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Lesbianism and feminist legislation in 1921: the age of consent and ‘gross indecency between women’

Introduction

In 1921, Lieutenant Colonel Moore-Brabazon, Conservative MP and aviation pioneer, stood up in Parliament and set out three options for dealing with lesbians:

The first is the death sentence. That has been tried in old times, and, though drastic, it does do what is required – that is, stamp them out. The second is to look upon them frankly as lunatics, and lock them up for the rest of their lives. That is a very satisfactory way also. It gets rid of them. The third way is to leave them entirely alone, not notice them, not advertise them. That is the method that has been adopted in England for many hundred years.¹

He was speaking on an amendment to the Criminal Law Amendment Bill 1921. That Bill as originally drafted contained provisions which would have strengthened age-of-consent laws; the amendment would have added a new offence of gross indecency between women. Had it, and then the Bill as a whole, been passed by Parliament, all sexual activity between women would have been illegal. However, it was a spoiling amendment, designed not to pass but to be controversial enough that the Bill would run out of parliamentary time. It succeeded in this: neither amendment nor Bill became law.

The failed 1921 amendment is the subject of this article. After considering the primary sources and historical literature on these events, we will explore the legal and political context of the Criminal Law Amendment Act; the feminist coalition campaigning for legal change; parliamentarians’ motives for supporting or opposing the amendment; and the feminist coalition’s responses. The possibility of sex between (higher-class, white, British) women was silenced by legislators and the legal system. Nevertheless,

the story of the 1921 amendment shows a wide-ranging activist movement negotiating the issue as it engaged in wider debates both within its own ranks and with other potential allies or adversaries, from sex reformers to moral purity campaigners, as well as with Parliament and the Church. Those debates reveal a great deal about sexuality, law, and the women's movement during this period.

Sources

Moore-Brabazon was correct to say that the English law's primary strategy for suppressing sexual activity between women was a policy of deliberate silence, intended to hide the very possibility of lesbianism from respectable ladies. Unsurprisingly, such an approach was rarely articulated (that would break the very silence it sought to impose). Nonetheless, some significant examples are known.

In the eighteenth century, there were around half a dozen 'female husband' prosecutions reported in the press. While the courts made it clear that the wrong was in two women (one living as a man) engaging in a marital relationship, efforts were made to obscure the sexual element – not least by charging fraud rather than a sexual offence, even when the motive was clearly not financial.² At the end of that century, a Scottish libel case centred upon allegations of lesbianism was ultimately appealed to the House of Lords. From the start of court proceedings, the court gave elaborate directions to keep documents confidential, and hearings were behind closed doors. Lord Meadowbank clearly identified secrecy as being in the public interest

for the values, the comforts, and the freedom of domestic intercourse, mainly depend on the purity of female manners, and that, again, on their habits of intercourse remaining as they have hitherto been, free from suspicion.³

Victorian cultural and medical norms constructed men as actively desiring; same-sex desire between them was thus comprehensible, if abhorrent. Conversely, sexual activity between two sexually passive, desireless women made no cultural sense. In the efforts to protect their (sexual) 'innocence', silencing seemed a plausible mechanism for policing the wives and daughters of the ruling classes. In an 1885 prosecution of a midwife for non-consensual examination of a girl, the defence thought it worthwhile to argue that a female could not be guilty of indecently assaulting another female under section 52 of the Offences Against the Person Act 1861.⁴ While the court briskly rejected that argument (unsurprisingly, given both the wording of the statute and her status as a lower-class criminal far outside norms of respectable femininity), the case was quietly forgotten: later writers have assumed that the issue was not addressed until an *obiter* remark was made in the 1934 case of *R v Hare*.⁵

This approach continued into the twentieth century: an attempt to legislate on the issue in 1913 was allegedly foiled by the Home Secretary's refusal to consider it.⁶ The 1957 Wolfenden Report on male homosexuality dismissed sex between women in a few vague sentences; yet archival files of evidence reveal that the issue had been canvassed repeatedly by witnesses behind closed doors.⁷

The subject's 1921 appearance in Parliament was therefore anomalous, but did ensure that the discussion is preserved in Hansard. It is nonetheless unsurprising that our exploration of the 1921 amendment owes as much to archival sources as to published records. The construction of sex between women as publicly unspeakable means that within the debates, there are significant evasions and omissions. No hint is given of what 'gross indecency' might mean; no specifics are given of what kinds of behaviour are of concern. The allusions are to individual 'cases', not to relationships.

There are considerable difficulties in reconstructing a policy based upon silence. Even those instances when it did become visible can be difficult to locate in the archives, since there is no specific offence or even terminology for which to search.

Once archival sources are located, the effect of silencing often extends to documentation. Detail may be kept to a bare minimum; the focus of discussion may be shifted or obscured; language is frequently indirect and hedged with qualifiers about the distastefulness of the subject. Reading between the lines, drawing inferences from silences and omissions, paying careful attention to what is not said as much as (or even more than) what is, become the primary tools of the historian. The relationship of historian and archive is thus a paradoxical one: a process in which the absence of information becomes tangible evidence in its own right.

The 1921 amendment debates are no exception. While the parliamentary discussion seems at first glance to confront the issue of sex between women directly, in fact the language of the debates is evasive and allusive. 'Gross indecency between women' is never described or defined. The papers of the Lord Chancellor's Office and Home Office add little, not least because of the manner of the amendment's introduction and the subsequent speed of the Bill's defeat.

The archives of the campaigning organisations are more forthcoming, although not without their own challenges. Most important are the holdings of the Women's Library, which include the papers of the Association for Moral and Social Hygiene (AMSH), the National Union of Societies for Equal Citizenship (NUSEC), the Women's Freedom League (WFL), and the National Vigilance Association (NVA). The records of the Medical Women's Federation (MWF) are held at the Wellcome Library; those of the National Council of Women of Great Britain's (NCW) are at the London Metropolitan Archives.

Again, there are significant limitations to these materials. Practical complications include the short time-frame between the introduction of the amendment and failure of the Bill, meaning that the whole issue was concluded before many of the organisations had time to respond; and gaps in the records. For example, there are no surviving minutes of NUSEC Executive Committee meetings in 1921. Nonetheless,

enough has been recorded and retained for us to piece together the story not only of the amendment, but also of campaigners' responses to it.

These issues have received attention from historians primarily in relation to social attitudes rather than legal regulation. Sheila Jeffreys, in *The Spinster and Her Enemies*, considered the debate relatively briefly, as an articulation of attitudes to lesbianism at this period, particularly the threat it was seen to pose to nation and race.⁸ Like Jeffreys, Martin Pugh addressed the debates in the context of the women's movement; but he fundamentally misunderstood the amendment's spoiling purpose when he concluded that 'feelings [against lesbianism] ran so high that members preferred to lose the entire measure rather than pass it without the anti-lesbian clause'.⁹

More recently, Laura Doan examined the 1921 debates to explore how far sexological discourse had entered legal discourse.¹⁰ She suggested that the parliamentary debates show little knowledge of the sexologists – only Sir Ernest Wild refers to them by name. Instead, there is an assumption that such sexual knowledge is demarcated by profession (lawyers and doctors will be aware of the issue), class and gender (women and working-class men will not).¹¹ Returning to the amendment in *Fashioning Sapphism*, Doan considered it could have 'been a pragmatic strategy enacted against certain individual women or movements to achieve other political or personal aims.'¹² Her specific suggestion that its target may have been the Women Police Service is perhaps not convincing (not least because, as she concedes, the topic was first raised before the Select Committee by Cecil Chapman, a supporter of the WPS). Deborah Cohler also explored the debates in terms of their discourse around lesbianism, notably the ways in which silencing was seen as an appropriate response. However, in not addressing the amendment's function as a spoiling measure, she arguably overestimated both the perceived urgency of this threat 'of grave

nationalist, moral, medical, and legal concern' and the desire to meet it with legislation.¹³

The *Lesbian History Sourcebook's* chapter on law, which included an extract from the 1921 parliamentary debates, noted that '[h]istorical analysis of the legal position of the lesbian [was] in its infancy' still in 2001.¹⁴ That remains true: the now-substantial literatures on the history of lesbians, and on lesbians and the law, rarely intersect to consider the legal history of women's same-sex relationships. The major reason for this is the lack of a specific offence, which not only limits the primary sources but also complicates finding those which do exist.

Although never explicitly criminalized, sexual activity between women has not been immune from legal sanction. We have seen that there had been prosecutions for fraud; all-female households had also been broken up using the provisions of the Statute of Artificers 1563.¹⁵ Later, the offence of indecent assault against a female encompassed non-consensual sexual touching by women. The Criminal Law Amendment Act 1880, section 2 provided that the consent of a person under thirteen was not legally valid, effectively creating an age of consent for same-sex acts. Nonetheless, Susan SM Edwards was the first British legal writer to treat lesbianism and the criminal law as a matter of interest purely in its own right.¹⁶ Her account, though brief and not entirely accurate, gave the topic visibility and provided a basis from which to develop further critique. That lead was followed in Matthew Waites' analysis of the history of the lesbian age of consent from the nineteenth century to the present, important for its sustained account of a surprisingly complex aspect of the criminal law. It places the age of consent in a wider social context of 'the continuing social invisibility of lesbianism' but makes only brief mention of the 1921 debates.¹⁷ There is, then, ample scope for further work on the complicated historical relationship between the criminal justice system and women's same-sex relationships.

The background to the 1921 Bill

The story of 'gross indecency between women' has its origins in 1885. While public concern about the sexual exploitation of girls had been growing, the legal age of consent for girls was just thirteen. Feminist and other campaigning organisations (including the recently formed Society for the Prevention of Cruelty to Children and the Salvation Army) sought to raise it significantly.¹⁸ Bills introduced in 1883 and 1884 had failed due to problems of parliamentary time, significant opposition in the House of Commons, and 'lukewarm' government commitment.¹⁹ However, new momentum was achieved by a series of sensational articles in the *Pall Mall Gazette*, 'The Maiden Tribute of Modern Babylon', in which journalist and editor WT Stead described child prostitution including his 'purchase' of a thirteen-year-old from her mother, apparently for the purposes of prostitution.²⁰ The resulting public outrage provided the impetus for Lord Salisbury's Conservative Government to allow sufficient time for the Bill, and for both Houses of Parliament to pass it.

During the Bill's passage through Parliament, Henry Labouchère introduced an amendment (the Labouchère amendment) which broadened the 1885 Act beyond its original scope, adding section 11 which criminalized 'gross indecency between males'. (Despite the persistent myth that the offence was restricted to male same-sex activity because Queen Victoria refused to believe that lesbianism existed,²¹ this legal silence around sex between women was a consequence not of prudery but of the deliberate strategy of silencing.) It is unclear how far Parliament and Government considered or supported the Labouchère amendment, which was introduced at almost the last minute and debated when few MPs were in the House, but was accepted by the Government who increased the penalty from one to two years.²² However, the inclusion of the Labouchère amendment had not been anticipated by feminist campaigners supporting the Act, who took a neutral or unenthusiastic approach to it.²³

Other provisions of the Criminal Law Amendment Act 1885 raised the age at which girls could legally consent to sexual intercourse from thirteen to sixteen, but had significant shortcomings. First, the new offence of unlawful sexual intercourse with a girl under sixteen had a three-month time limit for bringing prosecutions, later raised to six months by the Prevention of Cruelty to Children Act 1904. This was a significant barrier to prosecution because many cases were discovered only when a girl's pregnancy became obvious. Second, sections 5 and 6 provided a defence where the accused had reasonable cause to believe that the girl was over sixteen (the 'reasonable belief' defence), which made successful prosecutions difficult. Third, the age of consent for indecent assault remained at thirteen. Thus, from the moment of its passing, feminists recognised that the Act would need further reform.

The feminist coalition

Among the societies that had campaigned for the 1885 Act was the one which would lead the campaign for its amendment in 1921: the Association for Moral and Social Hygiene (AMSH), a merger of the British Branch of the International Abolitionist Federation with the society formerly known as the Ladies' National Association for the Repeal of the Contagious Diseases Acts, and then the Ladies' National Association for the Abolition of State Regulation of Vice. The Society had successfully worked under Josephine Butler's leadership for the abolition of the Contagious Diseases Acts 1864-1869, which provided for women suspected of prostitution in certain garrison towns to be subjected to compulsory examination and treatment for venereal disease. The Acts were suspended in 1883 and repealed in 1886, following a long campaign notable for its attention to the sexual double standard which dictated legal regulation of prostitutes but not their male clients.²⁴

After its success in forcing the Acts' repeal, the Association continued to oppose state regulation of prostitution while seeking to protect women and girls from

sexual exploitation.²⁵ It had given cautious support to the Criminal Law Amendment Act 1885, but was uneasy at provisions increasing police powers to prosecute solicitation and brothel-keeping, and at the enthusiasm of some 'social purity' organisations for enforcing those laws.²⁶ Almost alone among such organisations, the AMSH maintained its abolitionist approach to laws on prostitution through the first half of the twentieth century.²⁷

The AMSH concentrated upon three areas: improving the effectiveness of age-of-consent legislation; opposing solicitation laws which criminalized women yet allowed men to annoy girls and women in the street with impunity; and preventing the trafficking of women and girls for prostitution. Key to the first were the ongoing efforts to reform the Criminal Law Amendment Act 1885. In 1912, a committee with members including AMSH representatives and prominent feminists was able to name seventy-two supporting societies. However, there was government antipathy to such approaches, with the Home Office resistant to feminist pressure.²⁸

Divisions had also become apparent within the movement, between those favouring greater regulation and those who took a libertarian approach. Although the societies succeeded in having a Bill introduced into Parliament in 1917, the AMSH found itself unable to support amendments made in committee. These included a clause allowing courts to order the detention of girls under eighteen for various forms of sexual misadventure. For the AMSH, 'the liberty of the subject is at stake' but to the National Vigilance Association, 'the law only steps in when liberty is dethroned and licence reigns!' The National Union of Women Workers had been divided on the amendment.²⁹ The Bill did not pass into law, but this experience was perhaps salutary for the AMSH and its Secretary, Alison Neilans, when they took a leading role in the 1921 campaign.

The AMSH was now at the forefront of a broad coalition of more than fifty feminist and other organisations.³⁰ A brief look at some of these organisations will give

a sense of the range of views and priorities represented within the coalition; to add to the complexity, there were significant connections even between organisations with different approaches, as key campaigners often belonged to several concurrently (Neilans, for example, had close connections to the NCW and NUSEC).³¹ That may have made diplomatic relations between them more rather than less complicated.

NUSEC was the post-1918 name for the former National Union of Women's Suffrage Societies. Its focus was equal suffrage for women; but it also sought equal pay, widows' pensions, mothers' rights, and women's access to the legal profession, as well as an equal moral standard. Much of its work on the 1921 Bill was done by Chrystal MacMillan, who was also on the Executive Committee of the AMSH.

Founded in 1895, the National Union of Women Workers (NUWW) brought together mainly middle-class women engaged in philanthropic work. Non-political and formally non-denominational, its objectives were centred on 'the federation of women's organisations and the formation of local Councils and Unions of Workers' in order to promote women's 'social, civil and religious welfare'. At the end of the First World War, the Union resolved to change its name to the National Council of Women of Great Britain and turned its attention to women's representation in local government.³² In 1921, it would hold a conference on the Bill and pass a resolution supporting it, but this was not a central focus of its work: Neilans was right to be wary of its lack of expertise.

In contrast to the NUWW, which had only reached an agreed pro-suffrage position in 1910, some of the major organisations had been formed as suffrage associations. The Women's Freedom League (WFL) had broken away from the Women's Social and Political Union (WSPU) in 1907, and described themselves as 'midway between the extreme wings of the suffrage movement'.³³ Neilans had been among those who left the WSPU for the WFL; she was imprisoned for three months in 1909 for sabotaging ballot boxes in the Bermondsey by-election and joined the WFL Executive Committee after her release in 1910.³⁴ During the First World War, the WFL

opposed measures including Regulation 40D which allowed compulsory examination of women suspected of transmitting venereal diseases, foreshadowing Neilans' future work.³⁵ By 1915, however, she found the WFL's leadership too autocratic and turned her focus to Sylvia Pankhurst's East London Federation of Suffragettes and the AMSH.³⁶

Meanwhile, after some women over thirty were granted the vote in 1918, the Women's Freedom League continued to campaign for equal suffrage but also turned its attention to issues including female peers, equal pay, opening of the professions, the right of married women to keep their nationality, and the equal moral standard.³⁷ An undated pamphlet written some time after 1919 cited 'moral equality' as a key concern, calling for the raising of the age of consent and no state regulation of prostitution.³⁸ The WFL supported the 1921 Bill in its final form, despite having originally proposed a single-clause Bill raising the age of consent for girls and boys to sixteen for indecent assault and eighteen for sexual intercourse.³⁹ Nonetheless, the main work of the WFL after the War seems to have been focused on employment and nationality issues.⁴⁰

By contrast, the NVA had been formed during the campaign for the 1885 Act to bring together many of the social purity groups;⁴¹ its focus remained firmly on this area of work, and it was not a feminist organization. Josephine Butler, originally a member of its Council, would break away to form the AMSH with supporters who could not accept the NVA's support for policing and prosecuting prostitutes;⁴² as Laite identifies, by 1921 the AMSH policies were clearly distinct from those of the social purity and social hygiene movements.⁴³

Unsurprisingly, the NVA's attitude to legislation differed markedly from that of the AMSH. Its constitution defined the NVA's purpose as 'to enforce and improve the laws for the repression of criminal vice'.⁴⁴ William Coote, leader from its founding until his death in 1919, had emphasized that an equal moral standard meant equal punishment for those who contravened it.⁴⁵ The NVA approach was therefore not fully

aligned with that of the feminist organisations, and its records suggest much more uncertainty about the form changes to the law should take. The General Purposes Sub-Committee expressed concerns about the law's ability 'to distinguish cases where the girl is of bad character and is the real aggressor',⁴⁶ while Executive Committee member and barrister WJH Brodrick stated that, in his experience, the 'reasonable belief' defence only succeeded in deserving cases.⁴⁷ That was contrary to the views and experiences of other campaigners, not least Coote.⁴⁸

Also potentially at odds with aspects of AMSH policy was the MWF, which leaned towards social hygiene. It had been founded in 1917 to represent the interests of women doctors, although its predecessor organisations dated back to 1879; by 1925, it had over a thousand members.⁴⁹ One of its first two special committees was on the State and Venereal Disease. The medical emphasis of this organisation, and its focus on the spread of sexually transmitted infection, again gave it a different perspective from the AMSH. Thus while its report on the Criminal Law Amendment Bill discussed the harm to young people of sexual activity before they were 'physically and mentally reasonably mature', and attacked the double standard since 'protection cannot be had by sweeping up diseased girls [...] and punishing them by detention', it went on to argue that 'the young are especially dangerous [...] They are among the most inveterate communicators of disease'. A 'humane and scientific' solution might include control measures such as licensing of young people's lodgings. Criminalisation of the transmission of venereal disease was also discussed, albeit rejected.⁵⁰ These responses differed significantly from the abolitionist approach of the AMSH.

In a confidential report, Neilans would emphasize the crucial ongoing role the AMSH played in leading the campaign for a new Criminal Law Amendment Act:

Not one of these societies (except, in a small way, the Women's Freedom League) are able to keep up-to-date with what is happening, have records of

how M.P.s voted, or have made a special study of prostitution or morals legislation. When they want information they ring up this Association, or else have representation on this Executive Committee. None of these societies have any formulated principles on morals legislation, and apart from the steadying influence of this Association they might, through lack of information and multiplicity of other interests, support and promote proposals which would lead directly to Neo-Regulation. It will be remembered that the National Council of Women at first supported Compulsory Rescue and Regulation 40D.⁵¹

The AMSH, then, was aware that it needed to be almost as careful of its allies as of its opponents.

The Criminal Law Amendment Bill 1921

After the War, the newly-formed League of Nations was committed to ending the traffic in women and children. The post-war Liberal/Conservative Coalition Government under Lloyd George was enacting a programme of social reform including raising the school leaving age to fourteen,⁵² building social housing,⁵³ and extending national insurance.⁵⁴ It brought in legislation extending the franchise to women over thirty⁵⁵ and enabling women over twenty-one to sit as MPs in the House of Commons;⁵⁶ the Sex Disqualification (Removal) Act 1919 would allow women to be jurors and magistrates, and to qualify as lawyers.

Women's new political power had also added impetus to the reform movement, as they had direct parliamentary influence for the first time. On its face, the House of Commons was little changed as yet: there was only one woman MP, Lady Astor, sitting in Parliament (Constance Markievicz had been elected in 1918, but as a Sinn Féin MP did not take her seat). However, male politicians were aware that many women constituents were now voters whose support mattered if they were to be re-elected.

The political climate must, then, have appeared propitious to the campaigners for changes to sexual offences law.

The Criminal Law Amendment Bill 1921 had its origins in three similar Bills introduced into the House of Lords in 1920: the Criminal Law Amendment Bill, the Government's Criminal Law Amendment (No. 2) Bill, and the Sexual Offences Bill. They had been referred to a Joint Select Committee, whose proposals were the basis of the single Bill now before Parliament.⁵⁷ Introduced to the House of Lords as a Private Member's Bill by the Bishop of London, it had the support of the AMSH-led coalition which had also taken an assertive role at the drafting stage, helping ensure that the Bill omitted controversial elements of compulsion.⁵⁸ However, there was prescient concern among campaigners that a Government Bill would have been more appropriate, and more likely to pass, than one introduced by a private member.⁵⁹

The 1921 Bill would have abolished the 'reasonable belief' defence, increased the time limit for prosecutions, and raised the age of consent for indecent assault; there was no mention of sexual activity between women in the original text. More contentious proposals to raise the age of consent above sixteen had been omitted, and the Government had agreed to give the Bill parliamentary time provided that it remained agreed – but there would be no extra time available to debate amendments at length.⁶⁰

However, the Bill was not universally welcomed: for its opponents, it 'took away from an accused person a ground of defence [...] made blackmail easy' and was 'a Bishop's Bill'.⁶¹ Implicit in these objections was its characterisation as an unnecessary feminist attack upon men: to Liberal MP Horatio Bottomley, '[t]he only thing that appealed ... was the attempt to maintain the purity of our women.'⁶² Lieutenant Colonel Moore-Brabazon later characterized government support for the reforms as the Home Secretary's submission to feminist 'henpecking'.⁶³ As well as gender issues, there were also largely unspoken class issues: heiresses were already protected by the law, so the reforms primarily targeted sexual activity with working-class girls. While the AMSH

explicitly highlighted poorer girls' need for protection, their opponents worried about potential blackmail or criminalisation of higher-class men.⁶⁴

The AMSH was of course aware of the Bill's opponents, and had sought to engage with them. Neilans had met with one of the leading opponents, Major Christopher Lowther MP, who although entirely opposed to the Bill 'said he would offer "no unreasonable opposition".'⁶⁵

This diplomatic approach to the Bill's opponents continued in Parliament. Lady Astor MP supported the Bill, had sat on the Select Committee, was active in pressing for parliamentary time, and had liaised closely with the AMSH (to the extent that Neilans drafted at least one letter for her), but she did not speak in the substantive debates.⁶⁶ She was apparently 'prepared to do so if necessary', but it had been 'agreed beforehand by the supporters of the Bill to say as little as possible in order to allow the opposition to state its case.' (*The Shield* wryly commented that 'nothing [supporters] could say would be so helpful as the speeches of the opponents!')⁶⁷

Despite such efforts, and whatever Lowther may have agreed, some MPs were determined to wreck the Bill. They wanted a spoiling amendment which would prove controversial and so prevent the Bill's passage within the available time. Sex between women, then, became a means to scupper the Bill since any proposal to outlaw it would be contentious. To this end, a 'gross indecency between females' clause was introduced by the Conservative MP Frederick Macquisten in order to defeat the Bill as a whole.

The 1921 amendment was specifically modelled upon the male offence of gross indecency created by the Labouchère amendment to the 1885 Act. If passed, it would have similarly criminalised all sexual activity between women. The wording of the proposed amendment made this deliberate mirroring explicit:

Any act of gross indecency between female persons shall be a misdemeanour and punishable in the same manner as any such act committed by male persons under section eleven of the Criminal Law Amendment Act, 1885.⁶⁸

The primary purpose of the 'gross indecency' amendment was to introduce controversial material to the Bill. However, that point only partly answers the question of why sex between women was chosen: what was it about this topic which made it so appropriate to the proposers' purposes?

Practically, the regulation of sexual activity between women was a complex topic: there was agreement among MPs that lesbianism was a bad thing, but little appetite for formally discussing or enacting that view. Rather, as the parliamentary debates spelled out, MPs believed that silencing would prevent most respectable British women from even knowing that the possibility existed. (Men, especially professional men, were not expected to be so innocent.) The subject was therefore sure to prove controversial: by breaking the silence, the debate itself would arguably create a need for overt regulation; yet many legislators would remain wedded to the traditional approach. This formulation of lesbianism as secret male knowledge, which elite men could choose to share or withhold, left little space for women's agency.

The amendment also made a political point. Since the impetus for the Bill came from feminist campaigns, this new offence could be presented as another form of sex equality. The very wording of the 1921 amendment made the point that women were to be treated in the same way as men. Indeed, this argument was subsequently used to attack Lady Astor for voting against the amendment.⁶⁹

The Labouchère amendment had, however, been a development of existing law on sodomy. The 1533 Buggery Act had made 'the abominable vice of buggery', i.e. penile penetration of the anus, punishable by death (reduced to life imprisonment by section 61 of the Offences Against the Person Act 1861). Other sexual acts between

men had been prosecuted as indecent assault or attempted buggery.⁷⁰ Since there had been no such direct criminalisation of consensual sexual activity between women, the impact of the 1921 amendment upon the criminal law would have been rather different. An area of sexual behaviour hitherto outside its direct ambit would have been explicitly criminalized for the first time, marking a distinct rupture with previous approaches to female sexuality. That difference is reflected in the contrast between the substantive debate in 1921 and the lack of any parliamentary debate at all on the Labouchère amendment, as well as by the House of Lords' official reasons for disagreeing with the 1921 amendment: it 'introduces an new offence which may lead to unlooked for and evil results, and which should not be introduced without the fullest consideration.'⁷¹

The amendment's supporters could argue that it was time for such consideration, since the policy of silencing was already showing signs of fracture. The new 'science' of sexology had discussed and described the 'female invert', and although this occurred within a privileged field of primarily male knowledge, that information was moving gradually out of the scientific realm into public discourse. It would do so most dramatically in 1928 with the furore surrounding the publication of Radclyffe Hall's lesbian-themed novel *The Well of Loneliness*, but already the press had reported Maud Allen's unsuccessful 1918 libel case against Noel Pemberton Billing MP for claiming that she belonged to 'The Cult of the Clitoris', taken as an allegation of lesbianism. Press coverage had been cautious, with *The Times* never actually using the word 'clitoris', but the issue (undefined as it was) had been publicly aired.⁷²

Nonetheless, one must be careful not to overstate the growth of, or concern about, lesbian visibility. Although some supporters of the 1921 amendment attempted to present lesbianism as an imminent danger to the nation, this was not widely accepted. Instead, it was subsumed within a wider discourse presenting single women generally as unhealthy, unnatural and unfulfilled.⁷³ The legal silencing of lesbianism would largely persist for some decades to come.

However, the breaking of silences around sexuality was not just a whim of MPs but also a demand of the purity movement. From Josephine Butler speaking out publicly about prostitution to concerns that ignorance made young women more vulnerable to abuse and exploitation, the movement's members had emphasized the importance of speaking openly. In doing so, and challenging the double standard, they had asserted the existence of women's sexual feeling along with their moral sensibilities.⁷⁴ There may, then, have been an element of their opponents saying that if such speech was good, let it address female immorality too.

In doing so, it also functioned as a more personal attack on the campaigners. The now-suspect spinster status of many prominent feminists was a ground for hoping that the topic would be embarrassing for them. Neilans had recently set up home with Ethel Margaret Turner, with whom she would live for the rest of her life;⁷⁵ Dr Mary Gordon, leading the MWF's work on the Act, would later write a book about, and commission a memorial to, the Ladies of Llangollen, two eighteenth-century aristocrats who eloped to Wales together; the memorial features portraits of herself and her partner Violet Labouchere.⁷⁶ Lady Astor's political secretary Hilda Matheson was a lesbian.⁷⁷ (Nonetheless, although Doan concludes that 'the feminists were successfully smeared with the unsavoury label of inversion',⁷⁸ it seems that the socially unspeakable nature of lesbianism limited press coverage and mitigated the damage.)

Finally, although there had been no real attention to regulating sex between women, it had not gone entirely unmentioned during the Bill's genesis. The issue had been raised by one witness to the Joint Select Committee, Cecil Chapman. A supporter of women's suffrage and a founder member of the British Society for the Study of Sex Psychology (BSSSP) which generally opposed criminalisation of sexual activity between consenting adults, he argued that gross indecency should be extended to protect young girls from abuse by older women.⁷⁹ The terms in which he gave his evidence did not, unfortunately, make it altogether clear that he was not seeking to

prohibit sexual activity among adult women: as Doan comments, 'the magistrate's subtle, even strategic, distinctions are clearly lost on most of the committee members.'⁸⁰

Chapman's remarks were not taken terribly seriously by the Joint Select Committee. According to the Earl of Malmesbury, 'the impression, a very strong one, which was left on my mind was that this subject did not require serious attention'.⁸¹ Nonetheless, Chapman's intervention perhaps both suggested potential subject-matter for an amendment and indicated that there was no agreed position within the feminist movement on this issue. When the Bill's opponents sought a subject controversial enough to wreck it, sex between women was selected and became the focus of open parliamentary debate for the first time in English history.

It is important to bear in mind that what was being debated was the need for intervention by the criminal law, not the existence of lesbianism per se. There was no real dispute that it did exist, although estimates of its prevalence varied wildly: from the Lord Chancellor's certainty that 999 women in a thousand had not heard of it, to Sir Ernest Wild's assertion that it was increasing in prevalence to the point where 'no week passes that some unfortunate girl does not confess' such a relationship to one leading 'nerve specialist'. Those proposing the amendment argued that this apparent growth in prevalence justified criminalisation.⁸²

Lesbianism was thus portrayed as a potent threat, but to many MPs and peers it was one best kept secret lest hitherto innocent women be tempted to try it. The Earl of Desart spoke at some length on this issue, concluding, 'Suppose there were a prosecution [...] It would be made public to thousands of people that there was this offence; that there was such a horror.'⁸³

Knowledge is fatal, Sir Ernest Wild agreed, because 'it is a well-known fact that any woman who indulges in this vice will have nothing whatever to do with the other sex', leaving them to childlessness, debauchery, neurasthenia and insanity.⁸⁴ Moore-

Brabazon, having described himself as unopposed to the detention or execution of lesbians, nonetheless balked at criminalisation which 'would harm by introducing into the minds of perfectly innocent people the most revolting thoughts.'⁸⁵ The most succinct summary was perhaps that of the Earl of Malmesbury that '[t]he more you advertise vice by prohibiting it the more you will increase it'.⁸⁶

The amendment was passed by the House of Commons on 4 August 1921, albeit late in the evening with fewer than a third of MPs voting, but was rejected by the House of Lords shortly afterwards.⁸⁷ As a result, the Bill was no longer agreed and failed for lack of time.⁸⁸

The response of women's organisations

The women's organisations had, as intended, been placed in a very awkward position. Neither supporting nor opposing the amendment was guaranteed to get the Bill passed. Further, to support the creation of such an offence might appear to endorse the argument of the Bill's opponents that young women were as likely to be exploiters as exploited. Conversely, to oppose it would be to condone legal inequality between men and women, if not to condone the 'vice' itself. Worse, even to speak on the subject was to admit to knowledge viewed as incriminating. Finally, without an agreed position between the organisations, there was no clear basis ready upon which to respond.

It was the AMSH, as the organisation which had taken the lead in promoting and campaigning for the Bill, which had to produce a response both to the amendment and to the Bill's failure. The first would take the form of a private letter to 'a selected number of Peers, including the Law Lords' sent on 12 August during the Bill's passage; the second was a public statement at the point the Bill failed.

The Society's archives do not contain the original letter to peers, but *The Shield* quoted part of it in an editorial:

The subject with which the section deals is so repulsive, and indeed unintelligible to many people, that the new clause is not likely to obtain much public discussion nor receive much outside criticism. My Committee do not desire to express any opinion, without more consideration, as to the value or otherwise of this legislation either in the case of men or women, but protest strongly against so serious an amendment being added in the Commons to the present Bill in so ill-considered and hasty a fashion.

My Committee [...] do not wish to be understood as accepting any responsibility for the new clause, or desiring its inclusion in the Bill.⁸⁹

Neilans addressed her audience, which included the most senior judges in the country, as equals rather than pretending ignorance: a characteristic, if brave, refusal to let social norms of female innocence affect her work against the sexual double standard. She nonetheless followed convention (and implicitly flattered her readers) by referring to a lack of knowledge among the wider population. Characterising the subject as 'repulsive' was a nod to social norms: she herself was familiar with the work of Havelock Ellis (cited in the same editorial), and had voluntarily engaged with discussions of the topic.

What is much more interesting here is that, despite its careful disclaimers, Neilans' letter made AMSH opposition to the clause clear, with the second paragraph unambiguously distancing them from it. Indeed, the letter went further by indicating that the Committee were not expressing a view on gross indecency *either in the case of men or women*. Since the amendment would not have affected the law for men, this is a bold indication that the AMSH – or at least Neilans – saw decriminalisation as a topic ripe for consideration.

When the Bill failed, a statement had to be given promptly to the press; Neilans drafted this. It was issued urgently before the Executive Committee could meet, and

received retrospective approval at their next meeting.⁹⁰ The statement rose well to the challenge, avoiding any displays of inappropriate knowledge while carefully critiquing the clause itself. There was no overt description of the subject-matter of the clause, beyond its being 'a new clause of a purely wrecking character concerning certain offences by women', but an attack was made upon its content as creating 'a new crime for women of an almost unintelligible and unprovable nature, and one which would offer the most certain opportunities for blackmail of a peculiarly revolting kind.'⁹¹

Neilans was turning her opponents' argument back against them. If age-of-consent laws would allow men to be blackmailed by teenage girls, what of an even worse criminal accusation, and one which any woman or girl could level against any other? While unlawful sexual intercourse was precisely defined and readily understood, who was sure about exactly what gross indecency between women would consist of? (Since the proponents of the amendment had managed to be incredibly vague throughout the parliamentary debates, it was unlikely that they would rush to offer clarification.) To claim that blackmail was not a risk, or was a justified risk, would undermine that argument against the Bill's substantive content. Thus, reserved as Neilans' response may at first appear, it was a clever method of opposing the amendment.

Another interesting feature of Neilans' statement is that her opposition to criminalisation is again apparent, albeit carefully framed as criticism of the amendment's content and purpose. As we have seen, there was no such consensus among the large alliance her organisation was heading: for example, while the National Council of Women had no policy on the issue, NUSEC would initially have accepted the creation of the offence on the basis of sex equality (its journal *The Woman's Leader* suggested that such an amendment 'is on the right lines in so far as it equalises the sexes in this respect', although it too expressed reservations about having a gross

indecent offence at all).⁹² However, Neilans would have had little patience for opposing views – that much is apparent from the tone of the Association's records.

The AMSH was not generally opposed to greater sexual equality in sexual offences law: their report 'The State and Sexual Morality', published the previous year, had argued for the creation of an offence of unlawful sexual intercourse by a woman with a boy, and the inclusion of male victims in the offence of incest, as well as the exemption of boys under 17, like girls, from penalisation.⁹³ In this context, the opposition to criminalisation of gross indecency is suggestive of the wider views of at least some Executive Committee members, as discussed below.

The minutes of the subsequent Executive Committee meeting dealt only briefly with the statement's circulation and the Bill's defeat, noting that the statement had been approved by the Bill's sponsor in Parliament, the Bishop of London: yet another indication of Neilans' success in her delicate task.⁹⁴ Fuller discussion came month later, on 21 October. The minutes give us only a flavour, rather than a detailed account, of the conversation but it is enough to allow us to gauge the difficulty experienced by the committee in formulating a view.

The AMSH's abolitionist approach to state intervention would have informed the reaction of most members. George Johnson, a civil servant and suffrage campaigner, echoed Neilans' press release in arguing that 'such legislation was entirely unnecessary, that the offence which it desired to punish was almost incapable of proof.' The concerns of other members went further: Chrystal Macmillan (also an executive member of the NUWSS, and about to become one of the first women barristers) 'urged that the Association should not commit itself to any opinion on this subject until the whole question of the attitude of the Association to such offences both among men and women had been thought out.'⁹⁵

The discussion, then, went beyond the amendment's immediate use to defeat the Bill. The possibility of opposing the criminalisation of gross indecency between men

was also articulated and recorded, although it is apparent from the minutes that no firm conclusion was reached. That is perhaps no surprise: Neilans had contact with the BSSSP, and wrote to George Ives about homosexual law reform two years later that the aim of the AMSH 'is to repeal laws and not to make them. Practically all the legislation which punishes people for breaches of public morality has a tendency to do more harm than good'.⁹⁶ She was also well aware of the work of Havelock Ellis, and would later cite him as 'the greatest authority of our times on all aspects of sex problems.'⁹⁷

Grounds for opposing the amendment may have varied, but the effect was unanimous. The Executive Committee passed a motion disapproving of 'the inclusion of any such clause in a Criminal Law Amendment Bill.'⁹⁸ *The Shield* followed this approach when it 'quoted and endorsed Havelock Ellis's opinion that such acts, when committed in private, should not be subject to legislation.'⁹⁹

Throughout their discussions and response to the Bill, the AMSH were working in a context where women were silenced on the issue of their own sexuality. The parliamentary debates on the amendment had carefully constructed lesbianism as an area of male knowledge, to be kept from women themselves. Lady Astor had remained silent throughout, finding her voice again only at the moment of the Bill's defeat when her anger was so vocal that she was called to order.¹⁰⁰ Thus although the vote had been partially won and the first woman MP was sitting in Parliament, women were still battling for a political voice on some of the issues closest to them. While areas such as child-rearing may have been seen as natural ones in which women might take a political interest, their own bodies and sexualities remained a taboo – albeit one which women of this period were actively involved in breaking. The AMSH and its allies, then, had to contend not only with the usual political processes and manipulations but also with social and legal norms which sought to silence them. It is to its credit that the AMSH nonetheless negotiated these areas so effectively and, ultimately, successfully.

Nor did they limit their interests to the 'feminine' realm of women and children. In an editorial for *The Shield*, Neilans extended the discussion to encompass men's legal position. While her opposition to gross indecency offences had been only implicit in a document written for the benefit of a diverse coalition, and discussion of the issue in committee had left the question of gross indecency between men unresolved, this piece set out a more forthright opinion. After defending Lady Astor from criticism for having voted against the amendment on the basis that 'we imagine ... she saw at once that it was a wrecking clause', it goes on to argue 'that there are other sound reasons why an upholder of the equality of the sexes might well hesitate to vote for an extension of this section to women.' In particular,

The truth is that it is being slowly recognised that these laws provide the most fertile source of blackmail against both normal and abnormal men; that the offences are extremely difficult either to prove or disprove, and that modern scientific opinion is opposed to laws which attempt to punish very severely, not only the vicious pervert, but also the invert who is not really responsible for his psychic abnormality, and in whom the normal development of his sexual life is impossible owing to the congenital misdirection of his instinct.

While the terminology is problematic to modern readers, it reflected some of the most progressive views of the period. In particular, the editorial not only highlighted practical reasons against criminalising sexual contact between men, but also put forward the view that criminalisation was wrong in principle. The law would not begin to catch up until the Sexual Offences Act 1967 partially decriminalised sexual activity between men; full equality between heterosexual and same-sex activity under the criminal law was only achieved with the Sexual Offences Act 2003.

The AMSH's opposition to criminalisation of gross indecency between women took concrete form when, at a special meeting, the Executive Committee agreed that the Association should outline a new Bill, to be considered by a conference of Societies, and 'a resolution should be submitted to the conference that the associated Societies [...] would not accept amendments or additions [...] except on points of minor detail.'¹⁰¹ In other words, there was no question of the AMSH putting forward or accepting a Bill containing provisions on gross indecency between women.

In fact, although the conference went ahead, the Bishop of London's Bill was never reintroduced; a Government Bill was passed instead. It contained the key provisions sought by the AMSH, although the 'reasonable belief' defence was retained for young men under twenty-three. The issue of gross indecency between women was not raised again. However, the events of 1921 provide an intriguing example of the difficult terrain to be negotiated by feminist lawmakers, and the agility with which they did so.

Conclusion

The failure of the amendment, ironically, left sex between women still legally unspeakable. The parliamentary debates articulated the reason for this: it was not silenced because the legislature doubted its existence, but because any advertisement risked its spread among hitherto innocent women. Sexual relationships between women were a potent threat to the very security and comfort of those male MPs debating the topic. If their wives were to hear of this, what future for the family?

Nonetheless, we must take care not to mistake the silencing of feminist and lesbian voices for actual silence. If we pay close attention, we can reconstruct the complex negotiations of our foremothers which enabled them to achieve legislative reform and fight off attacks on their most personal selves while maintaining social and political conventions. Careful reading reveals that the 'unspeakable' has never been

truly unspoken, and that women have not been mere passive recipients of the law's disapproval or benevolence but were – and are – active agents negotiating its difficult terrain.

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²¹ Lesley A Hall debunks this story and comments, '[t]he Queen surely stands as a metonym for the reluctance of the Victorian age to conceive of sexual autonomy in women' (*Sex, Gender and Social Change in Britain Since 1880*, Basingstoke, 2000, p 36).

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