

# From the sodomite towards the homosexual.

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Two separate notions on homosexual identity, yet quite the same.

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## Introduction

The Dutch Gay Pride takes place in Amsterdam every year in the first weekend of August. The Canal Parade, which is the main event of the Pride, raises a heated discussion every year because of the extravagant behaviour of some of the homosexuals. Some argue to let them be because it is part of their identity, while others argue that the extravagant behaviour is either not part of the homosexual identity or is unnecessary to be expressed so publicly. The main argument against this public expression of extravagant behaviour is that it creates unwanted and mostly false prejudices. But what exactly is the 'homosexual' identity and what defines what we consider to be a 'homosexual'? The discussion about what the 'homosexual' identity is and how we define the 'homosexual' is not new in the community of the historians. Both historians Foucault and Van der Meer have interesting opinions on the notion of the 'homosexual' identity. This thesis will try to prove that these two notions are not as contradicting as it may seem and it will discuss how this is resembled in the way a (form of) 'homosexual' identity influenced how same-sex sexual activities/behaviour was perceived and prosecuted. This thesis will focus on the eighteenth and nineteenth century and on the area that was called the Dutch Republic in the eighteenth century. However, the main question refers to the contemporary name, the Netherlands, due to the numerous amount of name changes the country underwent in that specific period. The main question also refers to same-sex sexual activities/behaviour instead of homosexuality or sodomy due to the fact that those concepts are period-specific. The main question will therefore be:

'To what extent is the relation between the notions of 'homosexual' identity developed by both Foucault and Van der Meer reflected in how same-sex sexual activities/behaviour was perceived and prosecuted during the eighteenth and nineteenth centuries in the Netherlands?'

In order to answer this question as adequately as possible the following sub-questions will be answered:

- To what extent did a notion of 'homosexual' identity exist during the eighteenth and nineteenth centuries according to Foucault and Van der Meer?
- To what extent is a notion of the 'homosexual' identity reflected in the way sodomy was perceived and prosecuted in the Dutch republic during the eighteenth century?

- To what extent is a notion of the 'homosexual' identity reflected in the way same-sex behaviour was perceived and prosecuted in the former Dutch republic during the nineteenth century?

## Two notions on homosexual identity during two centuries.

In order to discuss the existing relation between the two different notions on 'homosexual' identity provided by Foucault and Van der Meer and how this relation is reflected in how same-sex behavior was perceived and prosecuted in the eighteenth and nineteenth century, it is important to address what identity is and what the two different notions on 'homosexual' identity entail. Therefore this chapter will first provide two concepts of identity and will continue with discussing the two notions on 'homosexual' identity and provide a nuance for both.

### Identity

The problem with defining the concept of 'identity' is that it is a very mysterious concept that can be interpreted in various ways. It will also be very hard to exclude current notions of the concept, which could influence the findings made and which could lead to different or inadequate conclusions. It is therefore necessary to provide both an 'old' definition of identity and a 'new' definition of identity.

The first definition is based on an idea of the English philosopher John Locke, which is discussed by René Woudenberg in his book *'Het mysterie van de identiteit'*, and revolves mainly around the self-identification of the individual himself. Locke states that the consciousness of an individual always accompanies the thinking process of that individual. This creates the 'self' of the individual and this is what distinguishes the individual from other thinking beings, thus making him unique.<sup>1</sup> Van Woudenberg concludes that Locke implies two things with his theory: First, that identity/being a person equals the consciousness of the individual. Second, that the personal identity only extends as far as the individual's awareness of his past actions and thoughts. Van Woudenberg summarizes that Locke implies that: 'an individual at t2 (where t equals time) is only identical to the individual t1 (assuming that t1 occurred before t2), when the individual at t2 has personal memories of what happened to the individual at t1'.<sup>2</sup> Van Woudenberg's main argument against this part of Locke's theory is that when the individual at t2 has personal memories of t1, the individual at t2 is the same person as the individual at t1. But when the individual at t3 has personal memories of t2, but has not got personal memories of t1, the individual at t3 is the same person as the individual at t2 but is not the same individual as at t1. So Van Woudenberg rightfully questions: 'how can t1 equal t2 and t2

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<sup>1</sup> R. van Woudenberg, *Het Mysterie van de identiteit: een analytisch wijsgerige studie* (Nijmegen 2000) 47

<sup>2</sup> Ibidem 48

equal t3, when t1 does not equal t3?'<sup>3</sup> Van Woudenberg is right in his statement that the idea of not having memories about a certain time, makes you a different person is incomprehensible. However, his objections are influenced by contemporary notions on what identity is and how it changes, if it even changes. However I believe that Locke implies that the individual creates his identity himself and that he can only do so with the recollection of past acts and thoughts. For example, Van Woudenberg uses the example of the general<sup>4</sup>, who can only identify himself as a skilled tactician and general if he has recollection of his past actions that prove that he is a skilled tactician and general. The recollection is necessary for the creation of this identity and off course it is highly biased because it is the opinion of the individual about himself. But that is irrelevant since the identity is apparently created by the individual himself and that the individual needs the recollection of memories to do so.

The second definition focuses, unlike the first, on how others classify or identify another individual. It mostly revolves around belonging to subcultures, like being a 'skater, a 'goth' or in this specific case, a 'sodomite'. We tend to include individuals in specific subcultures by using the following characteristics:

- Behaviour: refers to how individuals act in public and how they present themselves.
- Language: refers to the use of a certain 'slang' by a group, were the members understand it and outsiders most commonly not.
- Habits: refers to certain gestures and/or signals used for communication or expression.
- Belonging to a group: refers to whether the individual belongs to a certain social network that is associated with a certain subculture.
- Past: This concerns the childhood, which involves both the upbringing and education of the individual and how this has influenced the individual.

This definition of identity also implies that how others identify each other, influences how an individual identifies himself. For example, someone is Dutch not only because he identifies himself as Dutch. It also depends on the fact whether others identify you as Dutch, because you speak Dutch or because you are born in the Netherlands.

### **Homosexual or Sodomite?**

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<sup>3</sup> Ibidem 54

<sup>4</sup> Ibidem 54

Now I will summarize Foucault's point of view and afterwards the point of view of Van der Meer. Besides both works, the work of Halperin will also be included because he tried to revise Foucault's work and Van der Meer argues against Halperin as well.

### *Foucault*

Foucault's main point in his work *History of Sexuality* (1976), concerning same-sex activities is that there is a difference between the eighteenth-century sodomite and the nineteenth-century homosexual. According to Foucault the sodomite was a 'criminal' committing forbidden sexual acts and the homosexual became: 'a personage- a past, a case history and a childhood, a character, a form of life; also a morphology with an indiscreet anatomy and possibly a mysterious physiology.'<sup>5</sup> Foucault believes that the sexuality of a homosexual constructed his entire being, so simultaneously Foucault believes that this was not the case with the sodomite. This conclusion is based on Foucault's belief that sodomy was seen as a habitual sin in the eighteenth century and before. But the homosexual was seen in the nineteenth century as a being with a singular nature, this being was considered to be physically male but had a 'female' soul. Foucault proceeds by stating that the sodomite was a temporary aberration, but the homosexual had become a species in itself.<sup>6</sup> Foucault's vision in this case is rather black and white, because his statements suggest that the sodomite was an entirely different being in comparison to the homosexual. This is the main problem according to Van der Meer, but I believe Foucault can be interpreted differently. The reference to case history, morphology, indiscreet anatomy and the mysterious physiology he uses for the 'homosexual' suggests that he refers to how those who committed same-sex activities were perceived by 'normal' people. So Foucault claims that it is not about how both the 'sodomites' and the 'homosexuals' perceived themselves but about how they were perceived by others.

Concerning sodomy, Foucault also mentions that the act of sodomy was not meant to manifest a deviant sexual identity but to be the 'author' of a morally objectionable act,<sup>7</sup> and again Foucault's assessment is rather black and white. The reference to the sodomite being an author of morally objectionable act, suggests that the sodomite had control over his acts and deliberately choose to commit them. This again confirms the idea that the sodomite and the homosexual were different because the sodomite had control and he could stop being a sodomite, while the homosexual did not have this control because it was part of his being. It can all be explained by what Foucault considers to be a crucial element of discourses, namely power relations. The sodomite and sodomy itself were part of a juridical discourse, defined by the laws of European states and the Christian canonical laws.

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<sup>5</sup> M. Foucault; translated by R. Hurley, *The History of Sexuality* (New York 1990) 43

<sup>6</sup> *Ibidem* 43

<sup>7</sup> D. Halperin, 'Forgetting Foucault: Acts, Identities and the History of Sexuality', *Representations* 63 (1998) 93-120

Sodomy was considered to be an atrocious sin by the Church and therefore it was being prosecuted as a crime. It was also believed that sodomy was committing an act that was against God's intention and therefore it was a morally objectionable act. The homosexual on the other hand was part of the medical discourse and was defined by the medical discursive practices and sexologists.<sup>8</sup> Due to a renewed drive to understand same-sex behaviour they started to discuss and investigate this peculiar notion and they created the homosexual through their renewed understanding.

Because of the fact that both secular and Church authorities defined the discourse it can be stated that their concept of what a sodomite was, was the ruling notion prior and during the eighteenth-century. Their definition is quite similar to the, then, contemporary theory on identity by Locky, where the identity is construed based on memories of acts, behaviour and thought by the individual. However, they believed that you only were a sodomite when you committed the act, not when you acted effeminate or thought about sexual intercourse with a man.

#### *Van der Meer*

Van der Meer claims that: 'the publication of *'History of Sexuality'* by Foucault gave birth to a new 'truth'. A truth which considers the medicalization of sexuality the sole, or at least most important, source of the emergence of modern sexual roles, among which was the homosexual identity.'<sup>9</sup> According to van der Meer this led to the creation of a master narrative, which believes that there was a difference between the 'sodomite' and the 'homosexual'. Van der Meer proceeds by questioning the 'something new' claim by Foucault and Halperin. Halperin's contribution is questioned because of 'its peculiar teleological perspective'<sup>10</sup>, because Halperin acknowledges the existence of a proto-identity prior to the homosexual identity discussed by Foucault.<sup>11</sup> Van der Meer seems to be ardent to avoid making the same mistake, which leads to the fact that he avoids the use of the concept of identity and he replaces Halperin's proto-identity with proto-something. In his effort to prove the existence of the 'proto-something' he provides us with the following arguments.

First Van der Meer claims that a discourses on desires existed in the eighteenth century, he argues that the desires of the individual could not be separated from the fate of the collective and that because it affected the entire community, it was considered to be a crime. He believes that the severity of the prosecution of sodomites in Holland led to a self-awareness among sodomites. They considered themselves to be morally responsible and resisted the negative implications that were

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<sup>8</sup> Ibidem

<sup>9</sup> T. van der Meer, 'Sodomy and its Discontents: Discourse, Desire and the Rise of a Same-Sex Proto-Something in the Early Modern Dutch Republic', *Historical Reflections* vol. 33 no. 1 (2007) 41-67

<sup>10</sup> Ibidem 42

<sup>11</sup> Ibidem

given to same-sex behaviour. Van der Meer proceeds by stating that by the late eighteenth century both the sodomites and the prosecutors, judges and the general populace considered sodomites to be group on their own.<sup>12</sup> Although Van der Meer is right in this assessment, I believe he fails to address the power relation in this discourse. The authorities defined them to be group, but people belonged to this group because they committed the act of sodomy, not because they had this sense of self-awareness.

His second argument focuses on the subculture surrounding the sodomites during the eighteenth century. Van der Meer states that: 'The participants in the subcultures met at public meeting sites or in private parlors, pubs and brothels. They had developed a system of signs and gestures and used a certain slang.'<sup>13</sup> Another striking notion is the fact that there was a kind of division of roles, when it concerned same-sex sexual activities, based on class hierarchy. Van der Meer does mention that the role division based on hierarchy disappeared during the eighteenth century, but division of sexual roles (passive, active or both) continued to exist. Apparently the sodomites defined themselves as such and they communicated and met with each other in established ways, which support the idea of some form of identity. However, it is again an example of how the sodomites defined themselves and not about how they were defined by the authorities. This is even confirmed by something else Van der Meer states, that the behaviour of sodomites was in some or most of the cases effeminate and rampant and some of the sodomites even indulged in travesty.<sup>14</sup> Despite all this, the discourses at that time did not mention this effeminate behaviour and one author referred to by Van der Meer even claims that sodomites were hard to identify due to absence of any visible and definable behaviour.<sup>15</sup> So again, the authorities were in control and they believed that it was all about the morally objectionable act and nothing more, because they did not even consider the possibility of behavioural traits that could be used to identify them.

His last argument concerns the self-awareness of sodomites which existed at the time. He draws this conclusion based on two facts, first is the explanation given by a church minister who was a sodomite. This minister claimed that he had inherited his desires for males from his mother, because she had felt such passionate desire for her husband while she was pregnant. This thwarted the prosecution because he argued along the contemporary scientific notion of women imprinting their emotion on their babies during pregnancy.<sup>16</sup> The second fact is that sodomites identified other

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<sup>12</sup> Ibidem 43

<sup>13</sup> Ibidem 55

<sup>14</sup> Ibidem

<sup>15</sup> Ibidem 60

<sup>16</sup> Ibidem

sodomites by claiming 'he is one of us' or 'they belong to the family'.<sup>17</sup> Again Van der Meer proves the existence of a form of identity along the lines of the second definition of identity, by identification through behaviour, language and a sense of belonging to a group. But it is again from the point of view of the sodomites, not the secular and religious authorities which defined what a sodomite was.

Van der Meer mainly focuses on the concept of identity, which is quite contemporary and thus makes it not really applicable for the situation. Because of the simple fact the authorities did not consider behaviour, social network or other things than acts, something that defined whether you were 'normal' or a sodomite. However, I will not deny the fact that among sodomites there most definitely did exist some form identity and identification and it did even, as this thesis will show, play a significant role in the changes the perception and prosecution of same-sex behaviour underwent.

## **Conclusion**

The following can be concluded: First, it is necessary to address both an old and a new definition of identity. The old one concerns Locke's theory revolving around creation of the identity by the individual himself using recollection. The new one, because it is highly influenced by the modern notion on identity, concerns the identification by others using not only subcultures but also the past of the individual. Second, Van der Meer is right in his assessment that Foucault's theory implies a distinct difference between the sodomite and the homosexual. However, Foucault's theory seems to address the discourses concerning both the sodomite and the homosexual. Important in discourses is the power relation, and in this case the authorities defined the existing discourse. Therefore in this case it is not relevant whether or not an identity among sodomites themselves already existed in the eighteenth century, because they were simply not seen as such by the authorities. The European states and Church considered sodomites to be males who conducted an atrocious act that needed to be prosecuted. It did not involve behaviour or other specific traits, it concerned the committing of the act. However, Van der Meer's assessment on the existence of an identity seems valid and I will argue that this identity of the sodomites did play an important role in the prosecution of sodomites. In the following chapters it will be discussed how both a given notion on identity influenced how same-sex behaviour was perceived and prosecuted and how this specific aspect reflects the relation between the different notions of 'homosexual' identity by Foucault and Van der Meer.

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<sup>17</sup> Ibidem

## Prosecution and perception related to the identity of sodomites.

In this chapter it will be discussed how a notion of 'homosexual' identity influenced how same-sex behaviour was perceived and prosecuted. This chapter will refer to sodomy, because that was the term that was used to refer to same-sex behaviour at the time. This chapter will first address the prosecution and punishment of sodomites and how it was influenced by a notion of 'homosexual' identity. Afterwards it will discuss how sodomy was perceived by the authorities and the general populace and how it determined why sodomy was being prosecuted. This chapter will reveal that during the eighteenth century the way sodomy was perceived and prosecuted was influenced by the two concepts of identity given in the first chapter. This information will be used to illustrate the relation between the two different notions and how the first notion influenced the creation of the other.

### Prosecution and Punishment

According to Van der Meer the Dutch authorities of 1730 were under the impression, or they at least pretended to be, that sodomy was something new that was introduced by the Spaniards when they were in the Republic during the peace negotiations of 1714.<sup>18</sup> Their belief is resembled in the introduction of the Edict of 1730 in which the authorities refer to the 'novelty' of the crime as the reason why no law prohibiting sodomy existed prior to 1730. Van der Meer rightly states that this is sheer nonsense, but one can understand their reasoning. If God himself had destroyed Sodom and Gomorra because of the homosexual (and other) sexual behaviour, how could the Dutch Republic have prospered if sodomites had been part of society all along? Van der Meer states that prior to 1714 sodomy trials did occur but that the trials and the executions were conducted in secret. Because the authorities feared that knowledge of the sin would lead to an increasing amount of sinners, that is the reason why it was considered to be a *crimen nefandum* or the unmentionable vice according to Van der Meer.<sup>19</sup> After 1730 it changed, Van der Meer reasons that due to the discovery of the extensive network of sodomites the authorities started to believe that public prosecution and execution of sodomites would act like the prevention of the spreading of sodomy. So you can say that due to the discovery of a network of sodomites the authorities started to reason in an opposite manner and it caused a profound change in the prosecution of sodomy.

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<sup>18</sup> Ibidem 47

<sup>19</sup> Ibidem

The discovery also led to an intensive cooperation between the Provinces, despite the fact that the Provinces normally would deal with prosecution on their own. In that way the Edict of 1730, proclaimed by the States of Holland and Westvriesland was quite unique. This Edict proclaimed the following prohibitions concerning sodomy:

- 'Sodomy shall, from this moment onwards, be punished in public.'
- 'When found guilty, sodomites shall be executed but the judge decides which kind of death penalty shall be used.'
- 'Those who have not committed the crime but have seduced others in committing this crime and those who have willingly facilitated their homes for others to commit this crime, will also be sentenced to death.'
- 'The bodies of the executed men shall either be burned, thrown in the sea or hanged at the gallows, as they are unworthy of burial.'<sup>20</sup>

It is important to be aware of the fact that the act of sodomy itself was not the only thing that was criminalized. Facilitating the act of sodomy was also a crime and it was even made a capital punishment. In itself the authorities did not only create a crime but also an accessory to this crime, being accessory to sodomy. This once again proves that according to the authorities it mainly concerned the act, not the being. Despite the fact that the Edict clearly prohibited sodomy, it did not clearly define what was considered to be sodomy. This would eventually lead to some difficulties concerning the prosecution of sodomites. In this respect it can be claimed the existing 'homosexual' identity concerning a specific subculture, as illustrated by Van der Meer provoked a profound change in the prosecution of sodomy. The discovery of the brothels, pubs and more importantly the public meeting sites shocked the authorities so much that they officially criminalized the act of sodomy. Despite the invalid claims of the authorities that sodomy had not existed prior to 1714, the magnitude of the network of sodomites and their visibility in society provoked the criminalization.

In the actual prosecution of sodomites the 'homosexual' identity discussed by Van der Meer also plays a prominent role. This prosecution of sodomites started before the proclamation of this Edict, which was proclaimed on the 21<sup>st</sup> of July 1730. It started when a churchwarden recounted his eye-witness account to the authorities. The churchwarden, Josua Witts, claimed that he and his children had witnessed two men having sexual intercourse with each other at the Dom square. Josua Witts identified one of the men as Gillis van Baaden, who confessed to the crime after another eye-witness account was presented to the authorities. This eventually led to the arrest of Zacharia Wilsma and he

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<sup>20</sup> J. Wagenaar, *Vaderlandsche Historie: vervattende de geschiedenissen der Verenigde Nederlanden inzonderheid die van Holland* Volume 19 (Amsterdam 1750) p 40

proved to be a very valuable source of information for the authorities.<sup>21</sup> Apparently Wilsma was very sexually active as a sodomite, which resulted in his extensive network of sodomites all over the country and it was this network that included members of both higher and lower classes. With the help of Wilsma, the authorities managed to create a list of 144 sodomites across the country. Because of his accounts Wilsma was not executed, but transported through the country so he could be used as a witness in the cases against the sodomites he had turned in.<sup>22</sup> It can be argued that the use of Wilsma and the use of his accounts also helped with revealing the network of sodomites that existed as well with increasing the visibility of the sodomites (their customs, meeting sites etc.) Van der Meer mentions this network as one of the reasons that the sodomites were no longer prosecuted in private. Because the authorities were shocked by the magnitude of the network of the sodomites so they decided the public needed to be aware of the presence of this atrocious sin and of the way the authorities would deal with these sinners. Wilsma was not the only sodomite who had a key position in the prosecution of sodomites. Francois Voogt would play a similar role in Amsterdam in 1764, where he provided the authorities with names of sodomites who would be arrested or would flee the city two years later during another wave of prosecutions.<sup>23</sup>

It can be stated that both Zacharias Wilsma and Francois Voogt played an important role in the prosecution of sodomites. The reason why they fulfilled such an important role is the following: According to Van der Meer the authorities had decided that anal penetration would be the only 'act of sodomy' that was to be punished by death.<sup>24</sup> This is probably because of the absence of a distinct definition of sodomy in the Edict of 1730. Van der Meer also claims that a steady decline in the executions of sodomites occurred during the eighteenth century, with the last execution occurring in 1803.<sup>25</sup> This is due to the importance of the confession of the act of sodomy during the prosecution, apparently the knowledge of physical evidence of the act and the availability of this evidence was too inadequate to lead to a conviction. Therefore the confession of the act was the thing the authorities needed to prove that the accused was a sodomite and that explains the importance of Wilsma and Voogt. Because if they confessed having committed anal penetration with someone else, the other one would immediately be a sodomite as well. The importance of the confession is especially confirmed by Van der Meer's statement that sodomites became increasingly aware of the importance not to confess having committed anal penetration, because it would spare their life.<sup>26</sup> What is striking about this importance of the confession, is that it proves that the Dutch authorities

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<sup>21</sup> T. Van der Meer, *Sodoms Zaad in Nederland: het ontstaan van homoseksualiteit in de vroegmoderne tijd* (Nijmegen 1995) 14

<sup>22</sup> Ibidem

<sup>23</sup> Ibidem 84

<sup>24</sup> Ibidem 144

<sup>25</sup> Ibidem 148

<sup>26</sup> Ibidem

reasoned in a similar fashion as Locke. They apparently believed that the recollection of committing anal penetration was the evidence needed to prove the accused was a sodomite. Which is congruent with Locke's theory about how identity is created.

Considering the prosecution and punishment of sodomites it can be stated that it is influenced by the 'homosexual' identity described by Van der Meer. The discovery of the network of sodomites did not only result in the official criminalization of sodomy, but it also made prosecution of sodomites easier due to sodomites like Wilsma and Voogt. It can also be stated that the way sodomites were prosecuted in the Dutch Republic during the eighteenth century also proves that there was a different idea concerning identity. Due to the importance of the confession the ruling notion on identity, was similar to the theory of Locke on identity. Which proves that the authorities did not consider sodomy to be more than an act, because the recollection of the acts made the accused a sodomite, not their behaviour, slang or any other trait of the sodomite subculture.

### **The Edict of 1730: the sodomitic vice**

In order to understand why sodomy was prosecuted, it is important to understand how the sodomites were perceived by authorities and the general populace. Foucault claims that the discourse of that time was influenced by law, but that is debatable because the nature of the law seems to be highly religious. Although the act of sodomy is criminalized by law, this law shows a clear religious nature, as can be seen in the Edict of 1730. The following phrases extracted from the Edict will support this notion:

- 'so many violations of Gods most Holy Laws which more and more cause His wrath to descend over our nation.'
- 'and that several of our citizens discard any fear of God and his wrath, which leads to committing such atrocities.'
- 'and since we are rightfully repulsed by this atrocity, we shall use all our authority, conviction and means at our disposal to eradicate this Heaven provoking sin. So that God will not, as He has rightfully threatened to, descend his terrible but rightful wrath upon this country and its inhabitants.'<sup>27</sup>

The first phrase implies that the nature is both juridical and religious since it is referring to the law, but not to the law of the nation but the laws of God, implying that the nation should only make laws that follow His laws. The second phrase suggests that the nation or the people are not so much concerned with the sin sodomy in itself, but more over with the wrath of God. This wrath, it was

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<sup>27</sup> Ibidem 19

believed, would be unleashed upon the country when sodomy was being committed without prosecution by the authorities. The last phrases supports the already mentioned notions, that lawmaking in itself is influenced by religion and that the sin of sodomy is not prosecuted because of the sin itself, but because of the wrath of God it will provoke.

Since the Edict did not clearly define sodomy, it is important to understand what was implied with sodomy. We know it implies unorthodox sex, meaning all kinds of sex that do not have the intention of reproduction, with sex between males being the main association we tend to make. The work of Mark Jordan is a thorough analysis of the concept of sodomy in theology and it will be used in order to give a proper definition of the concept sodomy, its origin and more importantly its power. According to Mark Jordan, the concept of sodomy is an invention of medieval theologians, because he was unable to find a reference to or use of the word prior to the eleventh century.<sup>28</sup> To give a proper definition of the word is complex, because it is hard to properly translate the Latin words that were used to refer to it. Jordan mentions three, but stresses that translating them would rip them out of context. *Luxuria*, *vitium sodomiticum* and *peccatum contra naturam* are the words/phrases Jordan has found in Scholastic texts and especially *luxuria* proves to be rather difficult.<sup>29</sup> But the other two are useful enough to provide a proper context of the perception of sodomy in the Dutch Republic during the eighteenth century.

Jordan also states that sodomy is a judgment, one that has greatly influenced Western legislation, medicine, natural science and manners.<sup>30</sup> The notion that sodomy is a judgment supports Van der Meer's claim that sodomy was more than an morally objectionable act, which is logical because Van der Meer used Jordan's work to formulate that claim. Van der Meer, however, does not discuss Jordan's work in his article and in order to confirm or nuance Van der Meer's claim Jordan's statement about sodomy being a judgment will be assessed. Jordan discusses the 'grammar' of the word sodomite stating that it is no longer a noun simply referring to the inhabitants of the city of Sodom, but refers to the specific acts of those inhabitants that evoked the wrath of God.<sup>31</sup> The suggestion that sodomy is predominantly a judgement than a reference to the act alone can be supported with the phrases from the Edict of 1730. It is a judgement of the fact that sodomites have discarded any fear of God, which results in the fact that they commit the sin of sodomy. The judgement specifically entails the part where the society judges the sodomite for provoking the wrath of God which will descend upon the country, not on the sinners alone. So in this respect Van

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<sup>28</sup> M. Jordan, *The Invention of Sodomy in Christian Theology* (Chicago 1997) 1

<sup>29</sup> Ibidem 3

<sup>30</sup> Ibidem 1

<sup>31</sup> Ibidem 7

der Meer is right that sodomy is more than the 'forbidden' act, it is a judgement that reflects the genuine fear for the wrath of God of the non-sodomites.

### **Sexual Ontology**

Van der Meer mentions in his 'Sodomy and its Discontents' that there was a certain sexual ontology about sodomy at that time. With ontology he means that it was being specified or conceptualized by others, in this case it refers to how sodomites came into being or how their desires originated in their body. It was commonly believed that the seed of sodomy lay within everyone and it would manifest when the body got polluted by giving in to the sin of gluttony. If men would lose their restraint and sobriety, which men possessed and women did not, they would lose the control over their bodies. This loss of control would lead them to become as insatiable as women, which would first result in them becoming womanizers and eventually result in becoming sodomites.<sup>32</sup> This notion is very similar to the theory of degeneration which was formulated a century later. The first sin sets in motion the pollution of the man's body which would eventually make him a sodomite, meaning that from the first sin onwards the body degenerated to the end stage, becoming the sodomite. Because of the degeneration and the irreversibility of this condition it can be stated that the sodomites were perceived as some sort of class of their own, a group of degenerated beings polluted by their past sins. This way of thinking is similar to Locke's notion on the creation of the identity, because the individual is who he is due to past actions. However, in this case the acts alone make who you are and the recollection is not necessarily a part of it. This way of thinking does not include the part of the recollection of the acts as formulated by Locke but it is quite similar.

It can be stated that the reigning discourse concerning sodomy in the Dutch Republic did perceive sodomites to be beings. The existing ontology on sodomites referred to sodomites as degenerative beings which implies that according to the common belief they were more than authors of a morally objectionable act. They even used a form of case history to explain the sodomites' existence, which Foucault claimed to be new in the nineteenth century and belonging to the discourse concerning the homosexual. However, the concept of sodomy and the religious influences is what truly defines the discourse concerning the sodomite, not the sexual ontology. This can be seen in the Edict of 1730, where sodomy is defined as the act of sexual intercourse between two men and the Edict itself is highly religious of nature. As already said sodomy was moreover a judgement than a reference to the forbidden sexual acts that provoked the wrath of God. This judgement entailed the fact that the people judged the sodomites for having no fear of God and provoking his wrath by committing the

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<sup>32</sup> T. van der Meer, 'Sodomy and its Discontents' 50

act. With this act the sodomites condemned the entire nation and that needed to be prevented. This clearly implies that it was about the act alone, because only the act of sodomy would provoke the wrath of God and not the being that desires same-sex behaviour. Despite all this the act of sodomy itself cannot be entirely separated from the sodomite and how the sodomite was believed to come into existence. So, yes, it is mostly about the morally objectionable act, because the ruling discourse at the time concerned the act and made it morally objectionable. But there also did exist a notion of identity of the sodomite and its origin, but the prosecution itself concerned the act because of the religious nature of lawmaking.

## **Conclusion**

It can be concluded that how sodomites were perceived and prosecuted in the Dutch Republic during the eighteenth century was both defined by Foucault's and Van der Meer's notion on identity. First, there are several elements that resemble the notion on identity by Foucault. The edict prohibited the act of sodomy and even prohibited the facilitation of the act of sodomy. It did not concern the being with same-sex desires, but it concerned the act. This is supported by the fact that it was believed that sodomites did not have behavioural traits that could help identifying them and the fact that the sexual acts were the only things that were eligible for prosecution. In the prosecution of sodomites the confession, due to a lack of knowledge on physical evidence, played a very important role. The fact that the sodomites began to understand the importance of denying the act, which resulted in a decline in the number of executed sodomites, tells us that the authorities considered the recollection of committed acts the element that created the identity and thus made someone a sodomite. Second, Van der Meer's notion played an important role as well. Not only did some sort of identity among sodomites exist, but the discovery of some form of expression through the network of sodomites led to the criminalization of sodomy. At the same time the authorities used the existing social network to prosecute as many sodomites as possible. The main reason sodomy was so actively prosecuted, despite the fact it only happened in waves, is because of the increased visibility due to their (sexual) activities at public meeting sites, brothels and pubs. Despite the fact that the sexual ontology concerning sodomy considered sodomites to be beings, that aspect did not define the prosecution. The Edict also shows that sodomy, as van der Meer argues, is more than the act because it is also a judgement. Highly defined by religion, this fits in the ruling discourse of that time, therefore supporting Foucault's notion instead, due to the fact it judges the act not the being.

## Prosecution and perception related to the 'new' homosexual identity.

In the previous chapters the theories of Foucault and Van der Meer haven been discussed and nuanced. Some form of 'homosexual' identity already existed in the eighteenth century and this was formed by how it was perceived and prosecuted by society. This chapter will focus on the nineteenth century and how this prior form of perception of identity led to the creation of the homosexual identity Foucault refers to. Since prosecution plays an important part in the perception of sodomy or homosexuality, this chapter will use a similar structure as the previous chapter. It will first discuss how the homosexual act was prosecuted and punished during the nineteenth century and how it was being influenced by how it was perceived by society. This will supply interesting information, since sodomy was decriminalized in 1811 due to a change in how it was perceived, although it still was quite similar.

### Enlightenment

What caused the change in prosecution in 1811 and which ideas about same-sex behaviour influenced this change? It is important to know what caused this change, which is associated with the Enlightenment. It is important to understand how the ideas of the Enlightenment ended up in the former Dutch Republic and what the theories were on same-sex behaviour, by *philosophes* like Montesquieu, and how they believed it should be dealt with.

The ideas of the Enlightenment had led to the creation of the United States of America in 1776 and the American War of Independence and the Enlightenment ideas stimulated the French Revolution of 1789. This revolution meant the end of the *ancien régime* and with the Napoleonic Wars it also meant the spread and implementation of the Enlightened ideas across Europe. The Dutch Republic had joined the Coalition to overthrow the French revolutionaries and to reinstall the French monarchy. However, when the tide turned in favour of the French Revolutionaries the Dutch Patriots managed to establish the Batavian Republic with the help of the French army after Stadtholder William V had fled the Republic in 1795. The Batavian Republic laws were inspired by the Enlightenment, however at that point it did not influence the law concerning sodomy. In fact, in the beginning of the Batavian Republic the prosecutor of Amsterdam, Van Hall, criminalized same-sex flirtations.<sup>33</sup> Between 1806 and 1810 the former Dutch Republic became the Kingdom of Holland

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<sup>33</sup> G. Hekma, *Goed Verkeerd: een geschiedenis van homoseksuele mannen en lesbische vrouwen in Nederland* (Amsterdam 1989) 43

ruled by the brother of Napoleon, King Louis Napoleon and in 1810 it was officially incorporated into the French Empire. In 1811 the Code Pénal was successfully introduced in the former Dutch Republic and with it sodomy was officially decriminalized. It can be argued that the obvious reason for the decriminalization of sodomy lies in the Enlightenment itself. After all, the Enlightenment gave birth to the idea of separation of Church and State (and with it the break with the Christian world view), the idea that 'all men are created equal' and the notion about *liberté, égalité* and *fraternité*. It can be argued that since the concept of sodomite itself is religious of nature and therefore the break with the Christian world view is the obvious reason for the decriminalization. Added to that is the idea that men are all created equal(ly) and should therefore be equally treated and should have the freedom to pursue their own lives and same-sex behaviour should be accepted. However, it is not as obvious as it seems.

Indeed, the Enlightened philosophers Montesquieu, Rousseau and Voltaire believed that same-sex behaviour was not a sin and should therefore not be a crime. But do not be mistaken, because due to their vast belief in nature same sex behaviour was still, in their eyes, unnatural. Four interesting notions of the *philosophes* are important to this research. First, Montesquieu referred to same-sex behaviour as *crime contra nature*, which is similar to or even the translation of the already known *peccatum contra naturam*. Despite the fact he despised same-sex behaviour he believed it had to be decriminalized due to the disputable juridical nature of this crime.<sup>34</sup> He probably refers to an abstract definition of what was considered to be punishable and the alluring blackmailing possibilities that came with this crime. Second, Montesquieu believed the cause for the desire for same-sex behaviour could be found in the European educational system, in which boys and girls went to school separately. He believed, supported by Voltaire and Beccaria, that 'the forces of nature were wasted in such an environment for male youngster with a developing sexuality.'<sup>35</sup> In this system, the male youngsters lacked the presence of girls to develop their sexuality properly. However, this system provided an abundant amount of young, and therefore somewhat effeminate, boys to which their sexuality was directed instead. This is interesting because the *philosophes* seem to believe that the desires are developed during childhood and adolescence. With this theory they seem to have taken the first step towards the medicalization of homosexuality, because Foucault considered case history (which includes childhood and adolescence) a significant element in the medicalization of homosexuality. Third, according to Hekma, the *philosophes* argue against 'the Christian moral where sodomy was a sin, but the authorities did not do enough to prevent it.'<sup>36</sup> This is not only

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<sup>34</sup> G. Hekma, *Homoseksualiteit, een medische reputatie: De uitdoktering van de homoseksueel in negentiende-eeuws Nederland* (Amsterdam 1987) 27

<sup>35</sup> Ibidem 29

<sup>36</sup> Ibidem

confirmed by his statement that Rousseau was repulsed by inappropriate touching by a man but also shocked by the lack of countermeasures by the authorities, but it is also true concerning the Dutch Republic. Sodomy was only prosecuted by the Dutch authorities when the authorities believed the sodomites started to be too visible in society, which explains the prosecution in waves. Fourth, the *philosophes* believed that by prosecuting and punishing sodomites in public, sodomy was given a stage from which it could spread. Society was increasingly made aware of its existence, while they believed it should be forgotten.<sup>37</sup> They therefore argued that it should become a *crimen nefandum*. These notions are so interesting because the details of the ideas have changed, but the general idea is still the same. Nature replaced God as deity, and there was still a vast belief in reproduction which caused people to still consider same-sex behaviour to be repulsive and abhorrent. Although inspired by the *philosophes*, it was decriminalized but at the same time they tried to prevent it by making changes in education and upbringing and that with these changes same-sex behaviour would be forgotten and cease to exist.

### **Prosecution and Punishment**

As already mentioned in the previous chapter, the number of executed sodomites in the Dutch Republic started to decline in the second half of the nineteenth century, with the last accounted execution occurring in 1802. In 1811, with the introduction of the Code Pénal by Napoleon sodomy was officially decriminalized. This new code of law was also the first universal code of law in the former Dutch Republic and although it had decriminalized sodomy it did include certain restrictions concerning sexual behaviour. An issue of the Code Pénal dating from 1876 will be used, it is the same Code as from 1811 however the author of the 1876 edition has added some interesting remarks that can provide a different perspective.

- Article 330: 'All those who commit an offence against public decency shall be sentenced to prison differing between three months and a year and they will receive a fine differing between sixteen and two hundred francs.
- Article 331: 'All those who commit rape, or any other indecent factuality, against their own gender or the other gender performed with violence, shall be sentenced to the detention centre.
- Article 332: 'In the case of a criminal act towards a child under the age of fifteen the offender shall be sentenced to penal servitude differing between five and fifteen years.'
- Article 333: 'The punishment will be perpetual penal servitude (from five to twenty years), when the offender has some form of authority over the victim, like being his teacher or a

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<sup>37</sup> Ibidem 28

public servant or a server of one of the religions. Punishment will also be perpetual when the offender has been assisted by other persons.

- Article 334: 'All those who have committed an act of indecency, related to the debauchery of youngsters from any gender under the age of twenty-one shall be sentenced to prison differing between six months and two years.'<sup>38</sup>

With the fact that these articles did not concern or imply same-sex behaviour alone it can be stated that sodomy/same-sex behaviour was officially decriminalized. However, both Hekma and Van der Meer argue that it still was being prosecuted, but under the disguise of the articles 330 until 334. But how did these articles contribute to the continued prosecution and what role did a notion on 'homosexual' identity play? Concerning these articles there are two points of interest that could explain why the prosecution continued. First the remarks of M. Schooneveld concerning article 330 in the edition of 1876 state that: 'public does not only mean a public space which is accessible to all other people. It also refers to places which are accessible to a limited number of people, like an inner court which is accessible to neighbours, or to places where the indecent act can be seen by others from a public space.'<sup>39</sup> Not only is the concept of 'public' therefore widely interpretative, but it could also imply pubs and brothels, such as the pubs and brothels that were part of the social network of sodomites and thus were part of their 'identity' as illustrated by Van der Meer. These pubs were also partly responsible for the increased visibility of sodomites during the eighteenth century, the concept of 'public' was only more thoroughly defined in 1888.<sup>40</sup> Therefore with article 330 the authorities started to make same-sex behaviour invisible again, which was necessary in order to prevent it according to the *philosophes*. Second, the notion 'offence against public decency' is in itself widely interpretative as well, due to the reference to sexual acts and any indecent factuality, which can imply a number of things from a kiss and fondling to the actual act itself. Where in the eighteenth century only those who committed an actual sexual act (masturbation, fellatio or anal penetration) were mostly prosecuted. However in the nineteenth century it all depended on whether the authorities (especially lawyers and judges) considered it to be inappropriate and the problem was that it was unclear what was actually considered to be an offense against public decency. Therefore this could also be used to target same-sex behaviour, because the widely interpretable nature of same-sex behaviour and the fact that it was still severely frowned upon.

As already mentioned both Hekma and Van der Meer have concluded in their research that the prosecution of same-sex behaviour, although it was decriminalized, continued and even increased.

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<sup>38</sup> M. Schooneveld (ed), *Wetboek van Strafrecht, Code Pénal* (Den Haag 1876) 314-323

<sup>39</sup> *Ibidem* 315

<sup>40</sup> G. Hekma, 'Bewaar mij voor den waanzin van het recht', in: S. Faber (ed) and others, *Criminaliteit in de negentiende eeuw* (Hilversum 1989) 115-125, 116

While Van der Meer discusses the prosecution of same-sex behaviour in the period 1816-1838 in Amsterdam, Utrecht and The Hague, Hekma discusses the prosecution of same-sex behaviour from 1830 until the end of the nineteenth century in Amsterdam and The Hague. Both their findings will not only be used to illustrate how same-sex behaviour was prosecuted but also to illustrate if it tells us anything on how they were perceived. First, Van der Meer has provided us with a detailed summary of the cases he studied which creates a detailed insight. He mentions these cases by the name of the accused, the occupation they held, the punishment they received and a referral to the source. However, it is unclear from these summaries for which of the offences against public decency they were prosecuted. Van der Meer does not summarize the court cases, but I will. Of the 128 cases, ninety-five were sentenced with a maximum penalty of which four presumably were charged with an offense concerning article 334 and ninety-one presumably were charged with an offense concerning article 330. The other thirty three received either a discharge or a lower sentence.<sup>41</sup> Van der Meer also stated that despite the fact that the judges considered the punishments dictated in the Code Pénal to be extremely severe, they sentenced those prosecuted with same-sex behaviour in nearly seventy-five percent of the cases with a maximum penalty. What was even more striking according to Van der Meer, is that 'normal' offences against public decency (sexual activities concerning a male and a female), were in nearly all the cases sentenced with the minimal sentence because that was an offence against public decency of a lesser degree.<sup>42</sup> Second, Hekma also establishes an increase in the severity of prosecution, although not concerning the punishment but the number of prosecuted men. From 1830 until 1859 the number of men prosecuted in Amsterdam was relatively low: ten for the period 1830-1839, seven for 1840-1849 and seven for the period 1850-1859. But from 1860 until 1909 the amount of prosecuted men increases relatively fast, in the period 1860-1869 twelve men were prosecuted while in the period 1900-1909 it would be eighty-seven. Added with that is the increased number of men who received a dismissal, however a dismissal meant that although these men were not prosecuted they would have to refrain from any offences or they would be prosecuted.<sup>43</sup>

The conclusions of both Hekma and Van der Meer tell us that the main repulsion still concerns the abhorrent act and not the behaviour of the individual, because only the same-sex activities (and not the behaviour) were sentenced as severely as possible. The increasing amount of dismissals also tells us that the authorities seemed to start lacking evidence to properly convict the accused, which would eventually lead to a reversal of the *crimen nefandum* again. This was because in their effort to

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<sup>41</sup> Van der Meer, T., *Sodoms Zaad in Nederland*, 480-486

<sup>42</sup> T. van der Meer, *Jacob Anton Schorer 1866-1957: Een biografie van homoseksualiteit* (Amsterdam 2007) 25

<sup>43</sup> Hekma, G., *Homoseksualiteit, een medische reputatie* 106

explain, understand and properly prosecute same-sex behaviour it had to be researched and discussed.

### **Medicalization**

The articles from the Code Pénal and the conclusions of Van der Meer and Hekma concerning the actual prosecution of same-sex behaviour, prove that the authorities tried to prevent same-sex behaviour. However they still proceeded by prosecuting them, although not in public. Using Hekma's work we can distinguish four elements that (in chronological order) seem to have influenced the medicalization of homosexuality, and with it the homosexual identity according to Foucault.

First is the difference between the policy on gender and the policy on corporality. The policy of corporality entailed certain measures that actually narrowed the possibility for same-sex behaviour, but the policy of gender was focused on preventing the mingling of the genders, which led to an increase of same-sex behaviour in institutes like the army, prisons, boarding schools etc.<sup>44</sup> Although authorities did try to take countermeasures, the possibilities were still there. The authorities had failed to adequately change institutions where same-sex behaviour could be developed according to the Enlightened thinkers. This could also explain why the number of prosecutions, and thus probably the number of offences, were increasing.

Second is the problem that existed concerning the indecency offences, according to Hekma. The problem was the fact that Dutch doctors used the findings of French and German experts which caused an ambiguity in the Dutch perception of these offences. This ambiguity led to the fact that most doctors still considered same-sex behaviour to be criminal, which in turn led to the manuals for forensic medicine which defined the unnatural sexual act. What is striking about these manuals is not only that it seems that concepts like sodomy received a whole new definition, because they no longer referred to same-sex behaviour between men. But it also shows an increased and more detailed study of physical symptoms of same-sex behaviour between men, specifically about anal penetration.<sup>45</sup> Apparently it became increasingly important to support findings with physical evidence, concerning same-sex behaviour. This is similar to the findings about the prosecution of homosexuals in nineteenth century England made by Ivan Dalley Crozier.<sup>46</sup> From Hekma's references to these works it can be concluded that the notion on identity of Locke, and with it the relevance and importance of the confession of the homosexual act, is declining in the Netherlands during the

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<sup>44</sup> Ibidem 111

<sup>45</sup> Ibidem 140

<sup>46</sup> I. D. Crozier, 'The medical construction of homosexuality and its relation to the law in nineteenth century England', *Medical History* 45 (2001) 61-82

nineteenth century. Forensic evidence is replacing the confession as the decisive factor in prosecution, but the knowledge on this specific evidence had to be increased.

The third element concerns the new generation of doctors, their renewed medical interest and their increasing influence due to developments in the medical field around 1840. This new generation of doctors and their renewed medical interest mostly concerned social problems. According to Hekma it had two aspects. First, their renewed medical interest led to an increasing engagement with social problems, or 'public hygiene', and second a professionalization and organization of the doctors took place.<sup>47</sup> The first involves the idea that doctors were responsible for public hygiene and they believed same-sex behaviour (among others) to be a threat to the public hygiene. This, combined with the professionalization and organization of the doctors, led to an increased amount of articles concerning the 'problem'.

The fourth element are the findings of F. Schneider who was, according to Hekma, the first Dutch writing author who considered same-sex behaviour to be a psychological phenomenon. Schneider's point of view is a step towards Foucault's notion on the creation of the homosexual. Schneider considered pederasty to have the following causes: scratching of the anus and the genitalia, a faulty intellectual development, brain diseases, homosocial arrangements and excessive sexual consumption of women.<sup>48</sup> The first cause is a remarkable and unfathomable one, to me it is unclear what Schneider is implying with it, however the other four are quite intriguing. The cause 'faulty intellectual development' is quite illustrative of the, at the time, ruling notion where criminals could be considered as *degenerative men*.<sup>49</sup> In line with this notion, pederasts were apparently considered to be some underdeveloped beings, which would explain their desires for these unnatural and illicit sexual acts. The causes 'brain disease' and 'homosocial arrangements' can be combined, in my opinion. I believe Schneider implies with homosocial arrangement the social engagement with pederasts. This in combination with the consideration of same-sex behaviour being a brain disease can lead to the assumption that apparently it was considered to be a contagious disease. Therefore it would also explain the involvement of doctors, because they were needed to prevent this 'disease' from spreading. The last cause of pederasty, according to Schneider, is very interesting because it states that the excessive sexual consumption of women would lead to pederasty. It implies that an excessive amount of sexual engagements with women would lead to men losing control over their sexual urges and this loss of control would eventually lead that men would start feeling the urge for

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<sup>47</sup> Hekma, G., *Homoseksualiteit, een medische reputatie* 128

<sup>48</sup> *Ibidem* 142

<sup>49</sup> P. Becker, 'The criminologists gaze at the underworld: towards an archeology of criminological writing', Peter Becker and Richard Wetzell (ed), *Criminals and their scientists: the History of Criminology in International Perspective* (Cambridge/New York 2006) 105-133

the unnatural and illicit sexual act. This is quite similar to the slippery slope of excess Van der Meer refers to in 'Sodomy and its Discontents', although the slippery slope of excess did not only refer to sexual excess.<sup>50</sup>

What is interesting is the fact that all four elements seem to have a relation, namely the fact that they influenced each other. The authorities seemed unable to fully prevent same-sex sexual activities from occurring. These activities would lead to increased prosecutions when they occurred in institutions as mentioned above because those would be considered to be public places. This would require knowledge of physical evidence, which was gradually increasing due to the doctors new interest in psychology and sexology in their effort to explain homosexuality, because they still considered it to be a crime. This compared with the professionalization of doctors and the fact that same-sex sexual activities were being considered to be a threat to public hygiene, caused doctors to state their findings in articles which required research in what same-sex behaviour was. This eventually led, to the concept where it was considered to be a psychological phenomenon or even a contagious brain disease. Which could have numerous causes and in order to define those causes it would require thorough assessment of the subjects physiology, case history and childhood among others.

## **Conclusion**

The following can be concluded concerning how a notion of 'homosexual' identity was reflected in how same-sex behaviour was perceived and prosecuted during the nineteenth century. First, the decriminalization of sodomy did not mean that same-sex behaviour was considered to be normal. On the contrary, the decriminalization was inspired by Enlightened thinkers like Montesquieu. But they still considered it to be unnatural and repulsive due their belief in nature and reproduction. They only believed that it should be prevented beforehand instead of afterwards and they claimed that the authorities had not done enough to prevent it before. Instead the authorities had provided a stage from which same-sex behaviour became increasingly visible, while they argued it had to become invisible. Second, the Code Pénal is clearly directed against the expression of identity by sodomites by not clearly defining what they meant by 'public' and what they meant with 'indecent factuality'. Public did not only refer to any sexual activities outdoors, but could also imply pubs and brothels where they used to meet, as long it was a place accessible to others. Indecent factuality is also open to multiple interpretations because it could mean anything from a slight touch and a kiss to the actual sexual act, which is a clear difference with the eighteenth century. Third, the fact that prosecution of those committing same-sex behaviour stayed the same or even increased and the fact

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<sup>50</sup> Van der Meer, T., 'Sodomy and its Discontents', 50

that same-sex behaviour was punished more severely than non-same sex behaviour proves that it was still considered to be abominable. The high prosecution numbers were also a results from the authorities' failure to adequately prevent same-sex behaviour due to the possibilities same-sex institutions provided. Last, the huge amount of prosecutions and the fact that doctors still considered it to be a crime, increased the need for physical evidence of the act and thus increased the need to acquire knowledge. This combined with the professionalization of the doctors around 1840 led to publications of articles concerning this threat which required research to actually prove their findings. This increased research eventually led to an increased understanding of same-sex behaviour till the point at which it was seen as a psychological phenomenon. However, this did not imply that it was perceived significantly different, because in it was considered to be a contagious disease or even a degenerative form of a human being. So it can be concluded that the expression of some form of identity of sodomites caused the decriminalization of sodomy, in order to make it invisible and a crimen nefandum once again. However, the authorities 'failed' to properly prevent which combined with the fact that the articles concerning public indecency were open to interpretations, did not change the prosecution. This led to the belief that it threatened public hygiene and in the professionalization of doctors and their desire to cure society the one who committed same-sex behaviour was more over seen as a being, albeit a degenerated one.

## Conclusion

It has never been the intention of this thesis to suggest that identity of the sodomites developed or progressed to the 'homosexual' identity. Nor has it been the intention to prove either Foucault or Van der Meer to be right and the other to be wrong. It has been the intention of this thesis to prove a causal relation between both notions, which most certainly was not a linear development, and to prove that both notions are both right and are both wrong.

First, Foucault's notion is right because of the importance and influence of power relations in the specific discourses concerning both sodomy and homosexuality. The discourse concerning sodomy was defined by secular and canonical law, which concerned sodomy (the act) and not the sodomite (the being). This can be supported by several striking elements in the prosecution of sodomy in the Dutch Republic. The Edict of 1730 prohibits the same-sex sexual act, not the being that has same-sex desires. This is reflected in the fact that prosecution mainly concerned masturbation, fellatio and anal penetration, with the latter being the only one to be punished by death. It also creates the accessory to sodomy, referring to the facilitation of the sexual act, not the facilitation of having those desires. Also very illustrative is the fact that only in 1795 it was made possible for women to divorce a sodomite. Which implies that prior to this, authorities believed it to be a choice that did not affect the male's ability to fulfil his marital duties. The last notion that supports the fact that it was about sodomy and not the sodomite, is the importance of the confession of the sodomite. He did not need to confess to being a sodomite, but he needed to confess to having committed those sexual acts, because those acts made him the sodomite, which suggests that the authorities had similar notions on identity as Locke did. Because they considered the recollection of the acts more important than effeminate behaviour, since in the existing discourse sodomites were considered to be hard to identify. On the other hand, Van der Meer is right in the respect that a form of identity of sodomites did exist. He rightfully argues that sodomy was more than only the committing of the act, it was also a judgement made by society out of fear of God's wrath. Van der Meer has also argued that a sexual ontology existed concerning the sodomite and how he came into existence. It implies that the sodomites were considered as a group of beings, albeit degenerated ones, by the authorities. However, this did not significantly define sodomy or how it was prosecuted and perceived. What did define the prosecution in a way, is the form of identity the sodomites acquired themselves. The sodomites considered themselves to be a community during the eighteenth century. Their social networks and the pubs, brothels and public meeting sites increased the visibility of sodomy and

therefore provoked the criminalization of sodomy. The social network was also exploited by the authorities to prosecute sodomites on a wider scale on two occasions. However, the discourse is defined by the element in power and the identity of sodomites did not define this discourse.

Second, there actually is a relation between the two different forms of 'homosexual' identity. This does not imply a development of a teleological nature. Both would suggest that there was improvement in some way, progress in a linear line. While it did not significantly improve or got worse at all. In the case of, what we now know to be, the Netherlands, the existence of some form of identity of sodomites in the eighteenth century set in motion a chain of changes that eventually led to the development of the concept of 'homosexual' identity as illustrated by Foucault. The increased visibility of sodomites and the fear for God his wrath among the general public, forced the authorities to take action and they officially criminalized sodomy. In the prosecution of sodomites the authorities used the way sodomites identified themselves to prosecute a greater number of sodomites. It is known that this occurred in 1730 and 1764, where they used the information provided by one sodomite to prosecute the others. However, the perception on identity similar to that of Locke were past deeds and the recollection construct your identity, dominated the prosecution process. The awareness of this, which has undoubtedly to do with their social network, among sodomites led to a serious decline of effectiveness of prosecution (among others a decline of death penalties). Combined with the sporadic element of prosecution of sodomites, it only occurred in waves, it inspired the new way of thinking about same-sex behaviour by the Enlightened thinkers. Although they believed, due to their break with Christian world view, that same-sex behaviour was not a sin and therefore not a crime, they did still considered it to be unnatural and repulsive. They blamed the authorities for inadequate prevention and providing a stage from which same-sex behaviour could spread. They argued that the society was to aware of the existing same-sex behaviour identity and that it should be prevented by making it invisible again. They even went so far in explaining that they took the first step in the new understanding of what would become the 'homosexual'. They sought the explanation in institutions with same-sex regulations, or the prevention of the two genders mingling in crucial moments, like adolescence, when the sexuality was developing. This new way of thought led to the decriminalization of same-sex behaviour in 1811 and the articles of the Code Pénal clearly prove that they were used to suppress the visibility of same-sex behaviour. The articles were open to various interpretations and with public indecency it meant that every act(kissing, fondling, flirting and the actual sexual acts) that was considered to be offensive, which same-sex behaviour still was, to be able to be prosecuted. The public aspect could also mean anything and seems to be directed to the three main 'public' places that were responsible for the visibility of same-sex behaviour during the eighteenth century, their public meeting sites, brothels

and pubs. However the Dutch authorities maintained the prevention of genders mingling in institutions like public schools, which could explain the fact that there was still an increasing amount of prosecutions concerning same-sex behaviour. The fact that it still was perceived to be repulsive is resembled in Van der Meer his conclusion that same-sex offences against public indecency were punished more severely than non-same-sex offences against public indecency. The huge amount of prosecutions, the fact that same-sex behaviour was still considered to be a crime by doctors, the need to provide forensic evidence, the professionalization of doctors and their need to protect the public hygiene against the atrocity that was same sex behaviour inspired the need to explain and understand same-sex behaviour. This resulted in an increase of scientific articles concerning same-sex behaviour and with it an increased and intensified research to same-sex behaviour. In this light the knowledge about it same-sex behaviour gradually changed how same-sex behaviour was defined and came into existence. With the first Dutch acknowledgment of same-sex behaviour as a psychological phenomenon to be in the seventies of the nineteenth century. At this point the sodomite was considered to be more a being that was different to others, either because he was degenerated or that he was being that had contracted a disease.

With that it can be concluded that the identity of sodomites in the eighteenth century caused a motion of changes that eventually led to the change in discourse were the sodomite became the homosexual, although this does not suggest that homosexuality was suddenly normal. It still was considered to be a degenerated form of life or even as a disease, but there was a relation nonetheless.

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