

NOTES FROM THE ARCHIVES

Teaching Queer History in the GAPE Classroom

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Abstract

Digitization of archival materials has made it easier not only to analyze queer history during the Gilded Age and Progressive Era, but also to include these sources in the classroom. For instructors interested in incorporating queer history into their classrooms, this piece highlights specific examples of these queer primary sources and what they reveal about the queer past. Focusing specifically on criminal statutes, legal records, newspaper articles, medical discourse, and firsthand accounts, this introduction to queer archival sources emphasizes how these sources can be incorporated into class lectures and discussions, as well as directing attention to where similar examples can be found online in digital archives and databases.

Keywords: LGBTQ; queer history; history of gender and sexuality; archives; teaching resource

In this Notes from the Archive, Brian M. Trump presents a range of kinds of primary sources for teaching queer history in the Gilded Age and Progressive Era. Following his introduction, we have included the documents he discusses as reproductions, transcriptions, or excerpts.

— Eds.

I. Introduction

The two articles on queer history published in this issue of JGAPE—Katie Hemphill’s “‘Pastor was Trapped’: Queer Scandal and Contestations Over Christian Anti-Vice Reform” and Wendy Rouse’s “‘A Very Crushable, Kissable Girl’: Queer Love and the Invention of the Abnormal Girl among College Women in the Gilded Age and Progressive Era”—highlight the wide variety of sources that provide glimpses of same-sex desire in the past.¹ Digitization has not only made it easier for historians to access such archival materials, but also for instructors to include these sources in the classroom. An introduction to using widely available queer primary sources in the classroom, this

Notes from the Archive is aimed at those instructors interested in incorporating more queer history into their classes, focusing specifically on sources from the United States during the Gilded Age and Progressive Era.

One of the benefits of including queer sources in the classroom is that they provide students with clear examples of how authorities and individuals understood and defined gender and sexuality in the past. While it may appear an obvious point that definitions of gender and sexuality have changed over time, students sometimes struggle to fully understand the context in which those definitions emerged and changed. Teaching with queer sources from the archive can make that context less abstract and help students to better understand and make sense of the lived experiences of individuals in the past whose sexual desire or gender expression transgressed normative boundaries.

In addition, queer sources in the classroom can help students better view gender and sexuality as fluid and changing categories. Understandings of gender and sexuality changed dramatically during the Gilded Age and Progressive Era, shaped by the rise of sexology and medical discourses on sexual and moral perversion. Using these archival sources, instructors can help students unpack the nuance and significance of these changing definitions. Queer sources in the classroom, then, not only encourage students explore how these emerging categories shaped perceptions of gender and sexuality in the past, but also to identify the similarities and differences between these past categories and contemporary understandings of queer and transgender identities.

To show how queer sources can be included in the classroom, I have highlighted five primary categories of sources below, each category including a specific example. Alongside a brief introduction to the source, I discuss how this source fits into the larger context of queer history, how it can be included in the classroom, and some themes that instructors can emphasize or draw attention to during lectures or discussions. Although these archival sources are excellent examples of queer history that can be used in the classroom, they are not the only options available, and I also point to some of the online databases and archival collections where instructors can find similar sources. While not an exhaustive list of queer sources and how they can be integrated into teaching, these examples provide an entry point for those interested in incorporating queer history into the GAPE classroom.

Criminal Statutes

Criminal statutes provide clear examples of how legal authorities defined and criminalized queer desire in the past. This is especially true with sodomy statutes in the United States, laws that usually focused on criminalizing sex between men. These statutes often positioned queer sex alongside bestiality and non-procreative heterosexual sex, all of which were criminalized and categorized as unnatural. While most sodomy prosecutions during the Gilded Age and Progressive Era focused on cases of assault or bestiality, the language of these criminal statutes demonstrate how sex between men was defined and perceived in the legal realm.²

As the three examples included here show, however, there was not a clear consensus between state legal codes regarding how to define and punish sex between men.

While Pennsylvania clearly defined anal sex as sodomy—“*res veneria in ano*”—other statutes relied on the less explicit language of sex “against the order of nature” or the “crime against nature.”³ The placement of sodomy in criminal codes also reflects this lack of consensus between states: while the Georgia criminal code listed sodomy alongside rape and other violent crimes, the two Nebraska statutes include sodomy in sections defining crimes against marriage and public morals.⁴ In addition, the two Nebraska statutes reflect how many states revised their sodomy statutes during the Progressive Era, legislative acts meant to more clearly define which sexual acts constituted criminal offenses. In the classroom, then, these examples of sodomy statutes can be used to not only discuss how law and society perceived sex between men, but also to demonstrate differences between laws of the states and how these legal codes changed over time.

For instructors looking to include sodomy statutes from a specific state in their class, HeinOnline provides an online collection of legal codes under its “State Statutes: A Historical Archive” database.⁵ In the database, users can browse the collection by state and year to find specific laws and statutes. Additionally, overviews of state sodomy laws can be found in the appendix of *Dishonorable Passions* by William Eskridge and online at “The Sensibilities of Our Forefathers” by George Painter.⁶

Legal Records

Just as criminal statutes show how laws defined non-normative gender expression and sexual behavior, legal records demonstrate how authorities used laws to punish individuals who transgressed normative boundaries of gender and sexuality. While written from the perspective of authorities policing and prosecuting these cases, legal records often provide some of the clearest examples of queer sexuality and non-normative gender expression during the Gilded Age and Progressive Era. As such, these records are excellent sources to use in classroom lectures or discussions of queer history.

The case of *Cicero H. Thompson v. State of Nebraska* is one such example, highlighting how queer sexuality could factor into other types of criminal prosecutions, in this case second-degree murder. Included here, the record from the Nebraska Supreme Court illustrates two important aspects of queer history that can be emphasized in the classroom: first, that the case occurred in rural Nebraska and that queer sexuality was not limited only to urban areas; and second, the roles that blackmail, possible scandal, and fear of exposure could play in the queer past. In addition, the language used by the court to describe the case—specifically the mention of “the ooze and slime of a detestable sensualism”—demonstrates how the perception of queer desire as unnatural factored into legal proceedings.⁷

The 1915 document published by the Maryland Vice Commission also provides a detailed account of queer sexuality during the Progressive Era, focused specifically on a network of men under surveillance by authorities in Baltimore.⁸ The discussion of sex work, schools, and young boys emphasizes the connection authorities made between policing sodomy and protecting children, but the commission also described a visible community of queer men in the city.⁹ Similar to the fairy subculture

described by George Chauncey in *Gay New York*, the individuals mentioned in the report transgressed both sexual and gender boundaries while building social and sexual networks within the urban environment.¹⁰ While the report shows the clear influence of sexology and medical discourse, it is also significant for its inclusion of women whose queer sexual behavior brought them to the attention of the commission.

For instructors interested in incorporating queer legal records into the classroom, court cases are often an accessible option. Nexis Uni provides access to State and Federal Supreme Court decisions that are searchable by jurisdiction and subject, and keyword searches for “sodomy,” “perversion,” or “crime against nature” reveal state-specific cases that can clearly highlight for students the intersections between law and queer history.¹¹

Newspaper Articles

While criminal statutes and legal records demonstrate how gender and sexuality were defined in terms of law, newspapers can reveal how local community perceived queer desire and gender transgression. Often written in response to public scandals, newspaper accounts highlight the public reaction and coded language that often emerged once private queer behavior became public knowledge.

The case of Frank Dubois in rural Wisconsin is one such example, highlighting how the community of Oshkosh responded to the revelation that a man in the community had previously lived as a woman.¹² As Jen Manion showed while discussing the Dubois case in *Female Husbands*, newspapers played a major role in spreading ideas and perception of queer scandal, and the language used in the Wisconsin press highlights the different understandings of gender and gender identity between past and present.¹³ When used in the classroom, then, newspaper articles can help students not only understand how gender and sexuality were defined in the past, but also how community members responded when individuals crossed normative boundaries of gender expression or sexual behavior.

Newspaper articles are perhaps the most accessible queer sources available to instructors, largely due to local digitization efforts and online databases like newspapers.com and Chronicling America.¹⁴ By conducting keyword searches on these databases (e.g., “perversion,” “crime against nature,” “unnatural crime,” “sodomy,” etc.) and focusing on specific time frames and locations, instructors can find numerous examples from newspapers than can be used in the GAPE classroom.

Medical Discourse

With the rise of sexology and the medicalization of gender and sexuality during the Gilded Age and Progressive Era, medical discourse is a key component of reconstructing the queer past. While often not as easy to locate as newspaper accounts or legal records, articles published in medical journals can make the connections between medicine, psychiatry, and the queer past clear and understandable for students.

These connections are especially apparent in the 1892 article published in *The New York Medical Times* by T. Griswold Comstock. In the article, Comstock provided an account of the murder of Freda Ward by Alice Mitchell, but he also used the crime as a case study to discuss sexology and medical definitions of queer sexuality. Framing queer desire as not only unnatural but also as a mental illness, Comstock connected the Mitchell case to the work of German researcher Richard von Krafft-Ebing, revealing how European theories of sexology and psychiatry had crossed the Atlantic and influenced the American medical community.¹⁵ As Lisa Duggan argued in *Sapphic Slashers*, the sensationalized coverage of the Mitchell case—and the rise of sexology in general—contributed to the perception within both the medical community and wider American society that connected queer desire with violence.¹⁶ In the classroom, then, medical discourse like the Comstock article can be used to highlight the influence of sexology, the association between queer desire and violence, and the construction of sexual perversion as a mental and medical condition.

Firsthand Accounts

While the previous categories of sources were mostly written by medical or legal authorities, firsthand accounts—including letters, diaries, and personal correspondence—were written by individuals who experienced same-sex intimacy or queer desire for themselves. As such, these materials are valuable sources not only for historians, but also for students in the classroom, providing clear examples of how individuals expressed and perceived queer desire in the past.

The Story of a Life by Claude Hartland is an excellent example of this type of source, purportedly written by a queer man and published under a pseudonym in 1901. Written for the medical community, the book is not a celebratory narrative of queer experience, but rather an appeal for treatment and cure of same-sex desire. In writing his life experiences, however, the author highlighted themes of sexual orientation and identity, self-perception of queer desire, and the process of finding sexual partners. In the classroom, then, *The Story of a Life* can be used to discuss these themes, as well as how discourse on perversion shaped how individuals perceived themselves and their own desires.¹⁷

In addition, firsthand accounts often provide the clearest examples of same-sex intimacy between women. As Wendy Rouse demonstrates in “A Very Crushable, Kissable Girl,” diaries and letters are a valuable source for historians of the queer past, and these sources are also excellent examples to use in the classroom.¹⁸ Some firsthand materials are available in digital format, including the diaries of Stella Bloch Hanau that Rouse cited in her article.¹⁹ Just as *The Story of a Life* provides insight into the life and experiences of a queer man, then, these letters and diaries can help students to better understand how women during the Gilded Age and Progressive Era viewed their desire for same-sex intimacy.

2. Documents

Criminal Statutes

1. *Compiled Statutes of the State of Nebraska, 1881. With Amendments 1882 to 1907, Comprising All Laws of a General Nature in Force July 5, 1907* (Lincoln, NE: State Journal Co., 1907), 1969.

OFFENSES AGAINST MARRIAGE LAWS.

1969

necessary that offense be proven to have been committed on day alleged; sufficient if proven to have been committed within three years prior to finding of indictment. Id., 175. Evidence of co-fornicator in case stated, examined. Id.

7868 SEC. 204. [Father with daughter.] If a father shall rudely and licentiously cohabit with his own daughter, the father shall, on conviction, be punished by confinement in the penitentiary for a term not exceeding twenty years.

7869 SEC. 205. [Exposure of person—Obscene language.] If any person of the age of fourteen years and upward shall willfully make any indecent exposure of his or her person in any street, lane, alley, or other place, in any city, town, village, or county, or shall utter, speak, or use any obscene or lascivious language or words in the presence or hearing of any female, the person so offending shall be fined in any sum not exceeding five dollars, or be imprisoned in the cell or dungeon of the jail of the county not exceeding ten days, or both, at the discretion of the court.

7869a SEC. 205a. [Crime against nature.] That the infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the penitentiary for a term not less than one year, and my [may] extend to life. [1875, § 1, 26.]

Section 1 of "An act defining certain crimes and providing punishment therefor." Laws 1875, 26.

7870 SEC. 206. Obscene Literature. Repealed by Laws 1887, chap. 113.

7870a SEC. 206a. [Selling obscene books, etc.] Whoever sells, or offers for sale, or gives away, or has in his possession with intent to sell, loan or give away, any obscene, lewd, indecent or lascivious book, pamphlet, paper, drawing, lithograph, engraving, picture, photograph, model, cast, or any instrument, or article of indecent or immoral use, or advertises the same for sale, or writes or prints any letter, circular, handbill, card, book, pamphlet, advertisement, or notice of any kind, giving information, directly or indirectly, when, where, how, or by what means any of the articles or things hereinbefore mentioned can be purchased or otherwise obtained or made, shall, on conviction thereof be punished by a fine of not more than one thousand dollars, nor less than fifty dollars, or by imprisonment in the county jail not more than one year, or both such fine and imprisonment at the discretion of the court. [1887, chap. 113.]

SECS. 206a-f. "An act to suppress the circulation, advertising, and vending of obscene and immoral literature and articles of indecent and immoral use, and to confiscate such property, and repeal section 206 of the criminal code." Laws 1887, chap. 113. Took effect July 1, 1887.

7870b SEC. 206b. [Depositing same in post office—Advertising.] Whoever deposits in any post office within this state, or places in charge of any person to be carried or conveyed, any of the articles or things named in section 1, of this act, or any circular, handbill, card, advertisement, book, pamphlet, or notice of any kind, giving information,

2. Frank F. Brightly, Esq., *Brightly's Purdon's Digest: A Digest of the Statute Law of the State of Pennsylvania from the Year 1700 to 1894*, Vol. 1, 12th ed. (Philadelphia: Kay and Brother, 1894), 539.

CRIMES.

LXXXII. Sodomy — Buggery.

386. If any person shall commit sodomy or buggery, he shall be guilty of felony, and on conviction, be sentenced to pay a fine, not exceeding one thousand dollars, and to undergo an imprisonment, by separate or solitary confinement at labor, not exceeding ten years. (c)

21 March 1860 § 22.
P. L. 599.
Sodomy.

387. If any person shall, unlawfully and maliciously, assault another, with the intent to commit sodomy or buggery, or if any person shall, wickedly and unlawfully solicit and incite, and endeavor to persuade another, to permit and suffer such person to commit sodomy or buggery with him, such person shall be guilty of a misdemeanor, and being convicted of an assault with the intent aforesaid, or of so inciting another to suffer the act of sodomy or buggery to be committed with him, shall be sentenced to pay a fine, not exceeding three hundred dollars, and undergo an imprisonment, by separate or solitary confinement at labor, not exceeding three years. (g)

Ibid. § 23.
Attempt and solicitation to commit sodomy.

388. The terms sodomy and buggery, as and where used in the laws of this commonwealth, shall be understood to be a carnal copulation by human beings with each other against nature, *res venerea in ano*, or with a beast, and shall be taken to cover and include the act or acts where any person shall wilfully and wickedly have carnal knowledge, in a manner against nature, of any other person, by penetrating the mouth of such person; and any person who shall wickedly suffer or permit any other person to wickedly and indecently penetrate, in a manner against nature, his or her mouth, by carnal intercourse, he, she and every such person, committing any of the acts aforesaid, or suffering the same to be committed as aforesaid, shall be guilty of the crime of sodomy or buggery, and upon conviction thereof, shall be liable to the punishment now prescribed by law for the crime of sodomy or buggery.

11 June 1879 § 1.
P. L. 148.
Definition of sodomy and buggery.

332 Soldiers.
See
Pr. 310 pl. 21

Punishment.

LXXXIII. Soldiers' commissions and discharges.

389. It shall be unlawful for any person or persons who has or have the possession or control of, or who may hereafter become possessed of, the commission or discharge papers of any officer, soldier, sailor or marine of the United States army or navy, to withhold the same from the party named in such commission or discharge when such officer, soldier, sailor or marine shall demand possession thereof.

30 April 1865 § 1.
P. L. 13.
Withholding commission or discharge.

390. It shall also be unlawful for any person or persons having the possession of any commission or discharge, as aforesaid, to wilfully destroy, mutilate, or destroy or make away with, such commission or discharge, to the prejudice of the owner thereof, or to deliver the same to any person other than the party named therein, without the written request of such officer, soldier, sailor or marine.

Ibid.
Wilful mutilation or delivery to third person.

391. In case of the death of the party named in such commission or discharge, when the possession may be as aforesaid, the party or parties having possession shall deliver up the same on the written request of the widow, or legal representative of such officer, soldier, sailor or marine.

Ibid.
In case of death.

392. Any person or persons who shall violate the provisions of the preceding section, or refuse to comply with the requirements thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not exceeding five hundred dollars, and imprisoned not exceeding three months, or both, or either, at the discretion of the court before which the conviction be made.

Ibid. § 2.
Punishment.

LXXXIV. Surety of the peace.

393. If any person shall threaten the person of another to wound, kill or destroy him, or to do him any harm in person or estate, (A) and the person threatened shall

21 March 1860 § 4.
P. L. 384.

companies, and in general laws, having for their object the repression of the violation of sepulture; such are the 2d section of the act of 3 April 1849, P. L. 397; and the act 7 May 1855, P. L. 462. Report on the Penal Code 20. See act 10 February 1871, containing special provisions for Beaver county. P. L. 38.

of the act of 1829; punishment in such cases must now be inflicted under the 4th section of the act of 1790, 2 Sm. 532; and the 1st section of the act 4 April 1867, 4 Sm. 383. These sections of the acts of 1790 and 1867 are general provisions, which prescribe imprisonment at hard labor, not exceeding seven years, in all cases where, previously, burning in the hand, cutting off the ears, nailing the ear or ears to the pillory, placing in and upon the pillory, whipping or imprisonment for life, might have been inflicted. As these sections are proposed to be repealed, it is necessary to provide against these offences, as well as all others supposed to be so circumstanced. Report on the Penal Code 18.

(e) This crime is now punished by the 4th section of the act 23 April 1829, 10 Sm. 437, by solitary confinement at labor, not less than one nor more than five years. The present section authorizes the courts to extend this punishment to ten years, where the crime calls for special severity. Report on the Penal Code 18. By the act of 1765, a conviction of this offence, by a married man, entitled the party injured to a divorce. Bradford's Laws, ed. 1714, p. 41. See *Commonwealth v. Smith*, 14 Luz. L. Reg. 362. *Commonwealth v. King*, Public Ledger, 19 April 1890.

(A) Surety of the peace is demandable of right by any individual who will make the necessary oath. *Commonwealth v. Duane*, 1 Blinn. 102 n. See *Commonwealth v. Edwards*, 1 Ash. 46. *Case of Aldermen*, 2 Pars. 458.

(g) Attempts to commit, and solicitations to commit this crime, are not embraced within the provisions

Figure 2: Frank F. Brightly, Esq., *Brightly's Purdon's Digest: A Digest of the Statute Law of the State of Pennsylvania from the Year 1700 to 1894*, Vol. 1, 12th ed. (Philadelphia: Kay and Brother, 1894), 539.

3. David Irwin, Geo. N. Lester, and W. B. Hill, *The Code of the State of Georgia*, 4th ed. (Atlanta: Jas. P. Harrison & Co., 1882), 1145.

§4352. (4286.) (4251.) *Sodomy.* Sodomy is the carnal knowledge and connection against the order of nature, by man with man, or in the same unnatural manner with woman.

2 Whart. Cr. Law, §1161; 2 Bish. *Ib.*, §1172; 1 Bish. Cr. Proc., §1013; 1 Arch. Cr. Pr. and Pl., 1015.

§4353. (4287.) (4252.) *Penitentiary for life.* The punishment of sodomy shall be imprisonment at labor in the penitentiary for and during natural life of the person convicted of this detestable crime.

§4354. (4288.) (4253.) *Bestiality.* Bestiality is the carnal knowledge and connection against the order of nature by man or woman in any manner with a beast.

A verdict of guilty not illegal because contains recommendation to mercy: 51 Ga., 236.

1 Arch. Cr. Pr. and Pl., 1018; 2 Bish. Cr. Law, §1172.

§4355. (4289.) (4254.) *Penitentiary five to twenty years.* The punishment of bestiality shall be imprisonment in the penitentiary of this State for a term not less than five years, nor more than twenty years, in the discretion of the presiding Judge. Acts of 1880, p. 74.

§4356. (4290.) (4255.) *Attempt.* An attempt to commit sodomy or bestiality shall be punished [as prescribed in section 4310 of this Code.] (a.) Acts of 1865-6, p. 233.

Figure 3: David Irwin, Geo. N. Lester, and W. B. Hill, *The Code of the State of Georgia*, 4th ed. (Atlanta: Jas. P. Harrison & Co., 1882), 1145.

4. *Revised Statutes of the State of Nebraska 1913* (Lincoln, NE: State Journal Co., 1913), 2356.

ARTICLE V.

CRIMES AGAINST NATURE.

SECTION 8788. Sodomy.

8788 Sec. 210. Sodomy.—Whoever has carnal copulation with a beast, or in an opening of the body except sexual parts with another human being, shall be guilty of sodomy and shall be imprisoned in the penitentiary not more than twenty years. (1913 p. 203.)

ARTICLE VI.

OBSCENITY.

<p>SECTION</p> <p>8786. Exposure of person—obscene language.</p> <p>8787. Selling obscene literature.</p> <p>8788. Distributing same.</p> <p>8789. Advertising medicines for venereal diseases.</p>	<p>SECTION</p> <p>8700. Obscene or criminal books, etc., to minors.</p> <p>8701. Same—destruction.</p> <p>8702. Saving clause.</p>
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8786 Sec. 211. Exposure of person—obscene language.—Whoever, being of the age of fourteen years and upward shall wilfully make an indecent exposure of his or her person in any street, lane, alley or other place in any city, town, village or county, or shall utter, speak or use any obscene (2356)

Figure 4: *Revised Statutes of the State of Nebraska 1913* (Lincoln, NE: State Journal Co., 1913), 2356.

Legal Records

1. “Cicero H. Thompson v. State of Nebraska” in *Reports of the Cases in the Supreme Court of Nebraska, September Term, 1900–January Term, 1901*, Vol. 61 (Lincoln, NE: State Journal Company, Law Publishers, 1901), 210–15.

CICERO H. THOMPSON V. STATE OF NEBRASKA.
FILED JANUARY 23, 1901. NO. 11,493

1. **Instruction:** DEFENSE OF DOMICILE. An instruction charging that: “An assault on the house can be lawfully resisted to the extent of killing the assailant or assailants only in case the assault is made with the intent of taking the life of the inmate or of doing him great bodily harm, and that such resistance was necessary to prevent such crime or in case the inmate acting honestly had reason to believe that it was necessary to prevent the commission of such crime,” is erroneous.
2. **Defense of Domicile.** A man may defend his domicile, even to the extent of taking life, if it be actually or apparently necessary to do so in order to prevent the commission of a felony therein. Whether this is the precise limit of the domiciliary right is not determined.
3. **Theory:** EVIDENCE. The submission to the jury of a theory which has no basis in the evidence, is error.
4. **Extortion:** UNNATURAL SIN: THREAT OF EXPOSURE: ROBBERY. Evidence that money or goods were obtained from a man by taxing him with the practice of an abominable wickedness and threatening to expose him, may be sufficient to establish the crime of robbery.
5. **Self-Defense:** BREAKING AND ENTRY: FELONIOUS INTENT. The occupant of a dwelling may lawfully kill, as a necessary measure of defense, a person who attempts to break and enter with the intention of extorting money by charging him with the commission of an infamous offense against nature and threatening to expose him to public reprobation and contempt.
6. **Instruction:** ERROR NOT CURED BY ANOTHER STATING LAW CORRECTLY. An instruction which misstates the law is not cured by giving another which states it correctly. The jury should not be required to choose between conflicting instructions.
7. **Plea in Abatement:** PRELIMINARY EXAMINATION. A plea in abatement, grounded on the facts that defendant had two preliminary examinations and that on the first he was held for a lower grade of crime than upon the one which is the basis of the information filed against him, is demurrable.

ERROR from the district court for Cherry County. Tried below before HARRINGTON, J. *Reversed.*

Frank M. Wolcott and *Moses P. Kinkaid*, for plaintiff in error:

The witness Milliman swore that the witness and the deceased were entering the defendant’s domicile with intent to extort money from the defendant by putting him in fear of the loss of his reputation.

“If any person shall forcibly, and by violence, or by putting in fear, take from the person of another any money or personal property, of any value whatever, with the intent to rob or steal, every person so offending shall be deemed guilty of robbery.” Criminal Code, sec. 13.

The foregoing statute is declaratory of the common law. Coke, 2 Institutes, 308; Bishop, Statutory Crimes, pp. 5–8, 82, 86, 88, 131–144.

Robbery, by common law, is larceny from the person accompanied by violence or putting in fear. Anderson, Black, Bouvier, Dictionaries; Wharton, Lexicon; Russel, Crimes. But both these circumstances need not occur. Rawle, Bouvier's Law Dictionary, p. 935, art. Robbery; *Williams v. State*, 51 Nebr., 711.

Blackmail is robbery under the statute. It is defined: "A certain rate of money, corn, cattle, or other thing, anciently paid, in the north of England and south of Scotland, to certain men, who were allied to robbers, to be by the protected from pillage." Webster, Dictionary. In the United States: "Extortion of money from a person by threats of accusation or exposure." Bartlett, Synonyms.

The deceased, Arthur London, was breaking a mansion house in the night season to extort money by threat of accusation and exposure. The defendant slew him to defend himself from a felony. The act was justifiable homicide.

Constantine J. Smyth, Attorney General, and Willis D. Oldham, Deputy, contra.

SULLIVAN, J.

In the district court for Cherry County, Cicero H. Thompson was found guilty of murder in the second degree and sentenced to imprisonment in the penitentiary for fifteen years. The conviction apparently was the result of erroneous rulings, and must, therefore, be set aside. We cannot consider in detail all the specifications of error discussed by counsel. They are altogether too numerous to be given separate treatment. For the most part they depend upon a few principles which, if recognized and properly applied, will prevent on another trial a repetition of the errors of which the defendant complains.

On the night of the tragedy Thompson was alone in his cottage in the city of Valentine. About 2 o'clock A.M., Arthur London, the deceased, with a companion named Milliman, rapped for admittance. Receiving no response from within they broke open the door and were about to enter, when they encountered the defendant, who commenced shooting at them. Five shots were fired. Milliman fell in the storm-shed and London lay mortally wounded just outside the threshold. Two theories of the case were submitted to the jury. The theory of the defense was that all the shots were fired by Thompson in the belief that his home was being broken and entered by robbers. The state's hypothesis was that the defendant recognized London when he first sought to gain admittance and knew that his purpose was to obtain money by threatening to publish a report to the effect that the defendant was addicted to the practice of an abominable vice. It was contended by the county attorney that the fatal shot was fired after London had retreated and while he lay helpless on the ground. There is no sufficient basis in the evidence for the theory that Thompson did the killing to protect himself from blackmail. There is nothing in the record from which it may be inferred that he knew, or had reason to believe, that the deceased intended on the night in question, or at any other time, to extort money from him by any species of intimidation. If it be true that London and Thompson had been accustomed to wallow together in the ooze and slime of a detestable sensualism, it does not by any means follow, as a natural or probable conclusion, that either would use his knowledge of the other's baseness as a means of obtaining money. The jury might, perhaps, have been justified in finding that the defendant recognized London before he shot him, but there was no sufficient evidence from which to conclude that the motive for the shooting was to prevent blackmail.

Some of the instructions touching the right of the accused to defend his habitation are erroneous. In the seventeenth paragraph of the charge it is said: "An assault on the house can be lawfully resisted to the extent of killing the assailant or assailants only in case the assault is made with the intent either of taking the life of the inmate or of doing him great bodily harm, and that such resistance was necessary to prevent such crime or in case the inmate acting

honestly had reason to believe from the acts, facts and circumstances and in fact did believe that it was necessary to prevent the commission of such crime." The same thought is expressed in the eighteenth paragraph. The doctrine of these instructions is not, we believe, sustained by any adjudged case, although there are *dicta* in the opinions of courts and expression in the textbooks on criminal law that seem to give countenance to it. The true rule undoubtedly is that a man may defend his domicile, even to the extent of taking life, if it be actually or apparently necessary to do so in order to prevent the commission of any felony therein. *Semayne's Case*, 3 Coke, 91; *Foster's Crown Cases*, 273; *State v. Patterson*, 45 Vt., 308, 12 Am. Rep., 200; *Wright v. Commonwealth*, 85 Ky., 123; *State v. Taylor*, 143 Mo., 150. Whether this is the precise limit of the domiciliary right it is not here necessary to determine; but if it is the limit, then popular sentiment is not in accord with the law.

Another phase of the case seems to have been entirely overlooked at the trial. The right of the accused to resist an aggression having for its object the obtaining of money by threats of injury to his reputation was ignored. There is no good reason why the law should differentiate between a threat to inflict physical injury and a threat to cause mental suffering. One may diminish the value of existence quiet as much as the other. Of this fact the criminal law has but a dim perception; it is seen, but not seen clearly. If the mental anguish is acute and in its very nature calculated to lower the tide of life, the law takes cognizance of it. It appears from the authorities, ancient and modern, that the extortion of money by threatening to smirch a fair reputation is so atrocious a wrong that it is generally regarded as robbery, especially if the vice or crime imputed is an unnatural one. This being so it would seem that if London and Milliman came to the defendant's house with the intention, as claimed by the state, of obtaining money by taxing him with the commission of an infamous offense against nature and threatening to expose him to public reprobation and contempt, he might lawfully kill them as a necessary measure of defense, even though divining their purpose, or having actual notice of it. Under these circumstances the breaking and entry would be felonious because done with intent to rob. Evidence that money or goods were obtained from a man by putting him in fear of an injury to his property or reputation may, it is said, be sufficient to establish the crime of robbery. 1 Wharton, Criminal Law, sec. 852; Desty, American Criminal Law, sec. 142d; 3 Greenleaf, Evidence, sec. 233, 234; *Long v. State*, 12 Ga., 293; *Britt v. State*, 7 Humph. [Tenn.], 45. "As to the fear of injury to the reputation," says Greenleaf (sec. 234), "it has been repeatedly held that to obtain money by threatening to accuse the party of an unnatural crime, whether the consequences apprehended by the victim were a criminal prosecution, the loss of his place, or the loss of his character and position in society, is robbery." The instructions precluded the jury from considering this aspect of the case, and thereby deprived the defendant of a valuable right.

The seventh paragraph of the court's charge is a defective definition of murder in the second degree. The attorney general does not defend the instruction, but contends that it furnishes no ground for reversal, because the elements of the crime were correctly stated in another instruction. This question is not a new one. It has been frequently decided by this court, and the rule is a just one and founded in good sense, that the jury should not be required to choose between conflicting instructions. *First Nat. Bank v. Lowrey*, 36 Nebr., 290; *Carson v. Stevens*, 40 Nebr., 112; *Richardson v. Halstead*, 44 Nebr., 606; *Barr v. State*, 45 Nebr., 458; *Metz v. State*, 46 Nebr., 547.

The demurrer to the plea in abatement was properly sustained. The fact that the defendant had two preliminary examinations, and that he was held only for manslaughter on the first, did not entitle him to immunity from prosecution for murder. The decision of the county judge furnished the basis for prosecuting the prisoner for one crime; the decision of the justice of the peace gave the right to put him on trial for another crime. There has never been any doubt about the power of the grand jury to return two indictments against a party grounded on the same criminal act; and no reason is suggested why an examining magistrate

may not exercise, under the new procedure, the jurisdiction which the grand jury exercised under the old. *Bartley v. State*, 53 Nebr., 310; *Roby v. State*, 61 Nebr., 218.

The judgment is reversed and the cause remanded.

REVERSED AND REMANDED.

2. Maryland Vice Commission, *Report*, Vol. 1, 423–28. Enoch Pratt Library, Baltimore, Maryland.

Appendix

SEXUAL PERVERSION – (Homo-Sexuality)

By homo-sexuality we mean those cases in which the sex instinct is directed to the same sex—that is male to male, and female to female.

In the course of the investigation we found fifteen young men scattered about the city who practiced perversion for money. They solicit men along the streets, in railroad stations and in a few saloons. Those whom they pick up are taken to some secluded spot, such as a space behind a building or a dark alley-way, or a private room. They demand for this service from \$1 to \$5. Occasionally, some of these fellows spend the nights in hotels with other men; for which they charge \$10.

The police officials detailed during one summer two plain clothes men to patrol certain streets in several sections of the city and watch for this kind of traffic. In a period of three months, extending from the first of June to the first of September, 25 men were arrested. Most of these arrests were made on Charles St., Franklin St. and Mulberry St. The men arrested were usually between the ages of 18 and 30; about half were white and half colored. Some of them demanded from \$2 to \$5 of their clients, and some agreed to give the client \$5 if he would allow perversion. These men were arrested on the charge of assault. A number of them were fined from \$50 to \$100, and a few were imprisoned as well. It was discovered that one man had associated with him a number of boys, all of whom he had taught to do perverted acts. He gave each boy 25 cents and to the one who acted as procurer he gave 35 cents for each new boy brought to him. This man took the boys into a dark alley-way, where the practices were done. An additionally sad feature about this case was that the man had a syphilitic throat and had infected one of the boys.

Knowledge has recently come to us of a kind of organization composed of from 40 to 60 men and boys. These, according to the testimony of one of the boys, meet in rooms and have disgusting sexual orgies. It is also claimed by the boy that the older men have induced the boys to take heroin and cocaine. We have the names and addresses of 30 men who belong to this society; but it has not been possible up to now to make a thorough investigation.

As a rule, men of this type are distinct from the normal individual and can be easily recognized on the street. Their peculiarities are: feminine mannerisms, as shown in the gait and in the movement of head and hands; in the rather high-pitched voice, simulating a woman's; and in the choice of words,—such expressions as “how charming,” “most enchanting,” “gorgeously delicious,” and “oh, my dear” are frequently used. They are strikingly verbose and nearly always speak in superlatives. They are much addicted to letter writing, and their epistles are long and filled with various veiled references to their practices. They nearly always address each other by a girl's name and begin their letters with “My dearest Madge,” “My dear Gladys,” or “My darling Phyllis.” Many of these fellows are designated by the names of well-known women; for instance, one is known as “Maggie Pepper,” another as “Grace Larue,” another as “Lillian Russell.” In their rooms,

particularly when several of them are together, they put on slippers and wrappers of feminine style, and imitate women in other ways.

The method of perversion which they use varies with different individuals or different sets of individuals, and for obvious reasons will not be described here.

There are many actors who are perverts, and who soon become acquainted with others in the town in which they are playing.

Perversion in Schools

One Maryland school, comprising 56 boys, was investigated; 49 of these were found to be engaged in some form of sexual perversion, the most common of which was pederasty. Some time later it was discovered that the principal of the school was practicing perversion with the boys. He had had relations with about twelve of them; and with three other boys whom he had adopted in his family he had established very extensive relations. Sometimes he practiced perversion on the boys at other times they practice it on him. Several forms were practiced; here again pederasty was the most common.

The investigator talked with a number of boys at this school, most of whom were quite open and frank about the practice; it was so common that they had ceased to regard it as a novelty or anything to be particularly ashamed of. One student said that a small boy had received about 13 other boys in the course of an afternoon and evening. One of those engaged in the practice had had sex relations with a colored girl in the neighborhood and from her had contracted syphilis. He later infected two other boys in the school.

An investigator was placed in a school comprising a large number of boys, varying in ages from 12 to 20. He remained there for about one week and during that time he found 20 boys who practiced perversion. This practice is quite openly talked about, and the boys have developed a special set of names to distinguish various phases of the practice. The boys who act as passive agents are usually the younger set and are paid in various things, such as pieces of tobacco, cigarettes, pie-crust and so on. These fellows are designated by the name of "punk," and are spoken of as this or that boy's "punk." The practices are done in the rooms of the boys, in the toilets, and in any secluded place. Being seen does not constitute any special disgrace. Three teachers in this institution were found to be engaged in the practice with the boys. The investigator did not himself observe anything of the sort in connection with these men, but it was told him by a number of the students, and several smaller boys were pointed out as being used by the men.

At still another school, where there are about 140 boys, we found that the practice obtained; but as a thorough investigation was not allowed we cannot speak as to its extensiveness. One of the teachers in the institution was suspected.

A man who was principal of a school in one of the towns of Maryland was asked to resign because it was thought very probable that he was engaged in perversion with some of the students. He afterwards obtained a position in another school.

Several years ago a professor in a school for boys was asked to resign because of this practice. We have also notes on another school man of considerable prominence, both here and abroad, who is a pervert.

The community is familiar with the recent exposure of an official in the public schools of Baltimore.

We have several notes of men in Baltimore, aged from 55 to 65, who have relations with boys; two of these men are very well known and have business prominence.

There is a fairly well-known man who is a pervert and whose house is used as a rendezvous for men of this type. He has had several love-affairs with men, and one of them with whom the investigator talked, "raved" over him.

We have one authentic instance of a man's keeping another man; that is, supplying him with all the money which he needs in return for perverted relations.

Homo-sexuality among Women

It has not been possible to investigate this carefully, but with very little effort we have discovered several striking examples. Two well-known women who are engaged in various affairs about the city are perverts. A set of three others, one in a very responsible position, and one in a minor position, all have perverted relations among themselves.

There are numerous younger women who are guilty of this practice. Of these, one usually simulates the man, and as a rule is of a masculine type and is not infrequently called a man's name.

Newspaper Articles

1. "A Female Man," *Oshkosh Northwestern*, October 30, 1883. Transcription of article follows.

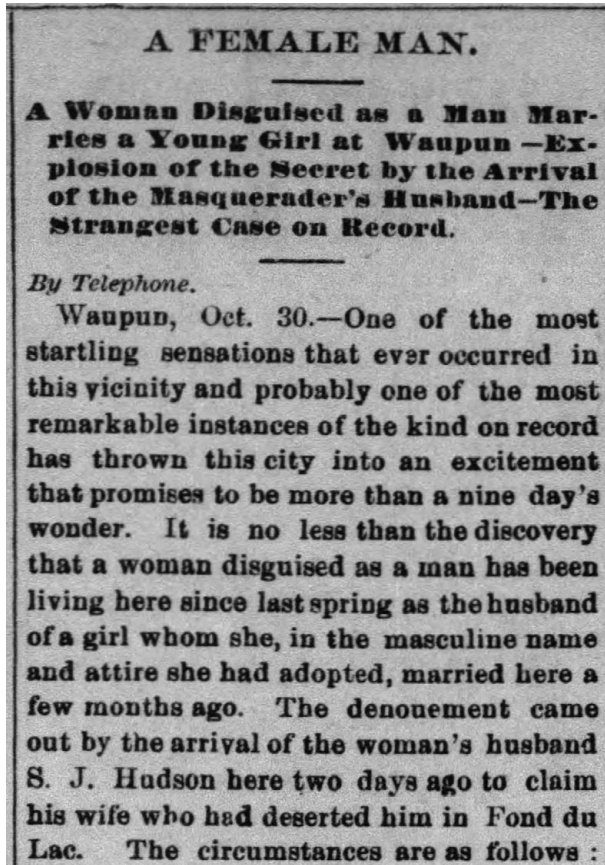


Figure 5: "A Female Man," *Oshkosh Northwestern*, Oct. 30, 1883.

A Female Man. A Woman Disguised as a Man Marries a Young Girl at Waupun – Explosion of the Secret by the Arrival of the Masquerader’s Husband – The Strangest Case on Record.

By Telephone.

Waupun, Oct. 30. – One of the most startling sensations that ever occurred in this vicinity and probably one of the most remarkable instances of the kind on record has thrown this city into an excitement that promises to more than a nine day’s wonder. It is no less than the discovery that a woman disguised as a man has been living here since last spring as the husband of a girl whom she, in the masculine name and attire she had adopted, married here a few months ago. The denouement came out by the arrival of the woman’s husband S. J. Hudson here two days ago to claim his wife who had deserted in Fond du Lac. The circumstances are as follows: Hudson and his wife and two children formerly lived in Fond du Lac. Mrs. Hudson helped support the family by peddling extracts, soap, etc., and in that business frequently visited other towns in the vicinity. Early last spring Mr. Hudson secured a business opening in Belvedere, Ill., and it was arranged that he should take the children and go on to Belvedere, and she should follow then in a few days. Hudson sent to Belvedere, but his wife never arrived and it was the last he ever heard of her until a few days ago. She disappeared suddenly from Fond du Lac after his departure and although he searched high and low and made every effort to get track of her, he could find no trace of her whereabouts. About that time, it now transpires, Mrs. Hudson appeared in this city in the attire of a man. She is short and stout and her form often attracted attention and caused frequent remarks that she must be a woman in disguise. She went by the name of Frank Dubois. She smoked, chewed tobacco, swore with perfect masculine indifference; but there was something about “Frank” that caused many suspicions. A paragraph hinting that Frank Dubois might easily be taken for a woman once appeared in a local paper. Immediately on “Frank’s” arrival he began keeping company with a young girl of unsophisticated nature named Gertrude Fuller who was living with her mother. Shortly afterward they were married, Rev. H. L. Morrison performing the ceremony. This circumstance somewhat allayed the previous suspicions of people that “Frank” was a woman, and as months wore on and the couple seemed to live happily together those who before had been suspicious began to believe that their suspicions had been ill-founded and the matter finally settled down to the general conclusion that everything was all right, and the couple passed in and out of society as man and wife.

Two days ago Mr. Hudson arrived in the city with his two children and looked about without letting his object be known. He discovered that Frank Dubois was none other than his own wife who had disappeared so suddenly from Fond du Lac under circumstances before mentioned. Last evening taking an officer with him, Mr. Hudson went to the house and demanded to see Mr. Dubois. It was then discovered that “Frank” had got wind of Hudson’s presence in town and had skipped out. The young wife, as the Fuller girl may be called to avoid confusion, declares positively that Frank is man. She was interviewed last night by your correspondent and stated positively that “Frank” was a man. Her mother stated positively the same thing, but how she should know so positively does not appear to be evident. She reiterated the statement to-day stating that Frank would be back this afternoon or evening and if the officer would come to the house she would prove it to him. The “young wife” took the train this morning for Brandon and Mr. Hudson left this afternoon for Fond du Lac with the children. The case is so mysterious as to be the great talk of the town. Everybody believes firmly that Frank Dubois is a woman and is Hudson’s

wife, and yet how she could marry a girl and keep the wife ignorant of her true sex for six to eight months is what astonishes people and makes the case so sensational. Some think the young wife knows the secret and has kept it herself. Others think she has never discovered the sex of her feminine husband.

LATER – It is just reported that Mrs. Hudson *alias* Frank Dubois is in the city, having remained last night concealed at the house of a friend. Efforts will be made to interview her and unravel the mystery. A Fond du Lac livery stable keeper is reported to have given information that while Mrs. Hudson was living with husband in Fond du Lac she was in the habit of hiring a rig at his stable, with which, dressed in men's clothes, she used to drive over to Waupun to court the Fuller girl.

2. "That Female Man," *Oshkosh Northwestern*, October 31, 1883. Transcription of article follows.

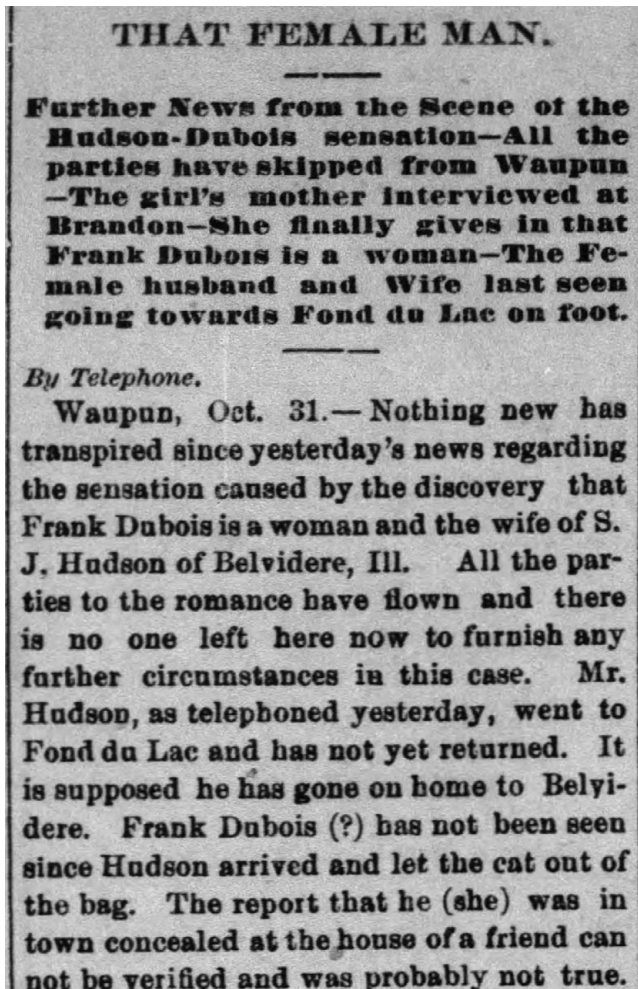


Figure 6: "That Female Man," *Oshkosh Northwestern*, Oct. 31, 1883.

That Female Man. Further News from the Scene of the Hudson-Dubois sensation – All the parties have skipped from Waupun – The girl's mother interviewed at Brandon – She finally gives in that Frank Dubois is a woman – The Female husband and Wife last seen going towards Fond du Lac on foot.

By Telephone.

Waupun, Oct. 31. – Nothing new has transpired since yesterday's news regarding the sensation caused by the discovery that Frank Dubois is a woman and the wife of S. J. Hudson of Belvedere, Ill. All the parties to the romance have flown and there is no one left here now to furnish any further circumstances in this case. Mr. Hudson, as telephoned yesterday, went to Fond du Lac and has not yet returned. It is supposed he has gone on home to Belvedere. Frank Dubois (?) has not been seen since Hudson arrived and let the cat out of the bag. The report that he (she) was in town concealed at the house of a friend can not be verified and was probably not true. "Mrs." Dubois and her mother went to Brandon yesterday, as telephoned yesterday afternoon and have not been seen since. When they left they said Dubois was in Brandon doing a job of work and they would bring him back that afternoon and prove to the people here that he was a man and not a woman. It is believed here that they will not come back and the female husband and her wife will seek pastures new where [illegible] belief [?] of some people here that the Fuller girl is perfectly cognizant that Frank is a woman, and is merely an accompish with her to help her get away from her husband, Hudson, but even this theory is one that can hardly be reconciled with the facts in the case; for why a young girl would assume the role of wife to a woman in men's clothes and continue to live that way for months is hardly explained on any reasonable hypothesis.

AT BRANDON.

By Telephone.

Brandon, Oct. 31. – Your correspondent has just finished interviewing Mrs. Hewitt, step-mother of the Fuller girl who married the so-called Frank Dupois at Waupun. Inquire develops the fact that "Frank" came her on Monday and his (or her) wife came over yesterday morning. They both took dinner at the house of a man named Irwin, and after dinner started down town, saying that they were going to call on some friends. This was the last seen of them here, although both were seen by farmers between here and Fond du Lac going on foot along the public road toward the latter city. They are now probably in Fond du Lac. Mrs. Hewitt followed her daughter over here yesterday afternoon, but the two had disappeared. Mrs. Hewitt has just been interviewed by your correspondent. She now comes down with the statement that she believes and has always suspect that Frank was a woman. She says the first time he came to see her daughter and while they were going together she was firmly convinced that Frank was a woman, his form and features and voice always betokened a female sex. She therefore bitterly opposed her daughter's marriage to a person she believed was a woman, but they were married in spit of her. They lived at her (Mrs. Hewitt's) house ever since they were married and although she still had her suspicions and talked to her daughter about them, the daughter always declared that Frank was a man and that she out to know if anybody. Mrs. Hewitt further says now the matter comes [sic] out as it has that is firmly convinced that Frank is of the feminine gender. She is perfectly at loss to know the cause of her daughter's actions or to see how she can be deceived in the sex of the person she calls her husband. Mrs. Hewitt [sic] further states that Frank is a vagabond and a thief, and that she can swear to instances where he (or she) is guilty of larceny. He (or she) was in the habit of stealing potatoes

and other provisions for the house and worked to keep up appearances. Further than what is already state, Mrs. Hewitt is wholly at loss to explain or unravel this remarkable mystery.

AT FOND DU LAC.

By Telephone.

Fond du Lac, Oct. 31. – Information having been received that Frank Dubois (Mrs. Hudson) and his (or her) wife have come to this city, reporters have been on the search all day but as yet have been unable to get any trace of them although it is supposed that they are in the city.

Medical Discourse

1. T. Griswold Comstock, “Alice Mitchell of Memphis: A Case of Sexual Perversion or ‘Urning’ (a Paranoic),” *New York Medical Times* 20 (1892–92): 170–73.

Alice Mitchell of Memphis
By T. Griswold Comstock, Ph. D., M. D., St. Louis, MO.
A Case of Sexual Perversion or “Urning”
(A Paranoiac)

The facts about Alice Mitchell will long be treasured in medical works on insanity, and mental and moral perversion. The medical scholar will study the case in all its lights and shades, while the public will only recall that she suddenly, in a terrible manner, with a razor, cut the throat of her dearest companion and friend, Freda Ward, a young lady of an excellent family. The natural impulse of every one was that summary justice should be dealt to avenge such an unprovoked crime. A few among the people of Memphis were so horrified that they even suggested violence. Fortunately the law took its course.

As a matter of medical jurisprudence, it is of great interest and importance that such a case should be inquired into and thoroughly analyzed by the medical profession, and I may add by the most careful and reliable medical experts. The very first impression is, that there must be something radically abnormal in the mental and physical development of such a murderess – and so it was.

The facts were that there was an unnatural affection existing between Alice Mitchell and Freda Ward. Alice Mitchell seems to have been the ardent one. The love they had for each other, to the public, seems something hard to conceive or explain, but to experts in insanity it is nothing unusual. Alice exhibited in her passion for Freda Ward all the impulses of the male sex for a female. She was to have been dressed as a man and take the bridegroom’s part in the marriage ceremony. She had already even arranged with a clergyman to perform the services, but Miss Ward’s friends interfered and they were separated. This disturbed Alice. When riding out with a friend, she meets Miss Ward. She suddenly stops and alights from the carriage, and overtaking Miss Ward deliberately cuts her throat with a razor which she carried for the purpose. She jumps into her buggy and drives rapidly home. She was arrested. She confessed the dreadful deed. She said she murdered her best friend because she loved her. For six months while in prison she did not exhibit any remorse or regret, but showed great devotion for the photograph of Miss Ward. And during the trial, and while the verdict was being rendered, her conduct was scarcely altered. The most reasonable conclusion of the jury, and those who have made a study of the alienated mental condition of those who commit such homicides, is, that the motive must have come of mental delusion. By scientific experts it is recognized as

insanity of a peculiar kind. Alice having been indicted for murder, her attorneys looked at once into the antecedents of the family for mental aberrations. They learned that the mother of Alice in her first confinement, which occurred in St. Louis, had child-bed fever and puerperal insanity, and was confined in an asylum, and that before the birth of Alice she was deranged, and this aberration continued until sometime after labor. I attended the mother of Alice in her first confinement in St. Louis more than thirty years ago. She became insane just after delivery and her mania was of the acute form with fever. I attended her for a month and then advised that she be sent to an asylum. She was sent to the State Asylum at Fulton, where she remained for some time – I think six months. Within a few days after her return home from the asylum, she was first informed of the death of her child, and then her mind became again unbalanced. This demented condition, however, continued only a few days, but she did not recover from the shock. She remained melancholy for a long time, suffering from hallucinations, and was infatuated with the most groundless prejudices and fears. I had occasion to see her for some three years until the family removed from St. Louis to Memphis, and I could always remark a peculiar expression about her eyes which would bring to mind her former furious delirium. I mention this matter since it is a most important factor in the case of Alice, and must not be overlooked. The fact of a real engagement of marriage with one of her sex indicated at once that she was what is known in forensic medicine as a *sexual pervert*. On the 19th of July, 1891, a judicial enquiry was instituted before Judge Du Bose, of the criminal court of Memphis, to examine into the sanity or rather the insanity of Alice Mitchell. A commission was issued and sent from Memphis to St. Louis to take my evidence regarding the particulars of the first confinement of the mother when puerperal mania followed. Also a hypothetical case was cited describing the life of the mother, her antecedents, her family history, and mentioning the fact that other members of her family had been of unsound mind. It was also described the particulars and all the peculiarities of the life of Alice, from the date of her birth up to the time of the murder of Miss Ward. This was presented by a commissioner to Dr. Hammond of Washington, to Belot of Paris, as well as to myself. My affidavit stated that from the antecedents of the mother, Alice was a sexual pervert and affected with emotional monomania, without doubt hereditary, and that her condition was one of *paranoia*, resulting in homicidal mania, and consequently her conditional might be regarded as intrinsic insanity. That Alice is a sexual perfect and a *paranoiac* is quite probable, and the jury unanimously decided that she was insane.

Of course, such a jury was not competent to go beyond the general evidence, and to give a detailed description of the evidence which revealed her mental status and the character of her insanity. But the jury was competent to decide whether she was responsible for her acts, even though she had committed murder in apparently cold blood.

Here I may say something of sexual perverts. It is a revolting subject for the laity, for they have no toleration for anything of that kind. It is strictly a scientific matter of professional interest and of great importance to the medical expert. Until recently, little has been said upon this subject in text-books of insanity. It is mentioned in the recent works of Spitzka and Shaw, but for a full elucidation we must examine the work of Krafft-Ebing.* Professor of Nervous Diseases at the University of Vienna.

He describes the "*vita sexualis*" of perverts, such as Alice Mitchell, under the classification "*Urnings*." This term, used frequently by German writers upon forensic medicine, refers to those who in a sexual sense are only stimulated when consorting with their own sex.

*[Original citation by T. Griswold Comstock.] *Psychopathia sexualis, conträren sexual empfindung*, von Krafft-Ebing, Professor in Wien. Stuttgart, 1892, 432.

It applies to those who indulge in unnatural sexual practices. But it especially includes sensuality and sexual desire of one female for another, and a disgust for a male. The same made be said of males – *mutatis mutandis*. Krafft-Ebing describes the “Lesbian Love” – (tribadism), sapphismus, cunnilingus, fellator, *paedicatio mulierum*, sadismus, masochismus, and fetischismus. Sadismus is a fierce, wild sensuality and lust, together with cruelty before, during and after coitus. Masochismus is another form of perverted lust during the act of constupration or coitus, accompanied with cruelty and special acts to terrorize and injure the female. Fetischismus or erotic fetischism refers to the “urning” or pervert, who superstitiously adores and worships some article of clothing or some organ of the person loved; or the odor of the person loved excites the orgasm, which the desire for natural coitus is disregarded. In some cases of these unnatural perverts, under the head of “Sadismus” or “Masochismus,” the subject, before he can accomplish the sexual act, must, in order to induce priapism, practice cruelty to the woman or upon some animal; *e.g.*, he will bring along a live chicken, a duck, a rabbit or a dog and decapitate it in her presence. And then only can he be excited to complete the sexual act. In these cases coitus is only performed with accompanied by acts of horrid cruelty, or murder after its completion. The awful murders of “Jack the Ripper,” in Clerkenwell, London, can be account for only on this theory.

Subjects like Alice Mitchell, who come under the classification of “Urnings,” are all given to the cruelties of the lower animals. This seems to have been the case with her, as proved by the evidence at the trial. These facts are all unpleasant matters to deal with, but they were germane in dealing with this young woman, and they are verified by numerous cases quoted in the authoritative work of Krafft-Ebing, extending through 432 pages. It is a sad truth that the existence of sexual perverts is of frequent occurrence, especially among the upper class of society. Some months since we saw in the newspapers an account of some scandalous acts (of *paedicatio, vel cinoedi*.) that occurred in Cavendish Square, London. They were reported in the *Pall Mall Gazette*, and were of such a nature as to unfit for publication. But what was most remarkable, the newspapers states that princelings of royal blood and other aristocratic profligates were named as not merely participants, but the instigators and principal actors in the horrible practices. For the “good of society” and for “State reasons” legal inquiry in the Cavendish Square scandals was suspended. Sexual perverts readily recognize each other, although they may have never met before, and there exists a mysterious bond of psychological sympathy between them. Instances have been authenticated to me where such perverts when meeting another of the same sex, have at once recognized each other, and mutually become acquainted and have left in company with each other to practice together their unnatural vices. I am informed by an expert in nervous diseases, that in New York, upon elevated railroads, these perverts travel and frequently meet others of the same sex, and leave the cars in order to be in each other’s private company. Dr. Moll, in Berlin, has recently written a work upon the same subject as Krafft-Ebing’s. Moll says he knows personally, and from authentic evidence, that there are 400 sexual perverts in Berlin, and he has reason to believe that there are half as many more. He says that they frequently consort together in localities prearranged. They also meet in certain restaurants in Berlin, and he states that the same custom exists in Paris.

The sexual function and passion are not to be trifled with. For it is nothing less than the keystone of society, and plays a great rôle in forensic medicine. Horace said,[†] “Lust, long before the time of Helen, was the dismal cause of war.” The practices of sexual perverts I have alluded to, but they can not be described – they are fit to be studied only by competent

[†][Original citation by T. Griswold Comstock.] “Jam fuit ante Helenam cunnus teterrima belli causa.” Horace, Satire, 1, 3, 107.

medical men. These individuals are naturally objects of disgust to the laity, but in a professional man they excite the deepest sympathy. We have known many cases, sad to say, among the ministers of the Gospel – in high places – who were perverts, and one case not long since in the medical profession. Some of the most unnatural crimes that are chronicled in the newspapers result from mental aberrations that affect the sexual system. And again, the practice of a neurotic vice will intensify delusions and insanity in a sexual pervert.

Among such persons, Krafft-Ebing mentions manustupration, *paedictio mulierum*, saphism, libidinous constupration with intense violence and the killing of their victims, sadismus and masochismus – which are frequently practiced. Among sexual perverts, jealousy is always a prime passion, and Alice Mitchell's separation from Freda Ward seems to have excited the most intense jealousy, and the fire of this passion at times burning in her breast was a motive for her to commit the homicide. The sexual relations of the human race are indeed mysterious, and when practiced in any unnatural manner, Nature will certainly avenge herself on the offender. Mental disturbance and insanity will often follow.

The case of Alice Mitchell will be instanced for a long period hence as *un cas célèbre*, and we feel that the verdict of the jury declaring that she was insane was just and proper. The relation of insanity to perverted sexuality is one of the most delicate matters that the physician has to treat, and it can be readily appreciated that in such cases the advice of experts and specialists in medical jurisprudence should be sought. Our mental organization and its workings are something that we can not entirely fathom, but the safety of society requires us to guard with constant care all persons who are in any way mentally irresponsible.

If the mind is deranged, self-control is lost and the acts of the person alienated may not only endanger his own life, but may be a constant menace to society. Physically, Alice Mitchell was a woman, but psychically her cerebral functions were those of a male, and still her preference, like other Urnings – were for her own sex. All this came from an abnormal neuro-psychical development, and, as we believe, was inherited. The insanity of her mother was undoubtedly its prime cause, and that the mother was deranged before the birth, and the mania continued after the delivery, is a legitimate reason for placing the daughter in the category of one not responsible for the dreadful murder which she committed. It was then indeed a case of sexual perversion from hereditary taint, and was probably intensified by unnatural practices – primitive degenerative insanity; though of these we can only conjecture, as there was nothing of the kind elicited by the evidence. Insanity in such cases is more liable to be transmitted from mother to offspring of the same sex than to any male issue.

This case of Alice Mitchell, not only to the family of the pervert, and to the afflicted family whose daughter was so ruthlessly murdered, and to society in general, is indeed sad, and must cast its dark shadows far and wide. To the medical profession it suggests more thorough and exact study of mental disease.

Addison once said: "Babylon in ruins is not so affecting a spectacle or so solemn as a human mind overthrown by lunacy."

Publius Syrus said: "Ulceri animi sananda magis quam corporis" – "Mental diseases demand of the physician more attention than those of the body."

So in ancient times mental maladies were considered more important to treat than somatic diseases.

"Each thing's a feeling and a thought
Within my soul divinely wrought;
All this, created and combined,
Compose my universe – my mind."

Firsthand Accounts

1. Claude Hartland, *The Story of a Life: For the Consideration of the Medical Fraternity* (St. Louis, MO: 1901).

CHAPTER X: Fleeing from Self (pp. 68–69)

The city was full of handsome men, and I burned with passion all the time.

I soon found that many others were suffering from a disease similar to my own, and while this knowledge gave me great relief, I was grieved to find the victims so numerous.

One night, while standing upon the sidewalk listening to a public speech, a very handsome and stylishly dressed man about thirty-five years of age, began a conversation with me.

I suspected him of course, for I could see that he labored under some nervous strain, and I decided to let him take his course.

We talked for some time, when he proposed that we go for a walk. I agreed and we walked down to the river.

When we were in a quiet and dark spot, he placed his arms around my neck and kissed me several times.

Leaning forward, he whispered something in my ear. I had an idea what he meant, but was not sure.

Passion and curiosity tempted me sorely, and I did not repulse him.

Ten minutes passed.

A new experience had been added to my life, and a half slumbering desire awakened in my breast.

One night, several months later, when I was more lustful than usual, I went on the streets actually in search of some one with whom to gratify maddening passion.

I was passing down a dimly lit street, when I saw in front of me a man whose form was simply perfect.

I had not seen his face, but I was sure that he must be very handsome.

I quickened my pace, and in the act of passing him I glanced at his face.

One look was enough—too much.

He was all that my passionate soul could desire, and I could not pass him without a word.

I begged his pardon, then asked him the way to some place that I knew to be in the direction he was going, and he kindly offered to show me the way.

He talked freely, but my own voice was so choked with passion, that I could scarcely answer him.

He soon took on my condition, and before we had gone another block, he had my hand in his and—we were in love.

We turned into a still darker street, for the city was not well lighted, and at that time we did not even have a moon.

He placed his strong arms about me, strained me to his great manly breast and kissed me again and again.

I lay perfectly still against his breast, for I was completely dazed with the sweet blissful feeling his caresses brought to my soul.

He too was aflame with passion, and placing his lips close to my ear, he made a request that I could not grant and I told him so.

He gently put me from him, told me I did not care for him and turned to leave.

I put my hand to detain him, and he repeated his request.

I hesitated a moment, and he again placed his arms about me.

I felt my resolution give way, for oh, how I loved him and how I longed to please him! Placing his cheek against my own, he whispered: "Will you?"

At this moment reason returned, and springing from his arms, I firmly answered: "No, not if I die," and turning, I hurried away and left him.

I did not look back for some time, and when I did, he was gone, and I knew I had lost him.

I sat down upon a curb completely exhausted by the great strain under which I had been laboring.

I felt at that moment that I would grant any request if I only had him with me again.

I will not describe the rest of that wretched night in my room alone.

Notes

- 1 Katie M. Hemphill, "Pastor was Trapped": Queer Scandal and Contestations Over Christian Anti-Vice Reform," *Journal of the Gilded Age and Progressive Era* 21 (July 2022): 182–200; Wendy Rouse, "A Very Crushable, Kissable Girl": Queer Love and the Invention of the Abnormal Girl among College Women in the Gilded Age and Progressive Era," *Journal of the Gilded Age and Progressive Era* 21 (July 2022): 201–220.
- 2 For the history of sodomy laws in the United States and their changing definitions, see William N. Eskridge, Jr., *Dishonorable Passions: Sodomy Laws in America, 1861–2003* (New York: Viking, 2008).
- 3 Frank F. Brightly, compiler *Brightly's Purdon's Digest: A Digest of the Statute Law of the State of Pennsylvania from the Year 1700 to 1894* (Philadelphia: Kay and Brother, 1894), 539.
- 4 Geo. N. Lester, C. Rowell, and W.B. Hill, *The Code of the State of Georgia* (Atlanta, GA: Jas. P. Harrison & Co., 1882), 1145; Guy A. Brown and Hiland H. Wheeler, *The Compiled Statutes of the State of Nebraska. 1881. With Amendments 1882 to 1907, Comprising All Laws of a General Nature in Force July 5, 1907* (Lincoln, NE: State Journal Company, 1907), 1969; *Revised Statutes of the State of Nebraska 1913* (Lincoln, NE: State Journal Co., 1914), 2356.
- 5 HeinOnline, "State Statutes: A Historical Archive," <https://home.heinonline.org/content/state-statutes-a-historical-archive/>. While a subscription service, HeinOnline may be available to instructors with access to the database through their institution.
- 6 Eskridge, *Dishonorable Passions*, 387–407; George Painter, "The Sensibilities of Our Forefathers: The History of Sodomy Laws in the United States," <http://www.glapn.org/sodomylaws/sensibilities/introduction.htm>.
- 7 "Cicero H. Thompson v. State of Nebraska" in *Reports of the Cases in the Supreme Court of Nebraska, September Term, 1900–January Term, 1901*, Vol. 61 (Lincoln, NE: State Journal Company, Law Publishers, 1901), 210.
- 8 Maryland Vice Commission, Report, Vol. 1, 423–28. Enoch Pratt Library, Baltimore, Maryland.
- 9 For the use of sodomy laws in prosecutions of assaults on young and teenage boys, see Stephen Robertson, *Crimes against Children: Sexual Violence and Legal Culture in New York City, 1880–1960* (Chapel Hill: University of North Carolina Press, 2005), 57–71.
- 10 George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890–1940* (New York: Basic Books, 1994).
- 11 Nexis Uni, <https://www.lexisnexis.com/en-us/professional/academic/nexis-uni.page>. Like HeinOnline, Nexis Uni is a subscription database that may be available to those with access through an academic institution.
- 12 "A Female Man," *The Oshkosh Northwestern*, Oct. 30, 1883; "That Female Man," *The Oshkosh Northwestern*, Oct. 31, 1883.
- 13 Jen Manion, *Female Husbands: A Trans History* (New York: Cambridge University Press, 2020), 231–37.
- 14 Newspapers.com (<https://www.newspapers.com/>) is associated with Ancestry and is a paid subscription service, although instructors may have access to the database through institutional libraries. While not as large of a database as newspapers.com, Chronicling America (<https://chroniclingamerica.loc.gov/>) is a free database supported by the Library of Congress and the National Endowment for the Humanities.

15 The author of the 1886 book *Psychopathia Sexualis*—one of the first medical texts to study homosexuality—Krafft-Ebing was a foundational figure in the fields of psychiatry, sexology, and the study of sexual deviance.

16 Lisa Duggan, *Sapphic Slashers: Sex, Violence, and American Modernity* (Durham, NC: Duke University Press, 2000).

17 Claude Hartland, *The Story of a Life: For the Consideration of the Medical Fraternity* (St. Louis, MO: 1901).

18 Wendy Rouse, “A Very Crushable, Kissable Girl.”

19 The Stella Bloch Hanau records are available digitally through Barnard Digital Collects: <https://digitalcollections.barnard.edu/object/0/stella-bloch-hanau-scrapbook-collection>.

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