

# Oscar Wilde: Paradoxical Poster Child for Both Identity and Post-Identity

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MICHAEL S. FOLDY. *The Trials of Oscar Wilde*. New Haven, Conn.: Yale University Press, 1997. Pp. 206.

Biography lends to death a new terror.

—Oscar Wilde<sup>1</sup>

There is only one thing in the world worse than being talked about, and that is not being talked about.

—Oscar Wilde, *The Picture of Dorian Gray*

A powerful man faces humiliation and professional ruin because of his sexual activities with a much younger person. The agent of his demise is a single-minded moralist with the power to initiate criminal prosecutions. Just as this story riveted us at the end of the twentieth century, it obsessed England in 1895, when Oscar Wilde was tried, convicted, and imprisoned for “acts of gross indecency,” precipitating his demise from a celebrated

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1. As quoted in Purdum 1998.

playwright and member of the London intelligentsia to a convict suffering social, literary, and financial ruin. President Clinton fared better than Oscar Wilde did, and Monica Lewinsky may be a more sympathetic character than Lord Alfred Douglas, but Kenneth Starr and the Marquess of Queensberry appear to be cut from the same cloth in their dogged pursuit of their powerful prey. Perhaps these morality tales reflect an end-of-the-century anxiety about the proper role for government regulation of private, consensual sexual conduct between adults. But the volume and range of academic and popular work exploring Wilde's trials suggests that much more is at stake. Indeed, Wilde was so full of paradoxes that no single interpretation can begin to do him, or his trials, justice. Such complexity is not surprising in a man who both dreaded biography and relished being discussed.

Wilde's story is an extraordinarily popular topic of discussion. In the past year or two, a contemporary film (*Wilde*) and two plays (the off-Broadway, London, and national production of *Gross Indecency: The Three Trials of Oscar Wilde*, and the Broadway production of *The Judas Kiss*, featuring Liam Neeson as Wilde) explore his life and trials.<sup>2</sup> Wilde's own work also is being performed again: *Salome* is a standard on the opera circuit, *An Ideal Husband* was made into a film that played in theaters across the country in 1999, and an opera based on Wilde's novel *The Picture of Dorian Gray* recently made its debut.<sup>3</sup> Academic work such as Michael Foldy's book *The Trials of Oscar Wilde* is part of this recent wave of intense fascination with Wilde. This interest is in turn part of widespread debate about the appropriate regulation of same-sex sexuality, a debate that has both legal and social implications.

On the law side, the past decade has witnessed an unprecedented discussion in courts, legislatures, law journals, and other fora about the proper legal regulation of same-sex relations. President Clinton and Congress refused to lift the ban on gays serving in the military, Congress refused to protect people from employment discrimination based on sexual orientation, Congress and numerous states explicitly banned same-sex marriage, and the U.S. Supreme Court found Colorado's antigay Amendment 2 unconstitutional. Each one of these events generated heated national

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2. Kaufman 1998, Hare 1998, Mitchell 1998. Other recent discussions of Wilde include Bronski 1998, Gopnik 1998, and Kaufman 1999. Gopnik's *New Yorker* article refers briefly to Foldy's volume (finding it "intelligent") and describes Wilde as "a genuine pop, rather than a mere cult, figure" (1998, 78). Using the same terms that are employed in this review to convey a different message, Gopnik concludes that Wilde's "queerness—his image as a romantic outsider—will surely diminish as the world becomes more easily reconciled to its own incorrigible queerness. His gaiety endures" (1998, 87).

3. See Oestreich 1999. Wilde's most famous works are the novel *The Picture of Dorian Gray* and the play *The Importance of Being Earnest*. Richard Ellman's definitive, literary biography begins by observing that "[a]mong the writers identified with the 1890s, Wilde is the only one whom everyone still reads" (Ellman 1987, xv). Wilde's life and literature have received a tremendous amount of attention in fields including history and literature. Frequently cited treatments include Dollimore 1991, Pine 1983, Powell 1990, and Raby 1997.

discussion that reflects public interest in exploring the appropriate legal regulation of same-sex sexuality.

These legal determinations, like Wilde's conviction for gross indecency, were made by social actors who both influenced and reflected fluctuations in twentieth-century understandings of sexual orientation. Because this social issue—the meaning of sexual orientation—is intimately related to its legal treatment, this essay focuses on the way that Wilde's trials both influenced and reflected the continuing construction of sexual orientation.<sup>4</sup> Prior to the late nineteenth century, same-sex sexuality was understood as conduct, and this conduct was viewed as sinful. The idea that sexuality might correlate with particular types of people (in the case of same-sex sexuality, the type or status was associated with sickness) did not surface in England until 1892 when the terms *homosexual* and *heterosexual* were coined (*Merriam-Webster's Collegiate Dictionary* 10th ed.).<sup>5</sup>

I explore the three major stages in the way twentieth-century law and society have understood sexual orientation, dubbing them sickness (stage one), normal variation (stage two), and post-identity (stage three). The Wilde trials occurred at the sickness stage, just as the very idea of sexual orientation (homosexual or heterosexual) as a status was developing. The extraordinary public and historical interest in Wilde's 1895 trials for acts of gross indecency connects Wilde himself to this emerging understanding of an identity-based *homosexual* status.<sup>6</sup> This new understanding of sexual orientation as a status dubbed same-sex sexuality *homosexuality* and viewed it as a disease or pathological condition, in contrast to the earlier understanding of same-sex sexuality as sinful conduct.

Half a century later, research empirically demonstrating that same-sex sexuality is not a mental illness ushered in the understanding of sexual orientation as a normal variation (Hooker 1957, 1958). In the late 1960s, defenders of same-sex sexuality renamed themselves *gay* to distance themselves from the pathology associated with early-twentieth-century understandings of homosexuality as a disease. The gay rights movement

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4. For an excellent discussion of both historical and contemporary legal regulation of heterosexual relations, see Hirshman and Larson 1998.

5. The simultaneous emergence of homosexual and heterosexual statuses demonstrates the intimate relationship between same-sex and opposite-sex sexualities. Nevertheless, just as race discussions mostly concern people of color and gender discussions center on women, sexual orientation analysis usually focuses on same-sex sexuality. This pattern reflects and perpetuates power relationships by treating only one part of a status as problematic. As a result, discussions of race, class, gender, and sexual orientation focus on whether dark skin, poverty, femininity, and same-sex sexuality are innate or culturally created, whether they are inherently inferior to white skin, wealth, masculinity, and heterosexuality, and whether people of color, poor people, women, or gay people could or should be full citizens.

6. Escoffier 1998 (suggesting that the trials transformed Wilde into "an 'identity'—one of the first out homosexuals").

embraced Wilde as a martyr for “the love that dare not speak its name,”<sup>7</sup> equating same-sex sexuality with opposite-sex sexuality by defining both around love.

At the end of the twentieth century, sexual orientation has entered the post-identity stage of its evolution. Queer theorists have led the charge, questioning the accuracy and usefulness of any identity categories based on sexual orientation.<sup>8</sup> This theoretical development suggests an additional reason for the avalanche of analysis about Wilde. Wilde made big news in 1895 because he was on the front end of the social and legal construction of sexual orientation as we know it. His conviction for gross indecency pathologized his same-sex sexuality, yet the brutality of the actions taken against him made him the darling of the later gay rights movement. He is big news now, I suspect, because the story of his trials paradoxically also supports much of post-identity, intersectional understandings of sexual orientation. These intersectional or queer legal theory approaches recognize that legal regulations rarely turn on a single identity category (such as race or sex). Instead, any given regulation, such as the criminalization of same-sex sexuality, invokes the race, sex, and class of the people regulated, in addition to their sexual orientation.

While *homosexual*, *gay*, and *queer* are roughly synonymous in common speech, they convey dramatically different theoretical meanings. Contemporary theory understands the terms *homosexual* and *gay* to imply an essential orientation toward one’s own sex, one that is biological or otherwise innate and shares some essential characteristics with other people who are affiliated with same-sex sexuality. *Homosexual*, however, connotes a pathology, while *gay* suggests a normal variation from heterosexuality. The newer category *queer*, in contrast, fundamentally departs from both *homosexual* and *gay*. Queer connotes the total rejection of identity and is instead a deliberate nonidentity. Queer signifies no particular conduct, status, or desire (let alone its genesis or commonality within the group), instead rejecting categories based on status or conduct. Rather than constructing a community around particular sexual practices or orientations (as do *homosexual*, *heterosexual*, and *gay*), the term *queer* groups people by their opposition to sexism, homophobia, racism, and other hegemonic exercises of power. Thus, according to one commentator, the queer community is an “oxymoronic community of difference” united around “difference from the norm.”<sup>9</sup> I

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7. This famous euphemism for same-sex sexuality was the final line of a poem by Lord Alfred Douglas published in an Oxford literary magazine and introduced as evidence against Wilde at his trials (p. 117).

8. For one discussion of various approaches taken in queer legal theory, see Ertman 1998.

9. Duggan 1995, 155, 163 (quoting Louise Slogan). Eve Kosofsky Sedgwick has described “queer” as addressing, along with same-sex sexual object choice, “dimensions that can’t be subsumed under gender and sexuality at all: the ways that race, ethnicity, postcolonial nationality criss-cross with these *and other* identity-constituting, identity-fracturing discourses.” Sedgwick 1993, 8-9. For a critique of queer theory, see Walters 1996, 838:

suggest that Wilde's continual ability to attract attention is due to the fact that his story fits into all three ways of understanding same-sex sexuality, homosexual, gay, and queer, and, further, that while no single approach does justice to the complexity of Wilde's story, queer theory's post-identity understanding of sexuality (and other identities) as provisional does more justice to Wilde's story than either of the prior essentialist approaches.

Wilde's story is anything but simple. He married Constance Lloyd and had two children, yet also had sexual relations with men. An extraordinary wit, darling of high society, and successful playwright, Wilde met his match when he fell in love with Lord Alfred Douglas, the son of a powerful English nobleman and boxing patron, the Marquess of Queensberry. By Wilde's own account, Lord Alfred Douglas was the love of his life (p. 117). Determined to separate Wilde and Douglas, Queensberry engineered Wilde's demise. Queensberry accused Wilde of "posing as a sodomite [sic]," provoking Wilde to sue Queensberry (at Douglas's urging) for libel. Wilde withdrew his suit to avoid enduring the testimony of former lovers and was then criminally prosecuted for acts of gross indecency. Even this abbreviated version of Wilde's story invokes numerous identity categories, suggesting that post-identity intersectional analysis brings more clarity to understanding Wilde's trials than an essentialism that highlights sexual contact with other men as the most (or only) important feature of his life.

Michael Foldy's volume explores some of these issues with the goal of reconstructing Wilde's deviance both as his contemporaries saw it and as Wilde himself understood it. Foldy acknowledges the difficulty of this task given "the many contradictions contained within a very complex and multifaceted personality" (p. xiv). At its strongest, the book is a compelling exposé of government blackmail and a detailed portrait of how a private tragedy became a catalyst in the social construction of sexuality. At its weakest, it represents what Joyce Carol Oats has called pathography, or the spurious portrait of a person through one despised character trait (Oats 1998).

First, Foldy describes Wilde's three trials and the daily, detailed press coverage of them. Second, he vividly recreates how Wilde's contemporaries interpreted his trials, describing the late-nineteenth-century shift in understanding of same-sex sexuality and suggesting that the trials contributed to the cultural construction of homosexuality as a status associated with gender nonconformity. Third, Foldy attempts to construct how Wilde himself understood his deviance. In doing so, Foldy sees Wilde's sexuality as an expression of his art, reversing the conventional interpretation that views his art

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"[I]f all that we share is a nonnormative sexuality and a disenfranchisement, then why not be totally inclusive? This reduces queer politics to a banal (and potentially dangerous) politics of simple opposition, potentially affiliating groups, identities, and practices that are explicitly and implicitly in opposition to each other. To link politically and theoretically around a 'difference' from normative heterosexuality imposes a (false) unity around disparate practices and communities."

as reflecting his sexuality. Toward this end, Foldy aims to achieve an anti-essentialist approach that recognizes “the importance of [Wilde’s] sexuality without subordinating either his experiences or his ideas to a ‘totalizing’ sexuality which overshadows all else and which obscures other equally important facets of his identity” (p. xiv). Fourth and finally, Foldy integrates these themes to suggest that the trials were part and parcel of the social purity movement and late-nineteenth-century English concerns about nationalism, disease, and masculinity.

Foldy’s approach primarily reflects what I call post-identity understandings of sexual orientation, and he is largely successful in using the tools of social constructionism to reconstruct Wilde’s deviance as his contemporaries saw it. His microhistory ties the trials and press coverage to the nineteenth-century artistic decadence movement and scientific theories correlating physiology and social decay, ably melding cultural theory and factual analysis, to address the intersection of law and society. If, as I suggest, Wilde’s significance for many contemporary readers lies, at least in part, in the way his story resonates with post-identity understandings of sexual orientation (in addition to being a touchstone to the two previous stages of understanding sexual orientation), then the extent to which Foldy’s approach coheres with queer theory is an appropriate measure of the effectiveness of the volume.

In this light, Foldy’s work falters when he abandons post-identity social constructionist analysis, instead reverting to an interpretation of same-sex sexuality as a sickness when he ambitiously tries to reconstruct how Wilde himself viewed his deviance. Just as the statute criminalizing gross indecency focused on sexual conduct, Foldy constructs an elaborate speculation about Wilde’s view of his own deviance, assuming with little or no evidence that Wilde engaged in anal penetration to express what Foldy dubs his “ontological aesthetic of dissent” (p. 97). He also describes Wilde as a “pervert” (p. 125). This stance conflicts with Foldy’s repeated critiques of homophobia and his anti-essentialist goals; it is almost as if an editor mangled Foldy’s thesis by imposing an essentialist analysis on an otherwise anti-essentialist treatment.

In this essay, I situate Foldy’s volume within the framework of the three major shifts in the evolution of sexual orientation. Act I describes Wilde’s trials, while Act II outlines the three stages of sexual orientation understandings and suggests that Wilde’s trials fit into all three stages, which may explain why he repeatedly emerges as a symbol of legal regulation of sexuality. Act III evaluates Foldy’s treatment of the trials, suggesting that his analysis falters only when he uses post-identity assumptions to reach an essentialist conclusion that Wilde viewed himself as a pervert.

Despite this analytical imperfection, Foldy’s volume is a timely illustration of how law and society interact in complex ways. The story Foldy tells

of the public reaction to Wilde's trials (and Wilde's own response) helps late-twentieth-century scholars explore legal rules regulating consensual sexual conduct, as well as the related social question of the nature of sexual identity. As such, *The Trials of Oscar Wilde* offers a unique and powerful analysis of the legal and social elements of an extraordinary historical event—extraordinary in that it both reveals the mechanisms at work at the sickness stage in the evolution of understandings of same-sex sexuality and reappears each time society and law reconstruct same-sex sexuality. A century later, as the social construction is again under extensive legal and social renovation, it is no surprise that so many people turn to Wilde. While Foldy fails to theorize adequately Wilde's desire for other men (and the actions he took as a result of that desire), he is not alone in doing so. *The Trials of Oscar Wilde* leaves to future scholars the daunting task of crafting a theoretical framework that captures the elusive but nevertheless powerful role of romantic love and its relationship to sexuality.

## ACT I. SUMMARY OF THE TRIALS

Oscar Wilde endured three trials. The first he initiated, suing his lover's father for libel. In the second and third trials he was a criminal defendant charged with acts of gross indecency, the second ending with a hung jury and the third resulting in Wilde's conviction.<sup>10</sup> The trials' continuing significance lies in the fact that they evoked issues far beyond the limits of legal doctrine. In this broader sense, Wilde was tried for: (1) engaging in sexual conduct with young working-class men; (2) subverting gender, sex, generational, and class conventions in doing so; and (3) espousing the ideals of aestheticism. Foldy's description of Wilde's trials pays careful attention to both the legal doctrine and social factors.

Two surprises emerge in Foldy's narrative. The first is the breathtaking speed of Wilde's descent from riches to rags. All three trials occurred in two months in the spring of 1895. In these few weeks, Wilde lost "his freedom, his marriage and access to his children, all of his wealth and possessions, his reputation, and, for all intents and purposes, the will to live and create" (p. x). In March 1895, two of Wilde's plays, *An Ideal Husband* and *The Importance of Being Earnest*, were tremendous successes in London's stylish West End, but the theaters terminated the shows shortly after the trials began.<sup>11</sup>

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10. Wilde initiated the libel case and retained his own counsel. Had Queensberry been convicted, he could have served time in prison. Thus all of the Wilde trials were criminal, but in a more functional sense, the libel trial was akin to a civil proceeding initiated by Wilde, and the two gross indecency trials were criminal proceedings initiated by the Crown.

11. The Haymarket Theater initially took Wilde's name off the playbills of *An Ideal Husband*, then cancelled the show April 13. A New York production of the play was reportedly cancelled the next week (p. 57).

Wilde's demise began when he sued Queensberry for libel. Queensberry defended on the grounds that the statement was true and published for the public benefit, and Wilde denied any improprieties in his relations with a string of working-class men with whom he dined and to whom he gave gifts such as silver cigarette cases. When Queensberry's counsel announced that the men would testify, Wilde voluntarily withdrew his libel complaint rather than endure their testimony. Perhaps the key legal outcome of the aborted libel trial was the judicial ruling that Queensberry had proved the truth of the statement that Wilde was a posing as a sodomite (p. 19). This ruling was crucial to Wilde's criminal conviction for gross indecency.

The second intriguing point in Foldy's discussion is the considerable evidence he presents that Wilde's criminal trials for gross indecency were the result of blackmail. Queensberry allegedly threatened to expose the homosexuality of the then-prime minister, Lord Archibald Rosebery, unless the government prosecuted Wilde for same-sex sexual activity (pp. 22–24). Specifically, Foldy suggests that Queensberry threatened to reveal that Rosebery had been romantically involved with Queensberry's eldest son, Francis Douglas, Viscount Drumlanrig. Five months before the trials, Drumlanrig was killed in a "mysterious shooting accident," which was suspected to be a suicide to prevent exposure of Drumlanrig's involvement with Rosebery (p. 22). Moreover, just two days before Drumlanrig's death, Queensberry's second wife had obtained an annulment of their marriage, alleging "malformation of the parts of generation" as well as "frigidity and impotency" (Ellman 1987, 405, 426). Notoriously splenetic (Queensberry was estranged from his entire family and was charged with assaulting his third son around the time of Wilde's trials),<sup>12</sup> he responded to Drumlanrig's death (and perhaps also to the annulment of his second marriage) by determining to destroy Wilde. Admitting that no smoking gun supports his conspiracy theory, Foldy does offer significant evidence to support the theory, including Queensberry's veiled threats to highly placed government officials, Rosebery's nervous breakdown that coincided almost exactly with Wilde's trials, and Rosebery's 1897 vacation in Naples, a popular resort for gay Englishmen (pp. 22, 29). While not overwhelming, these factors, especially the details Foldy gives of Rosebery's virtual incapacitation during Wilde's trials, strongly suggest that blackmail might have motivated the prosecution.

The two trials for acts of gross indecency illustrate the disparate legal treatment of Wilde and Queensberry, Queensberry's determination to destroy Wilde, and Wilde's seemingly incomprehensible failure to protect

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12. Pp. 3, 42. Queensberry's third son, Percy, Lord Douglas of Hawick, and Queensberry were arraigned in late May 1895, on charges of assaulting each other on the street. Percy claimed that Queensberry sent Percy's wife obscene letters, and Queensberry claimed that the attack was unprovoked, but Foldy speculates that Queensberry "must have felt betrayed by Percy's role in securing Wilde's bail" (p. 42).



himself. Foldy details the markedly different treatment that Queensberry and Wilde received during the trials. For example, Queensberry was released during the libel trial on his own recognizance for £500 bail, while Wilde was initially denied bail altogether and ultimately granted his freedom only on bail of £5,000, an enormous sum which Wilde and his friends raised only after considerable effort (pp. 19, 21).<sup>13</sup> Foldy, moreover, describes Queensberry's extraordinary dedication to tormenting Wilde, paying the witnesses £5 a week from the beginning of Wilde's libel case against Queensberry until Wilde's conviction for gross indecency, pressuring the government to change the judge and prosecutor to ensure a conviction in a second trial for gross indecency after the first one ended in a hung jury, and hiring a gang of thugs to harass Wilde as he went from one hotel to another trying to find a place to stay after his second trial (pp. 23–24). Queensberry got what he wanted, including a ruthless prosecutor and a venomous judge who secured Wilde's conviction.

In the final trial Solicitor General Sir Frank Lockwood, who "had the reputation for ruthlessness" and an aggressive prosecutorial style, was the new prosecutor, and Sir Alfred Wills, a 77-year-old expert on circumstantial evidence, replaced "the congenial and impartial" Justice Charles (p. 39). The new judge's interest in circumstantial evidence resulted in the admission of evidence regarding the condition of Wilde's hotel room sheets and Wilde's having shared a bed with another man (pp. 43–44). The judge in the first criminal trial, in contrast, instructed the jury regarding possible alternative, noncriminal, explanations for the state of the hotel sheets and about Wilde's class and intellectual achievements (p. 38). The second judge's statement at Wilde's sentencing vividly illustrates his hostility to Wilde and same-sex sexuality:

[I]t has never been my lot to try a case of this kind before which has been so bad. One has to put a stern constraint upon oneself to prevent oneself from describing in language I ought not to use the sentiments which must arise in the breast of every man who has a spark of decent feeling in him, and who has heard the details of these two terrible trials. . . . People who can do these things must be deaf to every sense of decency which can influence conduct. It is the worst case I have ever tried. . . . I shall, under the circumstances, be expected to pass the severest sentence that the law allows. In my judgment, it is utterly inadequate for such cases. The sentence upon . . . you is imprisonment with hard labour for two years.<sup>14</sup>

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13. The judge initially denied bail, reasoning that "there is no worse crime than that with which the prisoners are charged" (p. 56).

14. Pp. 46–47 (internal brackets omitted). The Court imposed this sentence on both Wilde and Alfred Taylor. Taylor had introduced Wilde to young working-class men and was tried along with Wilde in the first trial and immediately before him in the second trial (pp. 31, 40–41).

Given the prominence of the players and the antipathy reflected in the judge's sentencing speech, it is not surprising that the trials captured the attention of the English-speaking world (along with much of Europe) in 1895. What is surprising is the way that Wilde's trials continually re-emerge as a touchstone for changing social and legal understandings of sexual orientation in the twentieth century.

## ACT II. THREE STAGES OF SEXUAL ORIENTATION UNDERSTANDINGS

After describing the three shifts in understanding same-sex sexuality this section offers evidence that Wilde's trials cohere with all three stages.

### A. Stage One: Sin to Sickness

#### 1. *Describing the Shift from Sin to Sickness*

David Halperin has articulated the birth of homosexuality as a status in the late nineteenth century:

Sexual identity was thus polarized around a central opposition rigidly defined by the binary play of sameness and difference in the sexes of the sexual partners; people belonged henceforward to one or the other of two exclusive categories. . . . Founded on positive, ascertainable, and objective behavioral phenomena—on the facts of who had sex with whom—the new sexual taxonomy could lay claim to a descriptive, trans-historical validity. And so it crossed the “threshold of scientificity” and was enshrined as a working concept in the social and physical sciences. (Halperin 1990, 16)

Two Colorado cases illustrate the late-nineteenth-century transition of understanding same-sex sexuality as a sinful activity to understanding it as a sickness known as homosexuality. In 1888, John Short was charged with the crime against nature in the criminal court of Arapahoe County, Colorado. The grand jury's language indicates that Short was prosecuted for sinful conduct; it charged that Short

feloniously, wickedly, diabolically and against the order of nature had a venereal affair with and carnally knew the said Junius Salus, and then and there, feloniously, wickedly, diabolically and against the order of nature with the said Junius Salus did commit and perpetrate the detestable and abominable crime of buggery. (*People v. Short*, no. 2296, Criminal Court of Arapahoe County, 1888)

A few decades later, the state of Colorado used very different language to describe sexual conduct between men. In 1926, dentist Ralph Koontz was prosecuted in Denver for committing a crime against nature with Kingfield Springer. During the trial, Koontz's counsel questioned Springer about having stayed with one Darrel Boyle and sought to admit evidence at trial

that Darrel Boyle already was a homosexualist, and is now confined in the Psychopathic Hospital for this disease known as homosexuality; that he [Springer] carried on homosexual relations with Boyle and other persons. (*People v. Koontz*, case no. 11883, Denver District Court, trial transcript par. 164, 1926)

This change in language, from the late-nineteenth-century description of the crime against nature as “wicked” and “diabolical,” words connoting sinfulness and religious condemnation, to the early-twentieth-century description of the “disease known as homosexuality” reflects the cultural shift in how legal actors understood same-sex sexuality.

## 2. *Wilde as the Poster Child for Homosexual Identity*

Wilde's trials fit into sickness understandings of sexual orientation in that they gave the new category homosexual a satellite of purportedly pathological characteristics to go along with same-sex sexuality, including gender nonconformity and male aestheticism. The daily, detailed press treatment of the trials disseminated this new understanding, and the social purity movement both created the social climate for the trials and exploited them toward its own ends.

*a. Social Construction of Sexual Orientation.* Foldy offers significant insights regarding the Wilde trials' contribution to the social construction of same-sex sexuality from sinful activity to an illness (pp. 69, 81). Prior to the Wilde trials, Foldy argues, effeminacy was largely associated with upper-class Englishmen rather than same-sex sexuality, and the trials marked the transition in which effeminacy came to signify male interest in other men (pp. 83, 89). This section nicely braids sexuality, gender, and class together, harnessing the power of an intersectional approach. As the emergence of homosexuality as a status is familiar territory to sexual orientation scholars,<sup>15</sup> Foldy's major contribution to the discussion is suggesting the key role of Wilde's trials in this transition.

What is new is Foldy's detailed discussion of the philosophy of aestheticism and decadence espoused by Wilde and other artists, and its correlation

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15. For examples of legal scholarship analyzing the social and legal construction of homosexual status, see, eg., Goldstein 1988, Halley 1993, 1995, D'Emilio 1989, and Weeks 1989.

with a medicalized discourse of degeneracy (pp. 73-81). By tracing Spence-rian social Darwinism and eugenic approaches to both criminal and artistic behavior, Foldy weaves a discourse that goes some distance toward explaining the remarkable venom and publicity associated with the Wilde trials. Foldy describes the decadent artists' ambivalent response to modernity, both rejecting "progress, science, democracy, universal suffrage, and the spread of education" and embracing "the novelty, excitement, and possibilities for self-exploration offered by the modern city and new technologies" (pp. 78-79). Particularly relevant for Foldy's project is his insight that the decadents were "keen to exploit . . . the relativization of moral values" (p. 79). By situating Wilde as the embodiment of offensiveness to late-nineteenth-century British conventions regarding sexuality, gender, aestheticism, and class, Foldy powerfully argues that, contrary to conventional wisdom, Wilde's aestheticism may have informed his same-sex sexuality as much as same-sex sexuality informed his art.

*b. Press Treatment of the Trials.* In detailing the press coverage of Wilde's trials, Foldy demonstrates how the press's evisceration of Wilde transformed a personal tragedy arising out of a family squabble into a public event, creating the conditions for the Wilde trials to contribute significantly to the construction of same-sex sexuality as a sickness called *homosexuality*. Several innovations in journalism in the late nineteenth century informed the press treatment of the Wilde trials. New Journalism sought to involve readers with the press through "byelines," headlines, investigative pieces, pictures, interviews, and, particularly important for the Wilde trials, the correspondence column (p. 49). Editorials and letters to the editor reveal how some of Wilde's contemporaries interpreted his trials. By providing this forum, and selecting which opinions to publish, the press thus both sensationalized the trial testimony and shaped the meaning of the trials.

Most striking are the vociferous tone of discussions of the trials in the correspondence columns, the tepid nature of the few defenses on Wilde's behalf, and Lord Alfred Douglas's and Queensberry's participation in this public debate. The *Pall Mall Gazette* editorialized:

We have had enough, and more than enough of Mr. OSCAR WILDE, who has been the means of inflicting upon public patience during the recent episode as much moral damage of the most offensive and repulsive kind as any single individual could well cause. If the general concern were only with the man himself—his spurious brilliancy, inflated egotism, diseased vanity, cultivated affectation, and shameless disavowal of all morality—the best thing would be to dismiss him and his deeds without another word to the penalty of universal condemnation. (pp. 52-53)

The *Daily Telegraph* similarly condemned Douglas and Wilde in the name of defending what might now be described as family values:

[W]e saw in this case a son addressing his father in terms which in ancient days would have involved his death. The superfine Art which admits no moral duty and laughs at the established phrases of right and wrong is the visible enemy of those ties and bonds of society—the natural affections, the domestic joys, the sanctity and sweetness of the home. (p. 54)

Other than the “limited” and “qualified” support of progressive thinker and playwright Robert Buchanan, no one countered this vitriol with substantive support for Wilde (p. 59). The press both publicized the trials and excoriated Wilde for bringing issues of same-sex sexuality into the public view, doing precisely what it criticized Wilde for doing—discussing art, sexuality, and morality in public.<sup>16</sup> This analysis would apply equally to the recent pattern of contemporary American newspapers eagerly publishing and condemning the salacious details of Kenneth Starr’s report to Congress about President Clinton’s sexual conduct.

Even Queensberry and Lord Alfred Douglas joined this public debate in the London press. Queensberry countered Buchanan’s assertion in the *Daily Telegraph* that Wilde was innocent until proven guilty (p. 60), and Lord Alfred Douglas joined the fray to echo Buchanan’s defense:

I am taking my life in my hands in daring to raise my voice against the chorus of the pack of those who are now hounding Mr. Oscar Wilde to his ruin. . . . I submit that Mr. Oscar Wilde has been tried by the newspapers before he has been tried by a jury, that his case has been almost hopelessly prejudiced in the eyes of the public from whom the jury who must try the case will be drawn, and that he is practically being delivered over bound to the fury of a cowardly and brutal mob. (p. 61)<sup>17</sup>

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16. Michael Foucault has suggested that this simultaneous discussion and insistence that the topic is too horrible to discuss is more than mere hypocrisy. He sees this pattern as reflecting mechanisms of power, in which those who regulate justify doing so by denouncing the objects of regulation, yet the regulators must also maintain the hated population in order to retain their own power. Foucault 1978, 10.

17. Foldy portrays Lord Alfred Douglas in a negative light, describing this editorial defense as reflecting “Douglas’ own narcissistic injury and his own suffering, arising from being deprived of his lover, best friend, and alter ego.” When Foldy occasionally cuts Douglas some slack, his treatment remains condemnatory: “Psychologically, Douglas’ attempt to appear publicly in the guise of Wilde’s savior might be seen as an attempt to compensate for possible feelings of inadequacy or helplessness resulting from his inability to alleviate Wilde’s situation. From another perspective, it might also be seen as a way of belatedly assuming responsibility in order to assuage possible guilt feelings about his own complicity in Wilde’s predicament” (p. 61).

The extensive press treatment of the trials reflects their significance for late-nineteenth-century England. But the alliances between the press and the social purity movement expanded the trials' relevance.

c. *Situating the Trials within the Social Purity Movement.* Foldy builds on the press coverage to situate the Wilde trials as part of social purity movement and explores the significance of *Pall Mall Gazette* publisher W. T. Snead's influential role in both (pp. 129–34). Unlike the rest of the book, which virtually ignores women in general and feminism in particular,<sup>18</sup> Foldy engages in a nuanced approach to various strands of late-nineteenth-century feminist thought in the social purity movement (p. 133). Moreover, he ties in his earlier discussions of aestheticism, decadence, and degeneracy to the social treatment of Wilde as himself diseased (pp. 141, 145).

## B. Stage Two: Sickness to Normal Variation

### 1. *Describing the Shift from Sickness to a Neutral Status*

In the 1950s Dr. Evelyn Hooker revolutionized social understandings of sexual orientation by demonstrating that men who engage in same-sex sexual conduct are not psychologically different from men who engage in opposite-sex sexual conduct. (Hooker 1957, 1958). In one of her studies, Hooker had two experts in the interpretation of Rorschach inkblot tests evaluate the responses of 60 men (half gay and half heterosexual). The experts were unable to do better than chance in identifying which responses were from gay men and which ones were from heterosexual men (Hooker 1957). Based on these results, Hooker reached two conclusions that revolutionized how mental health professionals viewed sexual orientation: first that “[h]omosexuality as a clinical entity does not exist. Its forms are as varied as those of heterosexuality,” and second that “[h]omosexuality may be a deviation in sexual pattern which is within the normal range, psychologically” (Hooker 1957, 30). Hooker's findings discredited the idea that same-sexuality was pathological; by 1985 both the American Psychological and the American Psychiatric Associations announced that homosexuality was not a mental illness.<sup>19</sup> Many people's preference in the normal variation stage for the lighthearted term *gay* over the clinical term *homosexual*

18. Foldy totally neglects Wilde's wife, Constance, for example.

19. In 1973, the American Psychiatric Association announced that same-sex sexuality was not a mental illness. Bayer 1981, 129, 137. In 1985, the American Psychological Association resolved that same-sex sexuality “implies no impairment in judgment, stability, reliability or general social or vocational capabilities.” American Psychological Association, Resolution (Jan. 1985), excerpted in *Janitz v. Muci*, 759 F. Supp. 1543, 1548 (D. Kan. 1991), *rev'd on other grounds*, 976 F.2d 623 (10th Cir. 1992). By the time that the modern gay rights movement took off in 1969 with the New York City riots protesting arrests of gay patrons of a bar

reflects their refusal to view same-sex sexuality as a disease. However, as the strength of contemporary antigay political forces indicates, many people still understand homosexuality as an illness.<sup>20</sup>

## 2. *Wilde as Poster Child for Gay Identity*

As gay rights advocates have long recognized, Wilde's story is a powerful illustration of why the law should not criminalize love. This reading treats Wilde as a martyr for same-sex love. Wilde's romantic love for Lord Alfred Douglas initiated the proceedings, as it was this relationship (as well as, perhaps, Drumlanrig's love for Prime Minister Rosebery) that drew Queensberry's wrath. Romantic love further provides a coherent reason for Wilde to have failed to avail himself of the proffered opportunities to escape imprisonment. Wilde's letters to Douglas demonstrate both his passionate love and the tumultuous nature of their relationship. Wilde conflated Douglas with Wilde's highest ideal and purpose for being: beauty. In March 1893 (two years before the trials), for example, Wilde foreshadowed his demise and expressed a placating devotion to the high-maintenance Douglas:

I would sooner be blackmailed by every renter [male prostitute] in London than have you bitter, unjust, hating. I must see you soon. You are the divine thing that I want, the thing of grace and beauty. (Gardiner 1995, 97)

Similarly, in July 1894 (eight months before the trials) Wilde effervesced with loving passion in another letter to Douglas:

I want to see you. It is really absurd. *I can't live without you.* You are so dear, so wonderful. I think of you all day long, and miss your grace, your boyish beauty, the bright sword play of your wit, the delicate fancy of your genius, so surprising always in its sudden swallow-flights towards north and south—towards sun or moon—and, above all, you yourself. (Gardiner 1995, 98)

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called the Stonewall Inn, the movement had embraced Oscar Wilde as a victim of unjust persecution and a martyr for the "love that dare not speak its name." Shewey 1998.

20. Examples of legal doctrine that reflects understandings of same-sex sexuality as a sickness rather than a normal variation include the continued existence and enforcement of sodomy laws, the permissibility of employment and housing discrimination on the basis of sexual orientation in most jurisdictions, and limitations on the parental rights of gay people. Those who defend the sin or sickness understandings of same-sex sexuality often use moral justification. But "the moral sense of the community' is a slippery and complex idea . . . . [I]t is the sense of people who count, the respectable middle and upper classes . . . . Moreover, people often say one thing and do another. The laws against morality certainly represent values people think they *ought* to have, but not at all necessarily what they (secretly) think or want." Friedman, 1993, p. 126.

These letters show that Wilde loved Douglas. Yet Wilde's public denial of same-sex sexuality hampers his canonization in the name of gay pride.

It is possible, however, to read Wilde's initial offense at being called a "sodomite" as consistent with gay pride. Assuming that Wilde saw "sodomy" as loathsome and somehow distinguishable from his aesthetic experiences with beautiful men and the expression of his love for Lord Alfred Douglas, perhaps he could deny being a sodomite and in the same breath embrace some embryonic version of gay pride. Postconviction, Wilde admitted to same-sex sexuality, doing so in a way that sounds a lot like late-twentieth-century gay pride. While in prison, he refused a friend's passionate sympathy for him as an innocent "victim of a hideous plot," telling his friend that while some of the charges were groundless, "that my life had been full of perverse pleasures, and that unless he accepted that as a fact about me and realised it to the full I could not possibly be friends with him any more, or ever be in his company" (Wilde 1951, 131).

Wilde's trial testimony defending his relationship with Douglas also supports Wilde's place in normal variation stage of the evolution of sexual orientation. When questioned about "the love that dare not speak its name" referenced in Douglas's poem "Two Loves," Wilde testified:

"The love that dare not speak its name" in this century is such a great affection of an elder for a younger man as there was between David and Jonathan, such as Plato made the very basis of his philosophy, and such as you find in the sonnets of Michaelangelo and Shakespeare. It is that deep, spiritual affection that is as pure as it is perfect. It dictates and pervades great works of art like those of Shakespeare and Michaelangelo, and those two letters of mine, such as they are. It is in this century misunderstood, so much misunderstood that it may be described as the "Love that dare not speak its name," and on account of it I am placed where I am now. It is beautiful, it is fine, it is the noblest form of affection. There is nothing unnatural about it. It is intellectual, and it repeatedly exists between an elder and a younger man, when the elder has intellect, and the younger man has all the joy, hope, and glamour of life before him. That it should be so, the world does not understand. The world mocks it and sometimes puts one in the pillory for it. (p. 117)

When asked if he felt this affection for all of the young men with whom he associated, Wilde replied indignantly, "Certainly not! One feels that once in one's life, and only once, towards anyone" (p. 117). This focus on passionate love, rather than sex, counters an interpretation of same-sex sexuality as pathological, just as Hooker's findings do. Thus Wilde's own words, the best evidence of a writer's place in the world, make a compelling case for designating him as a spokesperson for the normal variation stage's understanding of same-sexuality.



### C. Stage Three: Post-Identity Analysis

#### 1. *Describing the Shift from Neutral Status to Post-Identity Analysis*

The third shift in understandings of sexual orientation is quite recent, occurring in the late twentieth century. In a nutshell, this stage departs from the earlier understandings of same-sex sexuality as either a bad status (sickness) or a good status (normal variation) to focus instead on beliefs that challenge abuse of power based on race, sex, gender, sexual orientation, and class. This set of beliefs, rather than sexual conduct or orientation, designates a person as queer. Because the category queer focuses on beliefs rather than conduct or status, it is a deliberate nonidentity.

Queer theorists defend the new category queer as preferable to the old status-based categories homosexual and gay by critiquing status-based designations in general. They suggest that categorizing people based on identity is problematic for two reasons, reasoning that status designations are: (1) illegitimate because they exploit power imbalances; and (2) inevitably inaccurate because membership in the group is either arbitrary or changing.

Under this analysis, status-based identity categories are illegitimate exercises of power because they are used to allocate benefits and burdens. Legal doctrines that designate a person as male or female, for example, determine whether that person can marry the person of his or her choice.<sup>21</sup> Historically, legal doctrines determined whether a person was white or a person of color in order to make a similar determination.<sup>22</sup> Queer theorists are quick to point out that status designations by have-nots are also exercises of power, such as gay rights organizations excluding transgendered people from proposed amendments of Title VII to protect against employment discrimination on the basis of sexual orientation.<sup>23</sup>

The second justification for the post-identity category queer is that status designations are inevitably inaccurate. While proponents of status designations often defend them as natural, biological, or inevitable, careful analysis reveals that the statuses are socially constructed. For example, the

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21. See *M.T. v. J.T.*, 355 A.2d 204 (N.J. 1976) (considering gonads, external genitalia, ability to procreate, sexual anatomy at birth, and gender—described as a person’s “psychological sex”—in order to determine whether a male-to-female transsexual was capable of marrying a man). In *M.T. v. J.T.*, the New Jersey Supreme Court concluded that a male-to-female transsexual’s gender (sense of oneself as male or female) and genitalia (determined by the ability “to function sexually as a male or female”) dictated that she was legally female, making her marriage to a man valid and entitling her to support upon its dissolution.

22. See Bardaglio 1995, 48–64; for an excellent discussion of nineteenth-century constructions of race in the context of estates and trusts, see Davis 1999.

23. Representative Barney Frank has stated that political realities require that any amendment to federal employment law to protect against discrimination on the basis of sexual orientation cannot pass if it includes protection of transgendered individuals. *Fair Employment Practices Newsletter*, 10 July 1997, 83.

United States Census Bureau has designated race differently at different times. Until the 1960s census takers did not ask people their race, but rather surmised it based on the person's skin, hair, eyes, nose, and other physical features. Persons of mixed parentage were "placed in the race classification of the nonwhite parent" (U.S. Department of Commerce 1959, 2). The 1960 and 1970 censuses identified race "principally" through self-enumeration. The 1960 census classified people of mixed parentage based on whether one of the parents was white (a person was "the other race" if one parent was white, and the father's race if neither parent was white) (U.S. Department of Commerce 1971, 3). The 1970 census used the father's race to classify only those respondents "who were in doubt as to their classification" (U.S. Department of Commerce 1971, 3). Again changing its methodology, the 1980 census designated people of mixed race by the race of a person's mother (U.S. Department of Commerce 1980, B-2). The very fact of these ever-changing methods of racial determination indicates that race is a social construction.

Queer theorists similarly point out that sex, like race, is socially constructed. While law assumes that there are only two sexes, biologist Anne Fausto-Sterling suggests that there are at least five sexes (Fausto-Sterling 1993). Transsexual marriage cases in which a court must determine whether the transsexual is a "real man" or a "real woman" to determine the legal validity of a marriage beg this question of what makes a person a real man or a real woman. While these decisions reach a conclusion about a transsexual person's sex because the ban on same-sex marriage forces them to do so, these decisions paradoxically reveal that sex can be determined in many ways, including chromosomes, hormones, external genitalia, assignment at birth, and current self-identity. In short, as much as this insight might distress Aretha Franklin, given her classic rendition of "[You Make Me Feel Like a] Natural Woman," there is no such thing as a natural woman (or a natural man)—only the idea, a cultural artifact, that sex is natural.<sup>24</sup>

Once one buys the idea that sex is socially constructed, then sexual orientation must also be. In other words, if there are five sexes, then legal rules based on whether a person is with a person of the same sex (i.e., a 1 being with another 1) or with a person of a different sex (i.e., a 1 being with a 2, 3, 4, or 5) cease to make sense. Moreover, even if one retains a faith in

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24. As Judith Butler points out, even the famous refrain suggests the provisional nature of sex and sexual orientation: "When Aretha Franklin sings, 'you make me feel like a natural woman,' she seems at first to suggest that some natural potential of her biological sex is actualized by her participation in the cultural position 'woman' as object of heterosexual recognition . . . [S]he also seems fully and paradoxically mindful that that confirmation is never guaranteed, that that effect of naturalness is only achieved as a consequence of that moment of heterosexual recognition. After all, Aretha sings, you make me feel *like* a natural woman, suggesting that this is a kind of metaphorical substitution, an act of imposture, a kind of sublime and momentary participation in an ontological illusion produced by the mundane operation of heterosexual drag." Butler 1991, 27–28.

two natural sexes, sexual orientation, like race and sex, is socially constructed. Sexual orientation could be based on a number of factors, including current practices, past practices, desire, and self-identification. The fact that race, sex, and sexual orientation are mutable demonstrates the queer theory point that designation of status based on them is inevitably arbitrary and often inaccurate.

In short, post-identity understandings of sexual orientation reject status as essentialist, embracing instead the nonidentity queer. Instead of drawing lines based on skin color, genitalia, or the genitalia of a person's sex partner, queer theory groups people together based on their opposition to subordination. The founding mother of queer studies, Eve Kosofsky Sedgwick, for example, has said that one can be both queer and heterosexually married (Duggan 1995, 168).

While each of these three stages of evolution is discrete, each shift also carries remnants of the prior stage and may also prefigure the next one. Wilde's trials fit within all three stages, which may explain why they continually re-emerge as a touchstone in legal and social discussions about appropriate regulation of same-sex sexuality.

## 2. *Wilde as Poster Child for Queer Post-Identity Analysis*

While Wilde's trials place him as a key player in both the sickness and normal variation stages of sexual orientation evolution, his story may cohere most clearly with post-identity queer theoretical approaches to sexual orientation. First, Wilde is more accurately described as queer than as gay.<sup>25</sup> He married and had two children with Constance Lloyd. If the terms *homosexual* and *gay* imply an exclusive attraction to one's own sex, then Wilde's marriage (and other dalliances with women) disqualify him from the category.<sup>26</sup> An additional barrier to categorizing Wilde as gay turns on the fact that Wilde distanced himself from the category sodomite by suing the Marquess of Queensberry for libel and denying any improprieties with other men in all three trials. In the terminology of the gay rights movement, Wilde tried to remain closeted in his legal proceedings, which calls into question his place as posterchild for gay identity, since gay identity is associated with pride rather than shame.

Unlike homosexual and gay, the category queer easily embraces a fluid sexuality and thus accommodates Wilde's marriage, his love affair with Lord Alfred Douglas, and his sexual encounters with other men and women.

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25. For further discussion of Wilde as a postmodernist ahead of his time, see Dollimore 1991, Craft 1990, Fineman 1996, and Sedgwick 1993, 52.

26. Indeed, Richard Ellman suggests that Wilde died of complications from syphilis, which he contracted from a female prostitute during his college days at Oxford. Ellman 1987, 92.

Queer theory recognizes the significance of multiple identity categories that were so crucial to the trials. As a matter of legal doctrine, Wilde was tried for gross indecency, or sexual contact with other men.<sup>27</sup> But the trial testimony indicates that Wilde's social crimes were based on more than sexual contact: the testimony focused on gender, class, and generational differences at least as much as (if not more than) sexual conduct.<sup>28</sup> The trial testimony reveals that Wilde violated gender norms by treating young men "as women" (pp. 32–33) and by associating with Alfred Taylor, an effeminate man who introduced him to other men.<sup>29</sup> Also introduced at trial was evidence that Wilde violated conventions of class and intergenerational relations by dining and travelling with young working-class men. Thus Wilde was on trial for violating norms not only of sexual orientation or sexual conduct but also of gender, class, and intergenerational relations. The significance of multiple identity categories suggests that queer theory provides a more adequate account of Wilde's trials than one that centers on an essential homosexual or gay identity.

The testimony that Foldy calls the literary part of the case further supports the categorization of Wilde as queer by illustrating that Wilde's gross indecency was not merely sexual, but closely tied to his beliefs about art and literature. Moreover, Queensberry's allegedly libelous statement that Wilde was "posing as a sodomite [sic]" suggests the provisionality of the term. Wilde's crime was appearing to engage in same-sex sexuality, and Queensberry's declaration that "I do not say that you are it . . . but you look it, and you pose at it, which is just as bad" (Ellman 1987, 447) suggests there is no difference between apparent and real homosexuality. This destruction of fundamental boundaries (between same-sex and opposite-sex sexuality) is central to queer theory: it reveals that there is no essential, measurable heterosexuality and homosexuality (only the appearance thereof), so that legal

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27. The statute provided: "Any male person who, in public or private, commits, or is a party to the commission of, or procures, or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanor." The penalty was a prison term not exceeding 2 years. 48 and 49 Vict. C. 69, s. 11. Sodomy, in contrast, carried a penalty ranging from 10 years to life and applied whether the conduct was between men or between a man and a woman. 24 and 25 Vict. C. 100, s. 61.

28. A key element of queer theory, of course, strives for gender and sex equality. Given Constance Lloyd Wilde's public humiliation during the trials (and Wilde's statement to a friend about his distaste for her pregnancy, since it transformed her from "a beautiful girl, white and slim as a lily" to "heavy, shapeless, deformed . . . [and] sick always," Ellman 1987, 266), it is tempting to dissociate Wilde from feminism. For a fascinating argument linking Wilde's advocacy of women's rights (including education and dress reform) to his influence on twentieth-century feminist writers such as Virginia Woolf, see Vanita 1996, 10–12, 83–89. In a somewhat different vein, Kerry Powell suggests that Wilde's friendship with feminist actor Elizabeth Robins was not nearly as benevolent as Ellman suggests that it was. Powell 1997, 149–73.

29. Wilde and Taylor were tried together for gross indecency in the first trial and in immediate succession in the second trial. Both were convicted and sentenced to two years hard labor.

regulations based on the distinction are both inaccurate and illegitimate exercises of power.

Trial testimony illustrates the contingency of the homosexual-heterosexual distinction. Queensberry's counsel cross-examined Wilde about his views of literature, introducing into evidence two letters Wilde wrote to Lord Alfred Douglas; Wilde's novel *The Picture of Dorian Gray*; his contribution to the Oxford literary magazine the *Chameleon*; and three other items published in the *Chameleon*—two poems by Lord Alfred Douglas and a story titled "The Priest and the Acolyte" that was widely attributed to Wilde. The cross-examination allowed Wilde to express his views on the relationship between literature and morality. The following excerpt from the libel trial illustrates Wilde's refusal to subject literature to moralistic standards:

*Carson* [Queensberry's counsel]: This is your introduction to *Dorian Gray*: "There is no such thing as a moral or an immoral book. Books are well written, or badly written." That expresses your view?

*Wilde*: My view on art, yes.

*Carson*: Then, I take it, that no matter how immoral a book may be, if it is well written, it is, in your opinion, a good book?

*Wilde*: Yes, if it were well written so as to produce a sense of beauty, which is the highest sense of which a human being can be capable. If it were badly written, it would produce a sense of disgust.

*Carson*: A perverted novel might be a good book?

*Wilde*: I don't know what you mean by a "perverted" novel.

*Carson*: Then I will suggest *Dorian Gray* as open to the interpretation of being such a novel?

*Wilde*: That could only be to brutes and illiterates. The views of Philistines on art are incalculably stupid. (P. 10).

Legal doctrine cannot explain fully why questioning related to Wilde's views of literature took up so much of the libel trial (and also was admitted to the criminal trials), but queer theory might explain Wilde's crime as not so much having sex with other men but rather as violating social norms governing sex, class, gender, aestheticism, and intergenerational relations. His "gross indecency," in short, was not merely sexual. The excerpt below, which followed directly after the one just mentioned, sheds light on the relationship between legal regulation of sexual conduct and Wilde's social crimes of aestheticism and intellectual elitism:

*Carson*: An illiterate person reading *Dorian Gray* might consider it such a novel?

*Wilde*: The views of illiterates on art are unaccountable. I am concerned only with my view of art. I don't care twopence what other people think of it.

*Carson:* The majority of people would come under your definition of Philistines and illiterates?

*Wilde:* I have found wonderful exceptions.

*Carson:* Do you think that the majority of people live up to the position you are giving us?

*Wilde:* I am afraid they are not cultivated enough.

*Carson:* Not cultivated enough to draw the distinction between a good book and a bad book?

*Wilde:* Certainly not.

*Carson:* The affection and love of the artist of *Dorian Gray* might lead an ordinary individual to believe that it might have a certain tendency?

*Wilde:* I have no knowledge of the views of ordinary individuals.

*Carson:* You did not prevent the ordinary individual from buying your book?

*Wilde:* I have never discouraged him. [laughter] (P. 11)

This exchange reveals the double-edged effect of class in Wilde's trials. He was deemed a traitor to his class for consorting with working-class men and also condemned for disagreeing with middle-class morality. If he were being tried for same-sex sexuality per se, then his relationships with Douglas would have been subject to scrutiny. But Douglas was relevant only in the literary portion of the trial, which examined Douglas's poems and two letters Wilde wrote to him. The sexual conduct portion of the trial focused only on Wilde's relations with men other than Douglas, specifically his sexual relations with working-class men.

While there was some evidence of sexual conduct (such as chambermaids' testimony about the state of Wilde's sheets), most of the evidence of "gross indecency" turned on a social gross indecency regarding age, class, and gender. Wilde's male companions were between 16 and 19 years old, and Wilde was in his late 30s at the time of their relations (pp. 160 n. 41, 183 n. 91). Gender became an issue when one of the men testified that he sat on Wilde's lap "imagining I was a girl and he was my lover," and that these men and Wilde sometimes called each other "Mrs. Wilde," or "Miss Oscar" (Gardiner 1995, 134). Further demonstrating the importance of the gender issues at trial was the evidence of women's wigs, shoes, stockings, and perfume being present during Wilde's meetings with these men (Gardiner 1995, 134).

*The Trials of Oscar Wilde* contributes to our understanding of sexual orientation. If this third paradigm shift (from naturalness to provisionality) proves to be as great as the late-nineteenth-century shift from sin to sickness, the magnitude of this alteration would require tomes of discussion in multiple contexts. While few of the recent treatments of Wilde's trials

explicitly invoke queer theory,<sup>30</sup> the resurgence of interest in Wilde could reflect the osmosis of queer theory's insights into popular culture.

### ACT III. FOLDY'S TREATMENT OF WILDE'S TRIALS

#### A. Situating Wilde as a Key Element in Sickness Understanding of Same-Sex Sexuality

Wilde is often viewed as one who brings the sensibilities of same-sex sexuality to his writing ("Tales of the Avunculate: Queer Tutelage" in *The Importance of Being Earnest*, in Sedgwick 1993). In contrast, Foldy suggests that Wilde brought his art to his sexual sensibility and that the public manner in which he did so contributed to the social construction of same-sex sexuality. In doing so, Foldy reverses the conventional focus, prioritizing Wilde's art and making his sexuality an expression of a larger aesthetic. Foldy is on firm theoretical ground in this section. Making the argument that Wilde's art and his sexual orientation (or practices) are co-constitutive helps explain Wilde's role as the poster boy for queer post-identity. This analysis invites consideration of multiple and overlapping identities, based on more nuanced considerations than an essentialized and deterministic sexual orientation.

#### B. Using Techniques of Post-Identity Analysis

Foldy uses the tools of cultural studies to reconstruct how Wilde's contemporaries and Wilde himself understood his deviance. He does much of this well, particularly when he explores how Wilde's life and writing anticipated postmodern rejection of "the possibility of a single, monolithic, absolute 'Truth' in favor of the simultaneous existence of multiple and equally valorized 'truths'" (p. 108) and when he links Wilde to the social construction of same-sex sexuality as a pathological status (pp. 67–96). However, he underemphasizes social factors (such as the significance of the age and class differences between Wilde and his companions) and overemphasizes the importance of anal sex. In doing so, Foldy's volume falls short of its stated goal to contribute to a "broader understanding of the many contributing factors that constituted Wilde's 'deviancy'" (p. xi).

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30. A notable exception to the general absence of queer theory in mainstream accounts of Wilde is the brief commentary by an insufferable academic in Moises Kaufman's play *Gross Indecency: The Three Trials of Oscar Wilde*, who makes several points similar to those raised in this essay.

### 1. *Ontological Aesthetic of Dissent*

Foldy's analysis is weakest when he tries to reconstruct how Wilde himself understood his deviance. This shortcoming however should be understood in light of Foldy's ambitious goal and Wilde's insistence in weaving paradox into nearly every facet of his life.<sup>31</sup> Foldy starts out strongly, suggesting that Wilde was motivated by an "ontological aesthetic of dissent," which he defines as antinomian, camp, and hedonistic. (pp. 98-99). Antinomianism refers to a code of conduct for artists, a "militant, elitist and egotistical form of radical individualism which justified the flouting of existing civil and moral laws by 'exceptional' individuals" (p. 99); camp refers to a sensibility characterized by theatricality, irony, aestheticism, and humor (p. 101); and hedonism implements the antinomian value by exalting "the self-indulgent pursuit of pleasure as the primary goal of life" (p. 99). This synthesis of Wilde's world view is promising until Foldy stumbles into the trap of making high theory out of low misdemeanors—of mistaking Wilde for a specimen illustrating what he calls the metaphysics of sodomy. Not surprisingly, Foldy's argument becomes heavy-handed and essentialist in its attempt to read the mind of one as complex as Wilde.

### C. *Foldy Paradoxically Reaches Essentialist Conclusions Using Post-Identity Analysis*

As reflected in Wilde's testimony set out above, Wilde thought of art and morality in unconventional terms. Foldy convincingly argues that Wilde saw his art as independent of conventional morality, except that it challenged the moralistic status quo.<sup>32</sup> Foldy might have ended his analysis here. Unfortunately, he seems to have stumbled into precisely the type of error to which Wilde might have objected: applying a monistic moral analysis to understand a person who strongly rejected both monism and conventional morality. In doing so, Foldy makes essentialist assumptions about Wilde's sexuality that conflict with the basic premises of Foldy's otherwise post-identity social constructionist approach.

Foldy first errs by speculating that Wilde understood himself to be a pederast.<sup>33</sup> This term is improper for linguistic, cultural, and analytical

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31. Wilde is notoriously difficult to pin down because "contradictoriness was his orthodoxy." Ellman 1987, 143. In Wilde's words, "A truth in art is that whose contradictory is also true." As quoted in Ellman 1987, 99. Foldy acknowledges this aspect of Wilde (p. 108).

32. P. 110. Further support is found in Wilde's quip in *The Picture of Dorian Gray*: "Women are a decorative sex. They never have anything to say, but they say it charmingly. Women represent the triumph of matter over mind, just as men represent the triumph of mind over morals." Wilde 1959, 38 (quoting *The Picture of Dorian Gray*).

33. P. 119 ("Defined very broadly, pederasty signals the love of an older man for a younger man").



reasons. Linguistically, pederasty denotes anal sex between an adult male and a boy.<sup>34</sup> However, the young men with whom Wilde consorted were all above the age of consent. They ranged in age from 16 to 19 at the time of their relations, well over the age of consent for male sexual conduct in 1895 in England was 16 for males.<sup>35</sup> It is thus inaccurate (or worse) to use the term *pederasty* to describe Wilde's contact with men who were legal adults for all relevant purposes.<sup>36</sup> Further, pederasty is culturally erroneous in the sense that it equates Wilde's conduct with child abuse. Antigay zealots have long manufactured claims that gay men prey on young boys (Ruskola 1996), despite empirical data indicating that the overwhelming majority of child molesters are heterosexual men (Jenny, Roesler, and Poyer 1994). Foldy thus invokes an explicitly homophobic term to describe Wilde's sexuality. Finally, Foldy's description of Wilde as a pederast is analytically flawed. Foldy assumes that "Wilde's gender role was masculine and his phallic protocol was . . . insertive," with scant evidence of the first proposition and none whatsoever of the latter (p. 120).<sup>37</sup> Indeed, when Wilde described his interactions with these men in *De Profundis* (written in prison), he used masculinized, phallic imagery to describe his companions:

It was like feasting with panthers; the danger was half the excitement. I used to feel as the snake-charmer must feel when he lures the cobra to stir from the painted cloth or reed basket that holds it and makes it spread its hood at his bidding and sway to and fro in the air as a plant

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34. The dictionary definition of pederast is "one that practices anal intercourse esp with a boy," and boy is defined as "a male youth from birth to puberty." *Merriam Webster's Collegiate Dictionary*, 10th ed., s.v. "pederast," and "boy." Under Foldy's definition of pederasty, significant age difference is equated with an adult having sex with a minor, making many more actions pederasty than the conventional definition does.

35. 43 & 44 Vict. C. 45 and 48 & 49 Vict. C. 69 Sec. 11 note K in Chitty's statutes (5th ed. 1894). (Consent not a defense to indecent assault of male or female under 13, referenced at the end of the gross indecency statute that Wilde was convicted of violating.) Foldy does not present any evidence that children were involved in Wilde's sexual circle. While estimates differ as to the precise ages of the men whose relations with Wilde were at issue in the trials, no estimate suggests that they were underage. To the contrary, Alfred Taylor's landlady testified that the young men who frequented Taylor's apartment were "16 and upward." P. 184 n. 91.

36. Were one to accept Foldy's redefinition of pederasty as "the love of an older man for a younger man" (p. 119), one would have to similarly view the relationship of 49-year-old President Clinton with 21-year-old Monica Lewinsky as pedophilia. Such a change of meaning at least deserves a new term; using *pederasty* is simply inaccurate.

37. While there was evidence of fecal matter on Wilde's hotel sheets, there is no evidence whatsoever of what roles Wilde and his companions played in bed. While Foldy may be relying on the men's trial testimony that Wilde "treated them as women," having them sit on his lap and calling them "wife" or "girl," no one knows what goes on behind closed doors. Foldy does assert that two of the men "claimed that Wilde sodomized them" (p. 122), but this testimony likely was inaccurate. Ellman states that Wilde "was not attracted to anal coition," preferring "oral and intercrural intercourse." Ellman 1987, 275-76. The witnesses apparently confused their experiences with Lord Alfred Douglas with those with Wilde, so that Wilde was convicted based on evidence related to Douglas's rather than his own activities. Ellman 1987, 461, 481.

sways restfully in a stream. They were to me the brightest of gilded snakes, their poison was part of their perfection. (p. 122; Wilde 1951, 118)

This language further indicates the shakiness of Foldy's assumption that Wilde played the masculine role to other men playing the feminine role in their interactions. Indeed, the fact that there was evidence that the name "Miss Wilde" was bandied about suggests that Wilde himself might have adopted a feminine pronoun on occasion (Gardiner 1995, 134).<sup>38</sup>

As discussed above, Wilde's deep and tumultuous love for Douglas more plausibly provides a key to understanding Wilde's view of his own deviance than does his purported fascination with the penetrating role in anal sex. Foldy's misuse of the term *pederasty* and groundless assumption that Wilde took one unwavering role in sexual interactions demonstrate the shaky foundation upon which his theory rests.

Foldy also errs in proposing that sodomy was, for Wilde, "a conscious expression of his 'ontological aesthetic of dissent'" (p. 122) that expressed Wilde's subversive intentions. Foldy suggests that for Wilde, sodomy symbolized his deeply subversive intentions:

Within the context of the material and moral conditions of late-Victorian England, his intention was to subvert the "compulsory heterosexuality" of the middle classes; to subvert the class system by cultivating working-class sexual contacts; to subvert the law by engaging in illegal sexual acts; and to subvert contemporary morality by aestheticizing his immoral actions. . . . Through the private sodomitical act, Wilde transcended the effete and effeminate connotations of his dandified public image by emphasizing instead the exuberant bestiality of the act and the passion, power, and masculine virility its performance expressed. (pp. 124–25)<sup>39</sup>

The intersectional power of this passage is undermined by its faulty premises. First, as with *pederasty*, Foldy is not on firm ground. He presents

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38. Moreover, classical Greek models of male-male sex that Foldy uses, contending that Wilde emulated these models, often involved intergenerational exchanges between older men and younger men of the same class. See Valdes 1996. While the older man would play a dominant sexual role in these interactions, the class element of the model suggests that Wilde's relationship with Lord Alfred Douglas echoed the classical Greek model as much or more than his interactions with the men he met at Alfred Taylor's apartment. Significantly, the platonic ideal of these relationships is based on love and mentorship rather than just sex. Indeed, Wilde likely had not been sexual with Douglas for some time prior to the trials. Ellman 1987, 436. His love for Douglas, rather than his sex with men, catapulted him toward legal destruction.

39. In describing sodomy as a perversion (unlike homosexuality, which Foldy hastens to say is not), he adopts the analysis of the Marquis de Sade in suggesting that sodomy "strikes precisely at the law of propagation of the species in the individual. It evinces an attitude not only of refusal, but also of aggression; in being the simulacrum of the act of generation, it is a mockery of it" (p. 123, quoting Klossowski).

no evidence that Wilde found the act of sodomy itself definitive nor even that he engaged in it. While there was some testimony about soiled sheets and anal sex at the trials (p. 122), Wilde did not like anal sex and took “the blame for several of Douglas’s erotic encounters” (Ellman 1987, 481). Foldy acknowledges that Wilde “was accused of (and took credit for) one of Douglas’s trysts” (p. 122).<sup>40</sup>

The misguidedness of Foldy’s focus on the metaphysics of sodomy as the cornerstone of Wilde’s understanding of his own deviance is further illustrated by Foldy’s designation of Wilde’s sexual interest in other men as a perversion. According to Foldy, “Wilde’s actions . . . although completely understandable, must be considered perverse” (p. 125). Foldy defines a pervert as “one who is possessed by an ‘improper object,’ and who lives his life in the pursuit of a sole defining gesture” (p. 125). However, as already discussed, Foldy offers limited evidence of the extent or nature of Wilde’s engagement in sodomy and absolutely no evidence that it was the focal point of his existence. Yet he speaks as if as if it were obvious: “Wilde clearly endowed the sodomitical act with a greater symbolic importance than it generally possessed in late-Victorian society, and for that reason the act was for him, in all respects, an expressive and signifying gesture, and, indeed, an act of self-definition” (p. 125).

Further pathologizing the act, Foldy suggests that while Wilde “pursued other gestures of self-expression . . . besides sodomy, such as his critical, literary, and theatrical endeavors, . . . he seemed unable to stop pursuing sexual contact with young men” (p. 125). As support for this position Foldy offers a letter Wilde wrote to his loyal friend Robert Ross shortly after his release from prison:

It is very unfair of people being horrid to me about Bosie [Lord Alfred Douglas’ nickname] and Naples. A patriot put in prison for loving his country loves his country, and a poet put in prison for loving boys loves boys. To have altered my life would have been to have admitted that Uranian [same-sex] love is ignoble. I hold it to be noble—more noble than other forms. (pp. 125–26).

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40. See note 37. Moreover, Wilde might not have embraced the approach of the Marquis de Sade as readily as Foldy suggests. In *De Profundis*, his alternately angry and devoted love letter to Douglas from prison, Wilde expressed disgust at the prospect of being linked with the Marquis de Sade: “I was arrested and your father became the hero of the hour: . . . your family now ranks strangely with the Immortals: for with the grotesqueness of effect that is as it were a Gothic element in history, . . . your father will always live among the kind pure-minded parents of Sunday school literature; your place is with the infant Samuel; and in the lowest mire of Malebolge I sit between Gilles de Retz and the Marquis de Sade. Wilde 1951, 23–24. This passage suggests that Wilde would not have embraced Foldy’s one-dimensional analysis.

Wilde's letter indicates that Wilde's view of his own deviance was not the shameful dependence on a perverse object that Foldy sees, but rather a noble love, comparable to patriotism.<sup>41</sup>

Though Foldy's inaccurate stereotypes do not pervade the book (see pp. 67–71 for his interesting discussion of heterosexism), he ultimately seems to embrace this perspective on homosexuality as a sickness and concludes his analysis with a statement describing Wilde's conduct as "evil."

Before the trials, Wilde had his own way with society, and he could afford to ignore the public and to design and inhabit a private world of evil and fantasy instead. After the trials, of course, the tables were turned and it was society that had its way with Wilde. (p. 128)

The retributive tone to this conclusion gives the impression that Foldy identifies more with the court, Queensberry, and the press than with Wilde. Perhaps the shortcomings of his attempt to reconstruct Wilde's own view of his deviance stem from Foldy's own failure of empathy.

Also missing from Foldy's account is any analysis of why Wilde participated in his own destruction, both by bringing the libel action and by failing to flee England for France when the magistrate deliberately gave him the opportunity to do so (p. 20). Foldy's speculative suggestion that Wilde was obsessed with anal penetration does little to explain this seeming self-destructiveness, seriously hampering Foldy's reconstruction of Wilde's deviance as he himself understood it. An alternative explanation, which Foldy does not entertain, suggests that Wilde's extraordinary love for Douglas might have led him to believe that he was not deviant at all and would be vindicated, or that honorable sacrifice was an appropriate expression of his love. Wilde said as much in a letter to Douglas a few days before the verdict:

In anguish and pain, in grief and humiliation, I feel that my love for you, your love for me, are the two signs of my life, the divine sentiments which make all bitterness bearable. Never has anyone in my life been greater, more sacred, more beautiful. . . . I know now how much greater love is than anything else. . . my sweet rose, my lily of lilies, it is perhaps in prison that I am going to test the power of love. (Gardiner 1995, 141–42)

While the devotion in these lines suggests that Wilde stands for same-sex love as a normal variation of opposite-sex love, other elements of his trials

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41. Foldy's definition of perversion raises two questions. Would Foldy consider his own "single-minded absorption" in writing this book, as described on the acknowledgments page, a perversion? Similarly, would he consider his opposite-sex passion for his wife, as evidenced by his dedicating the book to her, a perversion? The only distinction between Foldy's objects of devotion and Wilde's is that one's interests are socially and legally conventional, while the other's are not.

also situate him as the personification of sickness and post-identity understandings of sexual orientation. Wilde, master of multiplicity, might have embraced his paradoxical role in three widely divergent constructions of sexual orientation. The only thing that is certain is that Wilde played his role in the courtroom drama to the end, and the construction of sexual orientation has never been the same.

## FINALE

*The Trials of Oscar Wilde* accomplishes much of what it sets out to do. It convincingly reconstructs Wilde's deviance as his contemporaries perceived it and in doing so makes a compelling argument that the trials played a key role in the first shift of sexual orientation evolution, the late-nineteenth-century transition of same-sex sexuality from sin to sickness. This essay builds on Foldy's analysis, contending that the story of Wilde's trials is a touchstone for all three stages of twentieth-century sexual orientation evolution: homosexuality (a vilified status understood as a sickness); the positive status of same-sex sexuality as a normal variation; and contemporary post-identity understandings of same-sex sexuality.

Foldy's volume falters in attempting to reconstruct Wilde's own views of his deviance, abandoning the intersectional approach of social constructionism just when it might have done the most good. In doing so Foldy reaches essentialist and pathologizing conclusions about Wilde, paradoxically using post-identity methodology to do so. When Foldy alliteratively summarizes where he has taken the reader, he also reveals his bias against Wilde:

Wilde's image was invested with much more than just a deviant sexuality. Rather, he represented a frightening constellation of threats[:] . . . foreign vice, foreign art, and indirectly the legacy of foreign ruler; he represented the useless, lawless, effeminate, and sexually debauched upper classes; he represented an elite and effete form of art, and an aesthetic and anarchistic aesthetic; finally, and tragically, he represented the abuse of privilege and the misuse of talent. (p. 149)

It is not surprising that a biographer might not like his or her subject, but it does present problems when a writer attempting to reconstruct a subject's own view of him or herself exhibits the prejudices of the subject's fiercest enemies. Given the paradoxes imbedded in Wilde himself and the trials' key role in the evolution of twentieth-century understandings of sexual orientation, it is hardly surprising that such an ambitious attempt to understand this important legal, social, and historical event would occasionally falter. Foldy's reach was perhaps destined to exceed his grasp given the complexity

of Wilde's character and story; manipulating and evading categorization was Wilde's play.

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