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## A sincere belief in Dracula

### *Debunking the History of the Dutch Prosecution of Homosexuality*

Between 1940 and 1945, the Netherlands were occupied by a civil (instead of: military) Nazi-administration. This administration introduced at least three measures concerning the legal organisation of sexuality, which conflicted with Dutch customs and values. On the 15<sup>th</sup> of September of 1941, the Germans installed Decree 183/1941 which demanded the registering of 'public women' (in Dutch: 'publieke vrouwen'). Since the nineteenth century, the Netherlands had been a strongly abolitionist country where prostitution was concerned, resulting in the criminalisation of brothels and trafficking in women with the introduction of the new sex laws in 1911. With this German Decree the registered prostitutes had to submit themselves to recurring medical examinations and the results of those tests would be inscribed on their special identification cards.<sup>1</sup>

<sup>1</sup> For the Dutch history on prostitution and abolitionism, see: Petra de Vries (1997) *Kuisheid voor mannen, vrijheid voor vrouwen* (Hilversum Verloren); For the introduction of the German Decree on monitoring 'public women' (Decree 183/1941), see: Pieter Koenders (1996) *Van christelijk réveil tot seksuele revolutie* (Amsterdam Stichting Beheer IISG) 455-456.

Beforehand, the Germans had already established a decree – Decree 165/1940 – which gave way to measures concerning the prevention of the spreading of venereal diseases. The Decree ‘legalised’ the medical examination of any and everyone suspected of carrying STD’s.<sup>2</sup> No one could refuse such an examination, since the maximum sentence on declining to cooperate was three years imprisonment; the maximum fine was three thousand guilders (equalling 21.000 euro in 2006).<sup>3</sup>

The first ‘sexual’ Decree introduced by the Germans, however, concerned homosexual contacts. Decree 81/1940 prohibited sexual contact between men. Between 1811 and 1911 the Netherlands had no specific anti-homosexual article in its Penal Code. In 1911, the Dutch established an anti-homosexual article, criminalising the adult women and men who engaged in same-sex sexual contact with persons under the age of 21 years (article 248 bis of the Dutch Penal Code). The age of consent for heterosexual sex remained at 16 years of age. In a strictly legal sense, the occupation did not alter the situation for lesbian sex.<sup>4</sup>

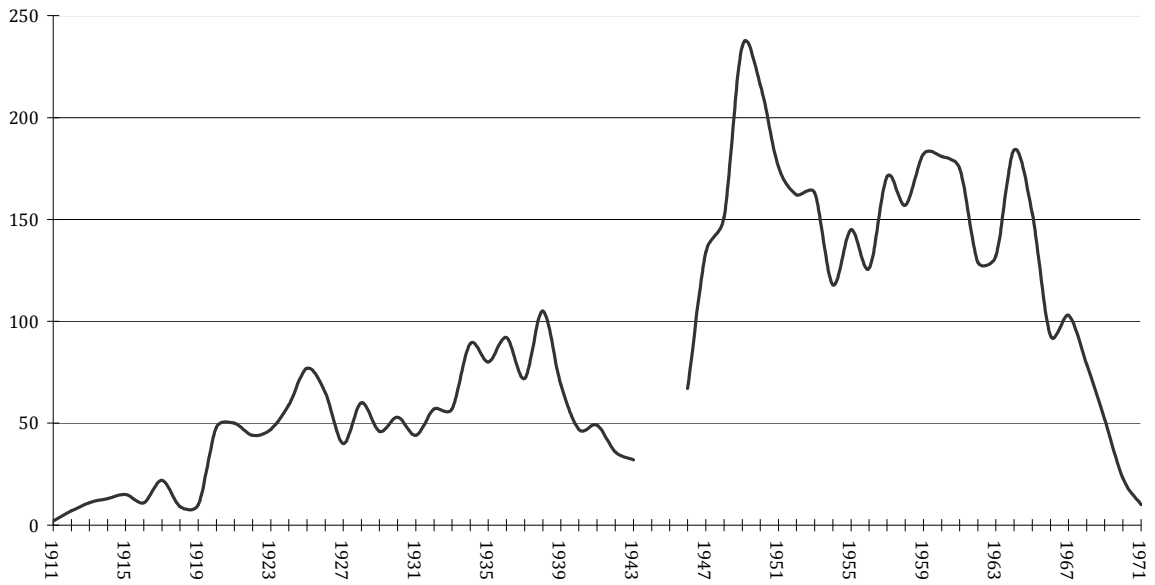
## Stagnating prosecutions of homosexuality

Decree 81/1940, prohibiting all sexual contacts between men, *could have* multiplied or at least doubled the numbers of the legal prosecution of homosexuality. Indeed, the German decree could have led to a dramatic rise in anti-homosexual court cases. It enabled the police and judicial officers to prosecute both the adult men and adolescents involved in homosexual contacts. Before 1940, the adolescents involved could not be imprisoned or fined for their homosexual experiences. Still, to ‘correct’ these young men a growing apparatus of guardianships and community homes was on the rise since the turn of the century onwards. The interesting thing about Decree 81/1940 is, that it did not lead to a dramatic rise in court cases against homosexuals: the statistics on homosexual court cases show that the number of court cases for homosexual offences during the occupation barely reached pre-war levels (see: graph 1 and 2).

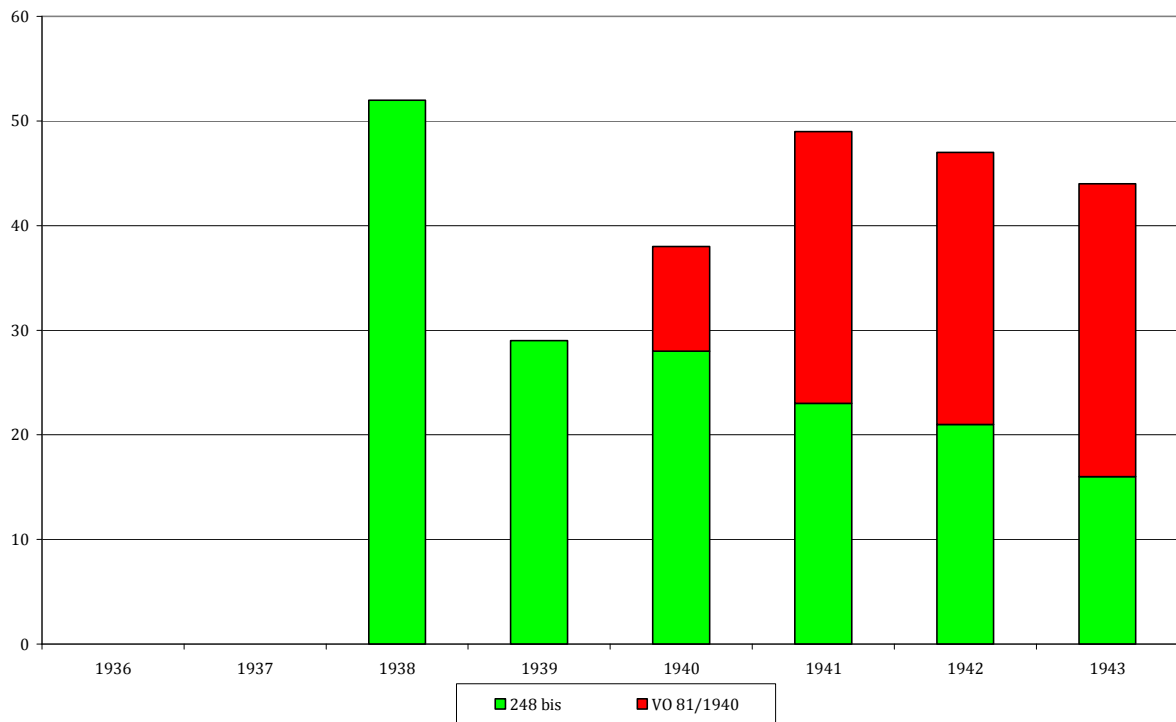
<sup>2</sup> Koenders (1996) 454-455.

<sup>3</sup> Historical comparing of purchasing power, see: <http://www.iisg.nl/hpw/calculate.php>.

<sup>4</sup> Koenders (1996) 387.



Graph 1. Absolute numbers of annual convictions in court cases based on article 248 bis of the Dutch Penal Code, 1911-1971 [Source: Koenders, 1996: Appendix C]



Graph 2. Absolute numbers in court cases based on article 248 bis PC (green/under) and the German Decree 81/1940 (red/top) (Source: Koenders, 1996: 437, 863)

The existing body of literature in the field of homosexuality, the occupation and the Second World War, presents the reader with an image of intensified repression and uncertainties for homosexuals and their circles of friends. When comparing the Dutch occupational history to the German national-socialist history, similarities are underscored. Here two examples will have to do. Firstly, one of the leading historians in this field, Pieter Koenders, emphasized resemblances between the persecution of homosexuality in Nazi-Germany and the prosecution of homosexuality in the Netherlands during 1940-1945 with a model of five stages: starting out with sharpened anti-homosexual legal measures, ending up in an intensified persecution of homosexuals. Koenders never wrote that homosexuals were *actually* persecuted in the Netherlands during the Occupation. Because he did not underscore this fact, the *reception* of his work stimulated interpretations that focussed on similarities between the Dutch and German prosecution of homosexuality. Klaus Müller wrote, for instance:

Koenders shows how all patterns of gay persecution, current in Nazi-Germany, were also established in the Netherlands, with abundant support of the Dutch authorities. (...) Still, the level of gay persecution in the Netherlands never equalled that in Germany or in the annexed Austria.<sup>5</sup>

Still, the 'lack of persecution' did not distort the parallels in the five stages of anti-homosexual Nazism for Koenders. Secondly, in 2007, the Dutch exhibition *Who can I still trust?* (in Dutch: *Wie kan ik nog vertrouwen?*) on the 'Nazi-history of homosexuality' in Germany and the Netherlands also underscored the parallels between these histories.<sup>6</sup>

As I was studying this body of literature, I started to wonder: if the Nazi-occupation widened the possibilities to prosecute homosexuality, why did the number of court cases stagnate? If literature systematically presented the years of occupation as a time of repression, why didn't this show in the numbers? If Nazi-Germany had led to the persecution of homosexuality, why did it come to a dramatic peak in court cases in the Netherlands in 1949 – four years after the liberation?

<sup>5</sup> Klaus Müller, 'Het gezicht van de vervolging. Inleiding', in: Klaus Müller (red.) (2005) *Doodgeslagen, doodgezwegen. Vervolging van homoseksuelen door het Nazi-regime 1933-1945* (Amsterdam Schorer Boeken) 28.

<sup>6</sup> See for a discussion of this exhibition (amongst other publications) the article of two of my colleagues in the IISH project 'Homosexuality in the Netherlands in the Twentieth Century': Marian van der Klein and Theo van der Meer, 'Gevangen in slachtofferschap. Homoseksualiteit en de Tweede Wereldoorlog', in: *De Gids* (January 2007) 74-83.

## Shifting from parallels to differences

In answering these questions, I decided to take up a cultural historical approach towards one court district in the Netherlands and find out what the *casuistry* behind the statistics of anti-homosexual court cases would tell me. In this paper, I will focus upon one strand of my investigation, and deal with the legal change around the sexual agency of adolescents. Before the occupation, adolescents involved in homosexual sex crimes were automatically seen as innocent victims and corrupted young men. As the Dutch Minister of Justice Robert Regout, the driving force behind banning 'boy-love' in the Netherlands, stated in 1911:

The practice is not, that two persons, who are both in their adolescent years, choose each other. The fact is, that the adult, usually *a very mature* adult, picks himself a παῖς [i.e. "pais": "boy" in Greek, AT] (*italics AT*).<sup>7</sup>

'Real' homosexuals were seen as adult men who seduced boys and adolescents. Boys and adolescent men were considered passive victims of homosexual predators and who had no sexual agency. It was *unthinkable* that adolescent persons would choose same-sex adult sex partners. With the occupation and the introduction of Decree 81/1940, which criminalised all men, adolescent men were no longer automatically innocent victims.

The existing body of literature mentioned that the 138 court cases based upon the German Decree prosecuted adolescents primarily.<sup>8</sup> After the Second World War only one man was recognised as a homosexual victim of the war: Tiemon Hofman. Symbolically, he was an adolescent man tried based upon the German Decree.<sup>9</sup> My investigation in the court district of The Hague – where 45 (33 per cent) of the total number of 81/1940 cases were tried – shows that in 24 instances adults were prosecuted. In the 21 other cases, adolescents were tried. Interestingly, only two of the cases tried derived from *one* homosexual contact. In other words, usually the Dutch judicial officers did *not* prosecute both men involved in the homosexual contacts that got

<sup>7</sup> Handelingen van de Tweede Kamer der Staten Generaal (Hansard), 53<sup>rd</sup> meeting: 1541

<sup>8</sup> Koenders (2005) 178; Judith Schuyf (2003) *Levenslang. Tiemon Hofman, vervolgd homoseksueel en avonturier* (Amsterdam Schorer Boeken) 47.

<sup>9</sup> Schuyf (2003).

the attention of the police and judicial body. Usually only one of the men involved was prosecuted.<sup>10</sup>

Though the body of literature in the field of homosexuality and the Dutch occupation is valuable in many respects, I did become critical of the focus on parallels between the German and Dutch histories. I found many differences. One of the aims of my PhD research *Guilty Sex. Homosexual Sex Crimes around the German Occupation* – on which this paper is based – is to study the differing local understandings of sexuality and to address the conceptual differences between the ways in which ‘homosexuality’ was understood in both Germany and the Netherlands. Whereas Germans were accustomed to policing *Strichjungen* or *Bahnhof Boys* – as Jennifer Evans showed in 2003 – as well as adult men; the Dutch police worked with different kinds of profiles on their ‘usual suspects’.<sup>11</sup>

One of the results of my cultural historical endeavour is that I can show for at least one court district in the Netherlands that the German occupation did not alter Dutch ideas on ‘homosexual agency’. In the Dutch approach of homosexuality, only adults could consent to homosexual sex. Homosexual sex was supposedly involuntary for adolescents. It was unthinkable that adolescents could long and search for homosexual contacts. The Dutch police and judicial offices did not accustom to the German anti-homosexual Decree smoothly. As Jessica Fletcher – quite the authority where meddling in police investigations is concerned – said: ‘Sometimes the smallest detail provides a clue that leads to the solving of the mystery.’<sup>12</sup>

Sometimes clues *are* in the details. One detailed example of the awkwardness with which the police handled the German Decree can be seen in the dust jackets or covers of police reports. Accustomed to enlisting both a suspect and a witness in investigating homosexual sex crimes, the police kept on enlisting the older men as suspects and the younger men as witnesses. During the years of occupation, the practice of typing up police reports did not alter. Instead of handling two suspects in one report – as the police was accustomed to do when a group of people was suspected of burglary together for instance – the police typed up two reports. The first report would follow standard

<sup>10</sup> Dutch National Archives, Archives of the court district of The Hague, 3.03.15.01 (1911-1940), 3.03.15.03 (1940-1950), 3.03.15.06 (1950-1960).

<sup>11</sup> Jennifer V. Evans, ‘Bahnhof Boys: policing male prostitution in post-Nazi Berlin’, in: *12 The Journal of the History of Sexuality* (2003) 4 (605-636).

<sup>12</sup> Universal Studios Publishing (2003) *Majoring in Murder. Jessica Fletcher and Donald Bain* (New York Penguin) 97.

procedures in hearing the younger witness and confronting the older suspect with the statements of the witness. The second report would be an exact copy of the first one, with a different dust jacket enlisting the younger person as a suspect and the older person as a witness. The blue print for police investigations in homosexual sex crimes did not allow for adolescent homosexual agency, not before, not during and not after the German occupation.

## Adolescent boys are a handful

To illustrate this point, I will present one case study about two boys that kept the vice squad busy in 1943. Indeed, 80 per cent of the police investigations in The Hague into homosexual activities in 1943 concerned the 16-year-old Jacques van Gaal and the 15-year-old Jaap Kaarsgaarn.<sup>13</sup>

On June 28, 1943, detective Anema – who worked with the vice squad – was called by the 50-year-old chief station sergeant Willem Lasage. Lasage called from the guard post at the South Park in The Hague. On his round, Lasage had met the friends of an 11-year-old boy Martijn Schapendonck who was forced into the bushes by the 16-year-old Jacques van Gaal. Lasage had taken Van Gaal into custody and wanted Anema to deal with him.<sup>14</sup>

The close reading of the police reports reveal the preoccupations of detective Anema. His priorities are interesting. During his hearing, the 16-year-old suspect mentioned his sexual contacts with an unknown man in a public lavatory at the end of April in 1943 and his first sexual contact ever, during the first half of April 1943, with the 26-year-old tailor Wouter Baalbergen.<sup>15</sup> Van Gaal declared that he would hang around public lavatories in the evening with his 15-year-old friend Jaap Kaarsgaarn.<sup>16</sup>

Subsequently, detective Anema focussed upon the tailor.<sup>17</sup> At first, Van Gaal's statements nicely fitted in the 'Dracula hypothesis'. Those bitten by vampires, would

<sup>13</sup> Obviously, the names of the witness and suspects in this case study were altered to protect their privacy. According to Dutch scientific customs, the names of the police officers were not.

<sup>14</sup> Municipal Archive of The Hague (MATH), 432, 6569: Police Report (PR) 112-114/1943 (juli 1943); PR 144/1943 (20.08.1943); PR 156-158/1943 (11.09.1943); PR 159-161/1943 (11.09.1943).

<sup>15</sup> MATH, 432, 6569: PR 144/1943 (20.08.1943), hearing of Jacques van Gaal (28.06.1943).

<sup>16</sup> *Ibidem*.

<sup>17</sup> *Ibidem*, PR 112/1943 (juli 1943).

turn into vampires themselves. Along the course of Anema's investigations, the infection-theory started to show defects. As Van Gaal was heard repeatedly by the detective, his stories could not be moulded into the stereotypical image of the older seducer and corrupted adolescent any longer. Still, the detective pulled out all the stops to keep the seduction theory upright.

During the first hearing, Anema directed his questions at the origins of Van Gaal's sexual behaviour in the park. Van Gaal stated that he had had sex with adult men and as a result experienced 'sudden bursts of sexual arousal' in the form of 'a stiffened manliness'.<sup>18</sup> At the day of his arrest, he had left school with the urge to have sex with a boy. That is why he went into the park. Anema asked the adolescent how he explained his own behaviour. 'If those men had not acted indecently with me [in April 1943], I am positive that I would not have acted indecently with that boy', Van Gaal stated.<sup>19</sup>

Because the detective started hearing Van Gaal's 15-year-old friend about their behaviour as well, Anema kept on returning to Van Gaal with new 'evidence' that did not fit well with his claims of having been corrupted by adult men. The 15-year-old Jaap Kaarsgaarn claimed that the sexual initiative came from his 16-year-old friend, not the men that had supposedly seduced the 16-year-old.

Confronted with Kaarsgaarn's allegations, Van Gaal altered his statements as well. Now he claimed that he himself had not engaged in homosexual activities in April 1943; his 15-year-old friend had taken the initiative to have sex on public lavatories and with the 26-year-old tailor.<sup>20</sup> In any case, the Dracula hypothesis was undermined by both of the adolescent testimonies. It took a considerable length of time before detective Anema could take these alterations in. He heard both adolescents on numerous occasions and kept on asking who in their view had taken the initiative in the homosexual contacts.

## Conclusion

Derived from two strands in his police work, detective Anema tried to actively steer towards the traditional story of adult homosexual predators and innocent adolescent victims. Firstly, he prioritised the investigation into the sexual behaviour of the 26-year-

<sup>18</sup> *Ibidem*, PR 144/1943 (20.08.1943), hearing of Jacques van Gaal (28.06.1943).

<sup>19</sup> *Ibidem*.

<sup>20</sup> *Ibidem*, PR 159-161/1943 (11.09.1943) hearing of Jacques van Gaal (02.07.1943).



old Wouter Baalbergen, that had supposedly led Van Gaal astray from his 'normal' sexual path. This, instead of prosecuting Van Gaal as a suspect based upon Decree 81/1940 for having had sex with an 11-year-old boy in the park. Secondly, he could not get his head around the repeated statements of the boys who incriminated each other as the initiators of the homosexual sex they had in public lavatories and with the tailor.

In the end, both boys' statements were taken by the police, they were considered as suspects on the grounds of the German Decree. This was more of a technical matter than a matter of convinced police work as details in the sources point out. *All* police reports concerning the 'adventures' of Van Gaal and Kaarsgaarn were primarily concerned with reconstructing the acts of the involved adults: the 26-year-old tailor, and the 37-year-old and 57-year-old men the boys had met in the public lavatories. The reports were exact copies of those against these adults. They merely differed where dust jackets were concerned. Apparently, this police officer in The Hague was still not used to dealing with adolescents as suspects in homosexual sex crimes around 1943. Or, refused to do so. With his colleagues, he had developed an administrative tactic to deal with adolescents as suspects. During the years of occupation, the blue print for policing homosexuality remained focussed on the agency of predatory adults. Adolescents were innocent unless their guilt could not be ignored.

Studying the casuistry based on the police archives and court dossiers sheds light on the *practices* of prosecuting homosexuality. The refusal or at least lack of policing adolescents as consenting sexual agents – where homosexual contacts were concerned – partly explains the peculiar stagnation of homosexual court cases during the years of occupation. With *Guilty Sex* – of which this paper showed one line of investigation – I aim to contribute to the field of research by focussing upon the multiplicity of the history of the prosecution of homosexuality in the Netherlands. As a result, the differences between the Dutch and German histories are difficult to ignore.