariousness of this 'liberation' within the framework of capitalist decadence, falls beyond the scope of the present article.

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