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Tracing the "Infectious Criminal": A Genealogy of HIV Criminalization and Infectious Injustice in Finland

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ABSTRACT *This article examines the junction of state healthcare and punishment through HIV criminalization. By problematizing the application of criminal law to HIV in Finland, the study locates a genealogy of the "infectious criminal" – a figure at the cusp of these two forms of state power. The article traces how this figure, evoked in official debates from the early 20th century onwards, justified punitive measures to control marginalized people, from poor merchants to prisoners-of-war, sex workers, vagrants, and later, migrants. Drawing on parliamentary archives, the article asks how punishment and existing social injustices are narrated, maintained, and connected. Revealing a continuum of punishment and healthcare, HIV criminalization – especially within a nation deemed exceptionally non-punitive and welfare-oriented – is a crucial point from which to examine the connections of social injustice and criminal justice.*

KEYWORDS HIV; HIV criminalization; medical history; genealogy

The application of criminal law to people living with HIV has been problematized by researchers, NGOs and the UN as unjust, negatively impacting the quality of life of people affected by HIV, posing a potential barrier to healthcare, and often employing misconceptions about modes of HIV transmission (Bernard et al., 2022). In 2010, the Global Network of People Living with HIV (GNP+) listed Finland, along with its Nordic neighbors, as among the countries with the highest rates of HIV criminalization per capita of people living with HIV.[1] Since 1993, there have been around 20 criminal cases in which the "intentional" transmission, exposure, or non-disclosure of HIV has been prosecuted under the Finnish Criminal Code, under categories of murder, aggravated assault, imperilment or resistance to a public official (GNP+, 2010). The actual number of cases is unknown, as trials may have been

[1] Sweden, listed as the highest, was followed by Norway. Finland had the fourth highest rate of HIV criminalization (GNP+, 2010).

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held confidentially, without public access; outcomes have been registered locally, under various charges, making them difficult to locate (Clarke, 2011).

Although criminal justice has been used as a response to HIV in Finland, typically known for its low rate of criminal punishment and strong welfare system (Pratt, 2008), HIV criminalization in the Finnish context has received little academic or critical engagement. Of exception is the work of researcher Kris Clarke (2004, 2011), who has studied the contradictions between criminal justice and "soft" health policy approaches to HIV in Finland. Clarke notes how the "HIV spreader," a highly mediatized figure of criminality from the late 1990s onwards, has exposed and defined outsiders to the Finnish nation. High-profile HIV criminalization cases in Finland have included the prosecution of an African American man, a Ugandan refugee, and sex workers from Kenya and Thailand (Clarke, 2011, p. 137). Clarke (2011) has traced the genealogy of HIV as a "non-Finnish disease of un-masculine men or foreigners" in media and policymaking, underscoring how the criminalization of these groups has worked to "maintain the borders of sexual transgression in Finnish society" (pp. 137-142).

This article furthers Clarke's argument with a different genealogical track, that of the "infectious criminal," deployed by Finnish lawmakers and officials across a century, as a precursive figure to the HIV spreader. It examines parliamentary formulations of the infectious criminal in earlier eras of punitive sexually transmitted infection (STI) controls. Despite differences in social, legal, biological and chronological meanings of HIV and STIs, a continuum of punitiveness can be located across time. STI criminalization has overlapped with, reinforced and expanded the criminalization of different marginalized communities in Finland. A changing and complex legal web, resting on parliamentary discourse of the infectious criminal, has been part of producing and maintaining the social and moral order in Finland as heteropatriarchal and racist. This genealogy unravels some of the historically situated tensions and connections between criminal and social injustice within methods of punishment and "care," which I define as non-coercive welfare and healthcare measures. A genealogy of punishment-as-healthcare in a Nordic country deemed exceptionally non-punitive provides a crucial case study on how these state logics are intertwined.

This article will begin by defining the infectious criminal and concepts around the connection of state punishment and care. It will then trace different sub-figures of the infectious criminal: first, the figure of the sex worker and vagrant woman, embedded in mid-19th century STI governance which built the foundation for punitive diseases controls in the emerging Finnish state. Next, the figures of the prisoner-of-war and recalcitrant patient in early statehood are located within increasingly dense legal networks of punishment, until their challenging by civil society groups and legal reforms from the 1960s onwards. The article then returns to the HIV spreader, emerging in the mid-1980s. This

genealogy asks how the premise of STI controls has always rendered Finnish state punishment visible for a constant, yet shifting, criminalized population.

Situating the Infectious Criminal

To uncover the genealogy of the infectious criminal, this chapter will conceptualize the social figure, and define the continuum of state punishment and care in relation to criminal justice and social injustice as examined in the article. It will briefly map these concepts onto scholarship on infectious diseases history and HIV criminalization. To begin with, scholars across Europe and the United States have drawn out how HIV criminalization stemmed from a continuum of public health history in which efforts to control "recalcitrant" infectious diseases patients by coercive, punitive measures has waxed and waned (Baldwin, 2005; Hoppe, 2018). Adopting this premise into the Finnish context, this article takes a closer analytical look at the construction and upholding of STI and HIV criminalization. It locates the infectious criminal as a crucial figure in parliamentary justifications for or against punishment.

The infectious criminal is a social figure – a hyperbolic description revealing moral and social imaginaries of problematic phenomena (Moser & Schlechtriemen, 2018). At its foremost, the figure of the infectious criminal embodies and reveals tensions in state responses to STIs as an increasingly recognized, growing public health issue. Beyond that, the infectious criminal has been subject to changes across societal constellations, tied to and revealing fissures in economic and political stability, gender, sexuality and race. Neither infectious criminal nor HIV spreader have been used directly as terms in parliament. A number of adjacent terms have been used, and infectious criminal encompasses the overarching figure evoked by Finnish officials to justify or challenge punitive measures. Overall, the figure spans communities narrated and categorized as "others" – sex workers, the politically deviant, vagrants, and later, racialized migrants. Through STI measures, these communities have been further legislated and politically narrated outside state care.

Through this overarching figure, connections between state punishment and care, criminal justice and social injustice become partly visible. The anthropology of law and critical legal scholarship have long recognized how marginalization and social injustice has a manifold relationship to criminal justice and punishment (e.g. Lacey, 2022). Criminal justice and punishment create and manage marginalization, material and social injustice – and questioning the "legitimacy of punishment is particularly acute when the state itself bears substantial responsibility for either creating, or failing to alleviate, the relevant conditions of marginalization" (Duff, 2001, pp. 175-201, as cited in Lacey, 2022). Further, paying attention to the historically continued implementation of punitive measures for the infectious criminal attests to how

"the law still operates in the form of a sovereign command backed by coercion; recalcitrant subjects still have to be constrained and coerced in disciplinary apparatuses" (O'Malley & Valverde, 2014, p. 326) despite the development of state care in the form of healthcare and welfare. Still, state care and punishment are on a continuum. The relation between these two often separated state logics have a "complex (though describable) interlinking relationship of pulls and relays, exchanges and interactions" (Garland, 1986, p. 262). Enriching Garland's observation from the angle of STI controls means taking the approach of critical health criminology, with the field's wide, nuanced understanding of the causes and effects of punishment in relation to health.

Critical health criminology sits between multiple fields: infectious diseases history, law, and the sociology of punishment (Hoppe, 2018). As alternative criminology, the field aims to locate "the meanings of crime and criminal justice so as to expose the relationships between social structural inequalities, criminal justice, laws and human identities" (Carlen, 2017 p. 4). Taking into consideration gender and class and exposing these intersecting elements in the social ordering of power and punishment also reveals "chronic over-representations" of certain groups' "criminality" (Carrington, 2019, p. 116; Grosz, 1994). It examines criminal measures around health as a "blunt instrument" (McClelland, 2021), forcefully categorizing complex experiences and defining innocence, victimhood and criminal guilt. The field situates its focus on the material experiences of violence and the wider impacts of health criminalization (McClelland, 2019). With multiple levels of analysis, critical health criminology has the premise of taking apart and challenging health-related injustices within and outside of criminal law. It can reveal the interplay of state welfare, healthcare and criminal justice with studies of crucial phenomena that sit alongside these forms of power.

Across time, punitive STI controls have resided within and between different legal frameworks outside criminal law itself: in legislation controlling sex work, in specific infectious diseases laws, and in vagrancy laws, as well as in marriage, military, and migration laws. The foundational reasons for "why we punish" (Hoppe, 2018) – retribution, rehabilitation, incapacitation, and deterrence – blend into justifications for punishing the infectious criminal in early health legislation. The blurred lines between coercion, punishment and protection mapped out by these laws have led to forced testing and treatment in hospitals, exclusions from civic and political life, deportation, and imprisonment in the war camp and workhouse. The logics and justifications of these measures sit on a tense, shifting, sometimes overlapping (and sometimes directly articulated) line between intentionally punishing the sick and poor, and protecting the nation from disease and the diseased. Healthcare and criminal justice have an "overlapping mandate to protect public welfare and safety" (Amiya et al., 2014, p. 541). The infectious criminal is one point from which to examine these overlaps, and to ask who the "public" includes.

Negotiations for STI controls by the Finnish parliament articulate and create these criteria, in part, through the figure of the infectious criminal. Separations

are made between those deemed worthy of protection and medical treatment, and those worthy of punishment. Other times, equality of treatment and appeals to the poor socio-economic conditions of those deemed punishable for spreading STIs come to the fore. While framing early parliamentary debates as calls for social justice would be anachronistic (Jackson, 2005), they are nevertheless calls against health-based injustice and punishment. These calls contain elements of redistribution of welfare provisions and legal rights, recognition of marginality, and equality of treatment. Still, from the era of systematized urban controls of syphilis from the mid-19th century to the era of HIV from the mid-1980s onwards, those narrated by officials as infectious criminals have been punished and further marginalized by various means.

Previous scholarship on the history of infectious diseases and the connection between welfare and criminal governance in Finland has not directly problematized HIV criminalization in this light. Historian Peter Baldwin (1999), although setting the stage for arguing how methods of state control are visible in the management of contagion, has offered fragmented explanations for criminalized responses to HIV in the Nordic countries. For instance, Baldwin (1999) has explained the presence of harsh HIV measures in Sweden as the result of Swedes regarding "their state as fundamentally benign" (p. 251) and therefore considering criminalization as just. This analysis sidelines the methods by which continued punishment is created and justified. Although sociological histories of pre-industrial epidemics, health citizenship, and infectious diseases policy (Harjula 2015; Jauho 2007; Kallioinen, 2005) in Finland reveal a constant presence of punitive measures, their analysis has not been the main focus of these studies. Furthermore, the history of health punishment drawn by these scholars has not been tied to HIV. Remembering Clarke's (2011) location of HIV criminalization within genealogies of homosexuality and the migrant "other" in Finland, this article, introducing the more extensive genealogy of the infectious criminal, brings new light to the tensions between criminal justice and state care interventions.

On a broader level of analysis, international criminologists working on the Nordic region (e.g. Pratt, 2008), as well as Finnish criminologists (e.g. Häkkinen, 2022), have been known to emphasize the inverse relationship between welfare state creation and criminalization, which in turn has invisibilized mechanisms of how the nation's other faces punishment (Barker, 2017). Critical scholarship has noted how state practices that restrict and control the mobility of communities defined as others are a central part of Nordic history (Mulinari & Keskinen, 2022). The infectious criminal exists on this continuum of state punishment that has worked to delineate belonging in Finnish nationhood. Employing a wide sense of criminal justice and its links to social injustice to the genealogy of the infectious criminal reveals state mechanisms of control and marginalization along lines of gender, class, and later, whiteness.

Methodology

By problematizing HIV criminalization, I draw on genealogy, which suspends the contemporary necessity of the HIV spreader or its predecessors, and "reveals their multiple conditions of formation" (Dean, 1994, p. 33), while opposing the "theme of history as reminiscence or recognition" (Foucault, 1977, p. 160). I turned to Finnish parliamentary archives, which revealed formations, transformations and continuities in the language and tools around the infectious criminal. Using a compilation of STI-related laws I gathered through a review of existing literature, I searched through digitalized government proposals, debates, and parliamentary questions from 1907 to 1993 – from the earliest possible parliamentary archives to the year of the first criminal case around HIV. I used key words around infectious diseases and STIs, punishment, and the workhouse.[2]

I analyzed legal proposals and parliamentary questions on prisoner of war camps in 1919, on the Venereal Diseases Acts of 1936 and 1951, as well as around HIV in 1991 and 1992. I followed how suggestions of punitive STI controls landed – or did not – into written law. From the 1960s onwards, I examined social justice responses to punitive state measures for the infectious criminal by activists and student unions through existing literature. While statistical sources from hospital and workhouse archives provided a more static frame for the effects of laws related to STI criminalization across time, parliamentary commentary and debate provided insight into how social injustice and criminal justice have been officially narrated, built, and justified – by evoking the figure of the infectious criminal.

The Infectious Criminal as Sex Worker and Vagrant

Through secondary literature on 19th century health governance, as well as an early 20th century parliamentary debate, this section will examine early official framings of the infectious criminal as the vagrant woman and sex worker. To begin, from the 17th century, laws controlling legal movement, trade, and sexual relations began to be tied to controlling STIs. However, before the mid-19th century, leprosy controls were the exception to generally meagre disease governance efforts by the Swedish and Tsarist Empires, the latter of which ruled the territories now constituting Finland between 1809 and 1917 (Kallioinen, 2005). Despite this, traces of punitive state controls over STIs – often using the umbrella term syphilis – emerged from the end of the 17th century onwards. Church laws from 1686 allowed the annulment of engagements between people with incurable diseases – leprosy and "venereal diseases" were listed as such (Mattila, 1999).

[2] Keywords: tartuntatau*, kuppatau*, pakkot*, HIV (i.e., infectious diseases, syphilis, forced labor, HIV). All translations of archival and existing literature are my own.

The 19th century saw the acceleration of regulations related to STIs. An 1811 health decree set by Tsar Alexander I declared that passports issued to merchants, farmhands and vagrant women were dependent on a certificate of health and specified that women working at market grounds were subject to mandatory STI checks (Nygård, 1985, p. 132). The required certificate was valid for two months, and if merchants from across the Russian border were found without one, they could be deported (Turpeinen, 2012). Although the extent of the implementation of these regulations was still likely limited, this handful of early decrees tied together vagrancy, national borders, sexual morality, and infectious diseases. These laws began to outline how the logic of infectious diseases controls could be used to delineate inclusions and exclusions in the nation by methods and narratives that repeat across the next two centuries.

State interest in STI controls solidified after the 1850s; cases of syphilis multiplied rapidly from the mid-1840s onwards, and regional doctors made alarming reports to Tsarist generals (Turpeinen, 2012). The first "Venereal Diseases Bureau" opened in the city of Turku in 1838, followed by Helsinki in 1847. Sex workers were specified in legal categorizations of vagrancy from 1865 onwards (Vuolajärvi, 2020). A specific body in the police force – the health police – had the task of monitoring and bringing urban, loitering, vagrant women suspected of sex work to venereal diseases hospitals from 1879 onwards (Harjula, 2015, p. 60). Further, the intentional spreading of syphilis was added to the first Finnish Criminal Code in 1889, although criminal cases related to diseases were extremely rare.[3] Finally, the Syphilis Decree of 1894 provided the legal frame for officially sanctioned STI checks for sex workers, and poor, urban, vagrant women for nearly eight decades onwards, even though this particular law was not long-lived. This is because punitive measures were maintained by several legal frameworks, and the politically tumultuous decades of the early 20th century were reflected in legal changes around STI governance. In 1907, following a large general strike in Finland, the 1894 Syphilis Decree and police-led monitoring of sex workers' health status were abolished. After this, instead of the police, health officials had official administrative rights over mandatory STI checks. In practice, the collusion of medical authorities and law enforcement continued, especially through arrests made under the Vagrancy Act of 1883 (Kinnunen, 2019). As conservative Member of Parliament Hilda Käkikoski stressed in a 1909 parliamentary proposal, this produced the same effects as before:

> When these regulations are compared to those which the police were in charge of previously, one notices similarities … the sense of reproach from previous rules is still, for the most part, present in the new health regulations. Both regulate for mandatory checks of women practicing or suspected of practicing unchastity.

[3] Between 1909 and 1961, 45 people were convicted of this offense. I have not yet been able to locate these cases. In an email exchange with legal historian Miikka Vuorela, the location of these legal archives proved to be difficult (Miikka Vuorela, personal communication).

> There can be no guarantee over either of these authorities not mistaking who they are targeting. Inexperienced poor women are under the threat of, having been misled into suspicious company, irredeemably losing their reputations and being subject to coercive checks – despite the fact that our constitution promises all citizens – poor and rich, man and woman – the protection of life, dignity, health and prosperity. (Käkikoski, 1919)

Käkikoski's impassioned speech is emblematic of how female "criminality" is adjacent to images of victimhood and the need for protection. Drawing on these images, the speech reproduced divisions between women she believed were wrongly subject to coercive testing, and the sex workers deserving punitive measures. Later in her speech, Käkikoski drew further divisions between those she deemed deserving and undeserving of the constitutional freedoms she mentioned. While lamenting the harms of "accidental" checks on poor women, she simultaneously advocated for the workhouse as a solution for disciplining sex workers caught in a spiral of immorality and punitive state responses, separating those deserving constitutional rights from the sex worker as infectious criminal. Finnish feminist historians have noted how late 19th century bourgeois feminism needed new delineations of acceptability and belonging in the slowly urbanizing spheres in which they worked (Urponen, 2010). The notions of sexual morality that underlay minister Käkikoski's speech indicate how STI controls folded into and clarified discourses surrounding the spectacle, condemnation and control of poor women and sex workers (Baldwin, 2005) as coercive STI checks became the marker of sex work (Vuolajärvi, 2020).

In summary, from the early 19th century to the decades before Finnish independence in 1917, tools and languages delineating the infectious criminal emerged through diminishing mobility based on STI status and police-led monitoring of women suspected of sex work. By the turn of the 19th century, debates over STI regulations indicate how medical and criminal logics of the state intertwined well before independent Finnish welfare-state building. The emergence of non-coercive health governance only maintained and specified the infectious criminal, for whom medical, rather than police-led procedures, were still underpinned by state punishment. Early forms of STI criminalization fluctuated around the layered official imaginaries of the sex worker as criminal (Vuolajärvi, 2020) delineating poverty, vagrancy and sex work as outside the realm of state care. The image of the infectious criminal justified punitive approaches and existing social injustices. These early narratives and practices around the infectious criminal echo into the moral crisis of the HIV spreader, but before that, their forms morphed and carried into early Finnish statehood.

The Contagious Prisoner of War

From independent Finnish statehood in 1917, an increasingly complex legal landscape of infectious diseases governance emerged, and with it, the figure of

the infectious criminal took on new forms. In this section, I will trace parliamentary narrations of this figure from early Finnish independence until the 1950s. I will briefly background the infrastructural developments in health as well as the criminal law trends of these eras and take a closer look at parliamentary debates in 1919, 1939 and 1951. These debates articulated the infectious criminal in clearer terms, appearing across the expanding welfare state. The various sub-figures of the infectious criminal show how social injustice was negotiated in, or into, state care.

Finland gained independence at the fall of Tsarist Russia in 1917 and fell into a bloody civil war that fragmented society for decades. By mid-January 1918, the capitalist, German-backed Whites were firmly in control of the nation, and tens of thousands of socialists and communists were imprisoned in camps across the country. The squalid, deadly conditions that political prisoners were subject to were a source of heated parliamentary debate. In 1919, during a debate about releasing prisoners from overcrowded camps, landowner and liberal MP Bruno Sarlin justified extended stays in overcrowded prison camps through infectious diseases management:

> Besides other contagions, there are thousands of venereal disease cases rampant among these rebels. In Suomenlinna prison alone there are 913 of these patients, and it needs no explaining what significance to societal life it has been to keep prisoners with these diseases isolated. (Sarlin, 1919)

Justifications for imprisoning the politically dangerous and quarantining the microbially dangerous were woven together by minister Sarlin. By this logic, civil society needed protection from the infectious criminal at hand – the contagious communist. By referring to the prisoner of war camp as a space for managing STI contagion, those imprisoned were narrated as a political, microbial, and sexual threat to the post-civil war nation.

Simultaneously, outside the camp, lower-class women continued to bear the criminalizing STI controls set in place in the previous century. Across Helsinki city hospitals in 1921, 2,580 women, but only 49 men, were coerced by police, via the Vagrancy Act, to "venereal diseases wards." This occurred despite men between 20 and 25 years of age having a higher prevalence of STIs than women at the time (Helsinki City Archives, 1921-1923). In the words of Grosz (1994), "men seem to refuse to believe that *their* body fluids are the 'contaminants.' It must be women who are the contaminants … regarded as a kind of sponge or conduit of *other men's* 'dirt'" (p. 197; emphasis in original). At the same time, official depictions of the infectious criminal could shift in politically expedient ways. State punishment of this figure – morphing with and under the guise of STI controls but stemming from state plans to control political prisoners – reproduced and reinforced a social and moral order around appropriate sexuality and political belonging.

The Infectious Criminal as Recalcitrant Repeat Offender

The next four decades of Finnish independence saw the steady rise of "coercive measures to prevent epidemics, venereal diseases and hereditary degeneration" (Harjula, 2015, p. 582) as part of the development of public health services in general. The 1920s onwards has been defined as an era of building more stable regional healthcare availability in Finnish health history (Harjula, 2015). This was framed by legislation: the first Healthcare Act of independent Finland was introduced in 1927. Although the Act had clauses on enforced quarantine for those with (or those suspected of carrying) smallpox, typhoid, scarlet fever, or meningitis, these measures only came to be legally defined in detail, and enforced in practice, from the mid-1940s onwards (Harjula, 2015). Generally, the long history of punishment in STI governance stands out in comparison to other infectious diseases.

Following this, the punitive turn of the 1930s and 40s strengthened and specified the infectious criminal further. Seen across Europe, this era was also characterized in Finland by economic depression and the rise of right-wing politics, which supported the "treatment of poverty and the poor in the spirit of preventive criminal law, including a more systematic social categorization and intensified and centralized social control" (Kettunen, 2001, p. 230). Longer sentences for the "repeat offender" were instituted (Nuotio, 2013). Accordingly, the Vagrancy Act of 1883 was renewed in 1936 with increasingly specific categories, which continued the legal premise for police to arrest and interrogate poor, loitering people, and those earning a living in a way that "threatens general safety" (Irtolaislaki [Vagrancy Act] 57/1936, § 1). In 1938, the Venereal Diseases Act was passed in parliament. It included punitive clauses related to patients who broke the rules; those not abiding by hospital regulations or found leaving hospital premises without permission could be sentenced to three months of forced labor (Sukupuolitautilaki [Venereal Diseases Act] 198/1939, § 11). Only a year later, the infectious criminal appeared as a subject of debate for even harsher legal measures. Minister of the Interior Urho Kekkonen (who later became president of Finland for over 25 years) argued for longer detention to discipline "recalcitrant" STI patients:

> The three-month maximum penalty in the proposal feels like too brief a period to act as any sort of punishment … It is necessary to consider whether the two alternative coercive means of the workhouse or the penitentiary are necessary. The use of a milder and harsher form of institutional punishment has been put in place for those who are free, but for those already under mandatory hospital quarantine, this feels unnecessary, since these people are already detained in an institution. It would be more appropriate to place these recalcitrant patients directly into the workhouse. (Kekkonen, 1939)

Kekkonen directly commented on the similarities between the workhouse and mandatory hospital quarantine – he saw both as locales of punishment. For the infectious criminal, the workhouse could legally replace the hospital. As the

Second World War postponed the implementation of the Venereal Diseases Act, another round of parliamentary debates began in 1951 to renew it. Kekkonen's commentary had its effect: the length of punishment in the workhouse for the infectious criminal doubled to six months. The punitive axis of vagrancy and STI legislation was specified in clause 15 of the Act:

> An individual ordered into compulsory hospital care, who breaks the regulations of the hospital or leaves hospital premises without permission, can via the orders of the municipal doctor, after an adequate investigation, be detained for a set period of time, at most six months, in forced labor as stated by the Vagrancy Ac (57/36). (Sukupuolitautilaki [Venereal Diseases Act] 51/1952, para. 15).

Moreover, the use of the police force was stressed in returning people who had escaped mandatory care, either back into the hospital or the prison. Once again, those in "danger of spreading sexually transmitted diseases" could be placed into a "hospital or other institute of care, even if it is not necessary for the treatment of his illness" (Sukupuolitautilaki [Venereal Diseases Act] 51/1952, para. 4). These harsh measures reflect, in part, the government's concern over increased STI infections in the post-war period (Turpeinen, 2012), but the way in which punishment-as-STI controls tightened after the Second World War hints to how wartime and the surveillance of microbes in the emerging concept of public health were woven together from the start (French, 2009). The ways in which criminal punishment can overlap with healthcare for marginalized people could not be clearer: within an infectious diseases law, punishment that explicitly did not have anything to do with treatment was a legal measure.[4]

Beyond "recalcitrance," the gendered and classed targets of the controls discussed were obscured in these debates. Still, as in previous eras, women arrested over the Vagrancy and Venereal Diseases Acts represented the majority of those sent to mandatory STI checks and the workhouse (Juurikkala, 1997). Overall, more women than men were arrested over the Vagrancy Act until the 1960s (Kinnunen, 2019). The tandem development of health access and punitive measures was especially tense around women's health. The year 1944 has been marked as one enshrining constitutional healthcare rights, and maternal and family healthcare infrastructure and law (Wrede, 2003). Just a year before this milestone in Finnish healthcare provisions, MP Aino Luostarinen proposed in parliament that those with STIs should be barred from voting (Harjula, 2015, p. 207). The suggestion was not passed, but exclusions from suffrage already extended to the punitive locales to which STI governance was tied: those receiving poor relief and those with previous workhouse sentences were denied suffrage from 1906 to 1944 (Harjula, 2009, p. 108).

[4] Tightening measures for the infectious criminal in the early 1950s stand out even more in light of the arrival of antibiotics. The introduction to antibiotic treatment for STIs was slow in Finland, and severe shortages of penicillin in the mid-1940s were alleviated with UN donations in 1949. By the late 1950s, doctors celebrated the significant drop in STI patients across Finland. The UN-gifted antibiotic doses were prioritized to pregnant women diagnosed with syphilis in Helsinki hospitals (Turpeinen, 2012).

Vagrancy carried on as a partial ground for exclusion from suffrage until 1972, as those sentenced to the workhouse lost voting rights for three years (p. 108). In this way, Luostarinen was making another point of connection between punitive STI governance and the removal of political rights. This harkened back to the legal practice of 19th century vagrants, merchants, and market women requiring STI checks and health documentation for the right to travel and to avoid deportation.

The figure of the recalcitrant and infectious criminal, delineating those intending to spread STIs and to disobey social order, justified harsh punitive measures with a criminal justice logic. At the same time, the use of the figure obscured social and economic conditions under which people subject to these measures lived. Archives from Tervalampi workhouse, near Helsinki, reveal these conditions, and the conflation of the infectious criminal, the workhouse and the prison. Between 1942 and 1947, only 10% of women at Tervalampi did not have an STI (Juurikkala, 1997, p. 109). The archives of this workhouse shine some light onto the material realities of the infectious criminal:

> Women of Tervalampi no. 009: Anna was arrested at a travelers' inn under the suspicion of vagrancy. Anna was ordered to Kumpula hospital for a health check and back into treatment for previously diagnosed gonorrhea.
>
> After three days in hospital care, Anna ran away, giving the reason of hunger. After her escape she was caught and ended up back at the hospital. From the hospital she was placed into the county jail to wait for a judicial decision on vagrancy. (Juurikkala, 1997, p. 110)

In its brevity, Anna's account exemplifies how while legal and infrastructural networks of healthcare were built, the 1920s onwards also saw a cycle of forced labor and hunger at STI hospitals for the infectious criminal. Although these early decades of Finnish statehood have often been characterized by expanding systems of care, the infectious criminal also reveals a continuation of harshly punitive elements within it. The figure took on various forms – political, and vaguely recalcitrant – but workhouse and hospital statistics reveal how again, women bore the majority of the punishment. While the 1930s and 40s have been categorized by Finnish criminologists as a punitive era (Nuotio, 2013), the continued presence of the infectious criminal preceded and followed these decades. However, by the following decade, the punishment of and social injustice surrounding this figure came under scrutiny.

Rupturing the Idea of the Infectious Criminal

The global tides of cultural liberalization in the 1960s meant that civil society and student groups put punitive state practices in Finland under fire. In 1967, an anti-institutionalization and housing rights activist group, Marraskuun liike (the November Movement) published a book condemning how the poor are targeted, contained, and criminalized on the basis of "spreading diseases":

> In Finland you can easily have your freedom stripped away from you. Everyone knows that our prison rates are the highest in the Nordic region. Fewer people know, however, that our institutions of 'care' are outright unique. … First of all: these institutions are not any better than prisons. Sometimes they are even worse.
>
> Although 70% of those at Ilmajoki workhouse have had a venereal disease, the spreading of these diseases is an increasingly absurd reason to detain and strip individuals of their freedom. Is it not more reasonable to treat a venereal disease in a day in Helsinki rather than with a year at Ilmajoki? (Eriksson, 1967, p. 7)

In contrast to parliamentary commentary on the infectious criminal in previous decades, the group highlighted how centuries-old vagrancy laws and STI controls were gendered in their implementation: between 1962-66, 100% of women arrested under vagrancy laws were subject to an STI check – and every sixth woman, compared to every 15th man – was jailed (Eriksson, 1967, p. 151). A detailed counter-discourse around the infectious criminal, taking an explicit stance against the social injustice of punishment along classed and gendered lines was articulated.

The group's critique was in line with – and pushed for – liberalizing legal developments of the time. This was visible both in criminological and welfare-related lawmaking. After a left-wing majority in the 1966 parliamentary elections, the Finnish government participated in cross-Nordic penal liberalization efforts (Lappi-Seppälä, 2012). The Penal Law Committee, established in 1972, launched fundamental changes to the Finnish criminal-legal system, asking "what acts should be punished and how severely" (Lahti, 2017, p. 9). The reforms focused on creating alternatives for custodial sentences, the waiving of penal measures, decreased criminal sanctions and enabling other forms of control – social welfare measures – to replace direct punishment (Lahti, 2017). In this period, state legislators argued for an inverse relationship between punishment and "care."

Similar attitudes were taken in lawmaking. In 1972, the Social Democratic Health Minister Osmo Kaipanen stated that the "right to health" should be implemented without coercion (Harjula, 2015, p. 245). Similarly, the Social Care and Welfare Committee took a direct stance on decreasing coercion and punishment, stating that such measures should only be used when individuals cannot care for themselves, or when others are in immediate danger (p. 246). The Venereal Diseases Act of 1952 was repealed in 1970. In 1972, legal measures around STIs were absorbed into the National Healthcare Law. Forced labor under the Vagrancy Act was legally abolished in 1971, although the Vagrancy Act was repealed in totality only in 1984 (Kinnunen, 2019).

Both state and non-state actors began to articulate the injustice of punitive measures, including those around the infectious criminal. These challenges eventually overhauled what forms of punishment could be legally implemented in Finland. In previous decades, the shifting figure of the infectious criminal had strengthened the relationship of punitive measures, poverty, vagrancy, sex work, political deviance and STIs. The breaking of previous punitive cultures

starting from the 1960s leads to the question: after the slow liberalization of cultural norms, penal institutions and legal frameworks, how did the infectious criminal "resurface" with the emergence of the HIV pandemic?

The Emergence of the HIV Spreader

HIV was first documented in Finland in 1983, amidst moral panic stirred by tabloid frenzy. As Clarke (2011) points out, gay men were the first to be stigmatized by HIV in Finland, but emerging civil rights groups in the mid-1980s also began to "serve the needs of the gay community" (p. 143) while migrants faced less structural support at the time. Without doubt, the stigmatizing effects of HIV criminalization have impacted gay men in Finland to this day (Kela, 2022), but parliamentary narratives of the HIV spreader appear in terms of racialized migrants in Finland. The connections of the punitive tools and narratives around the HIV spreader to the infectious criminal in previous eras begins to clarify.

After the legal and societal fissures of the previous decades, the HIV pandemic entered Finland during a steep recession, subsequent neo-patriotism, as well as the slow entry of neoliberal policy-making that reinforced hierarchies of care, marginalization and poverty (Tepora, 2021). The climate of criminal lawmaking in 1980s Finland reflected the wider punitive turn of the decade across Europe. Charges for violent, sexual and drug-related crimes harshened (Lappi-Seppälä, 2012). This environment reflected early, punitive state responses to HIV, which initiated a new configuration of the infectious criminal.

In 1986, a group of exchange students on Finnish Foreign Ministry study scholarships from different African countries were tested for HIV during a health check. Officials claimed that the students were asked for consent over the tests and the sharing of results with the Foreign Ministry, but the students disputed this. Those found to have HIV were stripped of their scholarships and ordered to return to their home countries. Despite backlash from student associations over the deportation orders, some students were forcibly deported; others left voluntarily (Järvi & Nikkanen, 2014). That winter, the Ministry of Education, Foreign Ministry and the Ministry of the Interior cooperated with the National Board of Health in an attempt to create systematic, mandatory HIV testing of foreign students in Finland (p. 97). Students' unions fought back against these proposals: the Student Union of Tampere suggested monthly, mandatory HIV tests for businessmen and ministers who traveled abroad frequently (Järvi & Nikkanen, 2014, p. 98), challenging the emerging figure of the HIV spreader as the Black immigrant. The Ministries' proposals were not passed; the National Board of Health ended up releasing policy for voluntary HIV testing of students and the prevention of health status affecting student status (p. 98).

Despite this, the figure of the HIV spreader continued to be woven in parliament. In 1991 and 1992, centrist MP Hannu Suhonen initiated two identical parliamentary motions around the coercive testing of refugees and migrants:

> It is public knowledge that some young women moving to Finland on work permits end up in suspect professions. Some of these women are later proven to have HIV. In practicing their professions in Finland, they are at risk of spreading AIDS, causing our nation large economic losses via the loss of working-age people to AIDS, and endangering our citizens' general state of health. This problem has a simple solution: HIV tests for all refugees and migrants moving to Finland on work permits. If the migrant is found to be a carrier of HIV, their work permit could be immediately revoked. (Suhonen, 1991)

Suhonen's parliamentary motion – suggesting coercive testing and deportations as solutions for keeping infectious bodies out of the nation – has deep roots. This motion delineated a new infectious criminal, that of the foreign HIV spreader, while still alluding to the sex worker as the primary, most complicit version. Mentioning economic losses was an appeal to the devastating recession of the early 1990s, but the "endangering" of Finnish citizens by the infectious criminal has a continued narrative, from post-civil war camps, to coercive STI testing and "treatment" in the workhouse that carried on until the end of the 1960s. Suhonen's suggestions did not get passed in the Finnish parliament, but succeeded in fortifying the image of the HIV spreader as racialized and sexually immoral.

A year after Suhonen's motion, the first criminal law case around an HIV spreader was disputed in the Finnish Supreme Court. In this inaugural case, a gay man was convicted of manslaughter because he had "intentionally and repeatedly" aimed to transmit HIV by having unprotected sex with his partner without disclosing his status. However, the narrative of the HIV spreader quickly became predominantly one of racialized men and sex workers (Clarke, 2011). In 1996, an African-American man was charged with attempted manslaughter for having unprotected sex with Finnish women while knowing he was living with HIV. He was eventually sentenced to 14 years in prison for attempted murder, and later deported. Clarke (2011) writes how during all stages of the trial, media and state subtext emphasized "the sexual association between Finnish women and black men as a threat to the Finnish nation" (p. 142). This first case was followed by similar narratives and legal cases of at least two Black men, and two sex workers from Thailand and Kenya (Clarke, 2011; Valaskivi & Maasilta, 1999).

In 1998, media reports sprang up in the small town of Kuopio, in central Finland, about hundreds of residents lining up for HIV tests. Days earlier, a local doctor had given a press release about HIV positive individuals having unprotected sex in the region. Within days, increasingly detailed media reports emerged of a Thai woman, who may or may not have sold sex, as the suspect HIV spreader. After a media-heavy investigation and District Court trial, this

woman was sentenced to a year and a half in prison for five counts of imperilment. She was subsequently deported. In media analysis on the case, Valaskivi & Maasilta (1999) recount how post-trial, it became public knowledge that she was brought to Finland to marry a 70-year-old man by her very claimants, she didn't speak Finnish and needed a translator during her case, and that none of the claimants were found to have HIV. Whether or not the alternate framing of "human trafficking," offered by Valaskivi & Maasilta (1999), is one which encompasses the complex power relations between this woman and her clients and partners, the genealogical track of the potential sex worker as infectious criminal is clear. A similar case occurred in 2010, in which a Kenyan-born woman working as an erotic dancer was sentenced to four and a half years in prison for having unprotected sex over a five-year period. The HIV Justice Network (2011) has gathered the few publicly known facts of the case, which included "sketchy" medical details and hefty damages payments to her clients.

In these cases, boundaries of sexual transgression were drawn along racial lines through the HIV spreader (Clarke, 2011). Previous eras' official narratives of the infectious criminal only employed a different network of laws to maintain similar boundaries. The HIV spreader has worked to define the nation's "other," while reinforcing acceptable forms of sexuality and the "innocence" of whiteness and white womanhood.[5] In previous eras, the infectious criminal defined acceptable womanhood by markers of sex work and class. In both cases, laws around punishing the infectious criminal were accepted public health tools while they created, defined and strengthened marginalization along lines of class, mobility, gender and race.

Just as it was pointed out by activists criticizing the "treatment" of syphilis in the workhouse – that the punishment which marginalized people faced for having STIs was not in line with medical advances of the time – criminal-legal cases around HIV have carried on in Finland until the latest Supreme Court decision in 2021. This legal decision, which overturned a conviction of assault for a man living with HIV who had not disclosed his status to a one-time partner, finally acknowledged that medicated HIV cannot be transmitted. However, as Sini Pasanen, director of Finnish HIV NGO Positiiviset ry has stated, the ruling still leaves the theoretical possibility of further HIV criminalization (Kela, 2022). The presence of criminal justice logic in public health has the potential to carry on in different forms. However, as those who have organized against it have shown, the presence of criminal justice logic in healthcare is not an inevitability.

[5] Matthew Weait (2007) has analysed similar cases in the UK, noting how "representations of, and elisions between, Africa(ns) and HIV are (and I do not wish to labour the point here) ones that fit squarely into the more general analysis of the risky, uncivilised body" (p. 137) which can "figure as insatiable and archetypical threats to innocent, white and 'native' femininity" (p. 140).

Conclusion

Globally, HIV criminalization is "often arbitrarily and disproportionately applied to those who are already considered inherently criminal, both reflecting and perpetuating existing social inequalities" (Global Commission on HIV & the Law, 2012, p. 23). HIV criminalization has been a major locus of punitive infectious diseases governance in Finland since the early 1990s. A genealogy of the HIV spreader opens the figure of the infectious criminal and the haunting of earlier eras of a medical politics of control and punishment largely sidelined in studies of Finnish healthcare history. This figure has been central to the argument for or against punitive healthcare measures and is a flexible tool that has continuously delineated belonging, and created and justified social injustice in the building of welfare and healthcare in Finland. Parliamentary suggestions for or against punitive STI controls simultaneously rest on and build the shifting figure of the infectious criminal, deemed punishable, irresponsible, and a threat in multiple ways, or on the other hand, as a vulnerable figure worthy of state protection and benevolence.

Moreover, the infectious criminal reveals some of the complicated axes of state care and punishment. In many ways, these state logics are adjacent, if not intertwined. This figure was narrated into and embedded in legislation that expanded healthcare in general, but it was also mobilized by officials in a more directly punitive frame, around vagrancy, or the rights of post-civil war prisoners. In one sense, state care and punishment are on a continuum, and rely on overlapping appeals to protection, defining safety and danger. Both these logics have ended up diminishing the mobility and political and health rights of marginalized people. The continued official narration, with its shifts and ambiguities, of the infectious criminal attests to the continued role of direct punishment by the state, even within the realm of healthcare. The figure therefore reveals porosity between criminal and healthcare state logics (Amiya et al., 2014), having "mutually conditioning elements of a general social strategy" (Garland, 1986, p. 262) rather than an inverse relationship. The figure discloses how the public to be protected resonates with shifting criteria of national belonging: the continuous, persistent re-building of heteropatriarchal order and normative sexuality in Finland, with its later connotations to whiteness in the context of HIV. The figure concentrates around the vagrant woman and sex worker, the politically deviant, and eventually the racialized HIV spreader – various marginalizations by the state that nevertheless have built and perpetuated similar normative notions of gender and sexuality.

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