



‘Here there be monsters’

**A comparative case study of the discrimination against people with
pedophilia in the US, UK and Germany**

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Abstract

Pedophilia is one of the most misunderstood mental disorders in contemporary society. The aim of this thesis is to analyse the discriminatory behaviour against people with a pedophilic disorder by the public at large, the media and current legislations; in the case of the US, the UK and Germany. The political and legal theory of Giorgio Agamben, particularly the concept of homo sacer, will be applied to this thesis, because it can serve as a theoretical foundation for understanding different aspects of the control and treatment of pedophiles as a form of punishment and discrimination. The results of the thesis show that the public and the media tend to confuse the diagnostic term of pedophilia and the legal term of child molestation, falsely assuming that all pedophiles sexually abuse children. The implemented 'anti-pedophile' laws, oftentimes promoted by the media, can be seen as disproportionate and unfounded, resulting in discriminatory behaviour against pedophiles and the violation of human rights.

Key words: Pedophilia, child sexual abuse, discrimination, media, prevention

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LIST OF ABBREVIATIONS

CSA	Child Sexual Abuse
HRW	Human Rights Watch
NOW	News of the World Campaign
PWP	People with Pedophilia
PPD	Prevention Project Dunkelfeld
UK	United Kingdom
US	United States

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1. Introduction

Child sexual abuse (CSA) is understood as a form of child abuse in which sexual contact between an adult and a child occurs. It is a global burden which nearly 20% of all women and 10% of all men experience throughout their lives (Beier et al., 2009, p.851; Finkelhor, 1994). Consequently, it seems necessary to increase resources for the development of targeted child sexual abuse prevention programmes. Pedophilia is a *diagnostic* term that refers to the psychiatric disorder of having a sexual attraction in prepubescent children. Yet, it is not the same as CSA, which refers to the actual behaviour and act and is understood as a *legal* term. The public at large, however, appears to be unfamiliar concerning the differentiation between the terms pedophilia and CSA, presuming that most, if not all people with pedophilia (PWP) engage in CSA. Since very few pedophilic individuals, who have not committed any sexual abuses against children, choose to reveal their sexual attraction to others due to judgemental and discriminatory reactions that entails, it is difficult to assess how many PWP do not commit any sexual crimes. However, based on the existing data, it can be estimated that around 30-50% of all individuals that committed sexual abuse against children can be diagnosed with pedophilia. Accordingly, many, if not the majority of the committed child sexual offences, are not being committed by PWP (Seto, 2004, p.326). Yet, the media tends to portray pedophilia in a generalised, negative way, confusing the terms pedophilia and CSA, - factors that promote discriminatory reactions in modern society. The depiction not only increases the public concern for pedophilia, but also led to the introduction of new laws and policies against PWP, such as the enactment of the United States (US) Megan's Law, which allows for the disclosure of offenders' private information's, such as name, address, photos etc. (Hall & Hall, 2007, p.457; McCartan, 2010b, pp.254-256). The implementation of these laws has contributed to the continuing debate on several matters, including the effectiveness and legality of these laws and the necessity to find a more appropriate balance between public safety and the offender's individual rights (McCartan, 2010b, p.256; Vess, 2009; p.265). As such, the research area of pedophilia is important, since it may contribute to a change of view concerning PWP and the discriminatory behaviour towards them or even the de-stigmatization of pedophilia altogether. Ultimately that would entail that human rights of PWP are being respected, and that the protection of children from sexual abuse is being prioritised. Yet, public stigma and discrimination hinders PWP from achieving these goals. By reducing the current stigmatization against PWP, PWP may be more confident to confess to friends or family members or to seek professional help, which eventually could lead to a better understanding of pedophilia, a fairer

treatment of PWP, and the prevention of CSA (Cantor & McPhail, 2016, pp.123-124; Imhoff & Jahnke, 2018, p.353).

1.1. Aim & Research question

The aim within this thesis is to examine the discriminatory behaviour and human rights violations against PWP by applying a qualitative content analysis method and using a comparative analysis of the US, United Kingdom (UK) and Germany. To be able to understand the phenomena of discriminatory behaviour, - and human rights violation that PWP are being exposed to, the legal and political theory of Giorgio Agamben's 'Homo Sacer' is being applied to the material. Ultimately the intention is to spark further debates and discussions that broaden the understanding on the topic of pedophilia and its linked discrimination and violations. By doing that, the twofold goal, - upholding fundamental human rights of PWP and protecting children from CSA, is being placed in the centre of the debate.

The aim of the thesis leads to the following research questions:

- *What kinds of patterns of discriminatory behaviour against people with a pedophilic disorder can be observed in the case of the US, UK and Germany?*
- *To what extent are the human rights of PWP being violated in the three countries?*

1.2. Terminology

The central concepts in this thesis are pedophilia and CSA. The purpose of this section is to give a brief, introductory presentation of these terms, because it is crucial for the thesis to have a clear understanding of the differentiation of the applied terms.

Pedophilia

Pedophilia is a *clinical* or diagnostic term in the Diagnostic and Statistical Manual Mental Disorders, and describes a pedophile as 'an individual who fantasizes about, is sexually aroused by, or experiences sexual urges towards prepubescent children with children up to 13 years of age, for a period of at least 6 months.' (Hall & Hall, 2007, p.457). Another criterion for the diagnosis includes that the individual must have experienced significant distress or a certain degree of dysfunction because of it and/or has acted upon the sexual attraction. The sexual

attraction to children, however, is *unrelated to actual behaviours* (Feelgood & Hoyer, 2008, p.34; Houtepen, Sijtsema & Bogaerts, 2016, p.48).

Child sexual abuse

CSA refers to the actual sexual contact between an adult and a minor. The sexual act is *legally* defined. While the terms CSA or child molestation reflects acts or behaviours, the term does not refer to a medical or psychological description (Feelgood & Hoyer, 2008, p.34; Hall & Hall, 2007, p.458).

It follows, the two terms stand in a certain relation to one another but are nonetheless different phenomena. Some PWP may fall within the category of child sexual abusers, however, not all PWP are necessarily abusers, just as much as not all abusers are in fact PWP.

1.3. Ethical considerations

Pedophilia is a highly emotionally and controversial topic and is most often seen as a taboo. Needless to say, parents are concerned about the well-being and safety of their children and want to protect them from any harm. However, breaking through that taboo may contribute to a possible change of view and approach in regard to PWP, which in turn may lead to the prevention and/or decline of CSA and a more 'empathetic' behaviour towards PWP. By accepting that pedophilia is not a choice, but instead an established sexual attraction for which no cure has been found, the stigma which has been attached to pedophilia may be reduced, which could lead to a fairer treatment of PWP in a social, legal as well as a medical context. The intent throughout the thesis is not to claim that punishment, once PWP entered into any illegal actions, should not be applied, rather, that the deep-rooted fundamental principles of western legal systems should also apply to pedophilic individuals. While it may be controversial to portray PWP as victims of discriminatory behaviour and laws, PWP are entitled to fundamental human rights and certain core values as well. It is not being argued that CSA is tolerated at any point, nor that PWP could never pose a threat to children. Instead, efforts to establish fair and knowledge-based policies and help-offering treatment programmes can contribute to the goal of assuring children's safety.

1.4. Relevance to Human Rights

Even though some people, such as former Polish Prime Minister Donald Tusk, claim that PWP forfeited their human rights because of the (potential) offences they committed; and can be seen as ‘creatures’, instead of human beings, therefore unworthy of the usually applicable legal system, PWP are in fact, or should be to say the least, entitled to basic human rights (DW staff, 2008). The Universal Declaration of Human Rights (UDHR) states in article 2 that:

‘Everyone is entitled to all rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’ (UN General Assembly, 1948: Article 2).

Consequently, if all human beings possess human rights due to their common humanity and without discrimination, then PWP are entitled to human rights as well. While it is evident that, once offences have occurred, freedom rights of offenders are usually constrained in various ways (due to incarceration, parole conditions etc.), seen from a human rights perspective, even then, offenders keep possessing their fundamental human rights and are still entitled to general core values, such as well-being and human dignity, values crucial for ‘the functioning as purposive agents’ (Ward & Birgden, 2007, p.635).

However, the current discriminatory attitude towards PWP by society, fuelled by the negative and often falsely portrayal of PWP in the media, frequently results in the enactment of new policies and laws that no longer respect the human rights of PWP. – Many of these laws and policies differ to most other legal precedents in western societies, because they punish offenders on the ground of risk factors for potential offences, instead of punishing offenders for previous committed actions; and therefore calls for the reflection of the effects, effectiveness and legality of that treatment on the human rights of PWP.

2. Previous research & Research gap

Within the following section, different limitations and/or research gaps, as well as previous research regarding the study of pedophilia will be mentioned. Whereas the first three sub-sections (etiology, prevalence and orientation) can be understood as limitations within the field, the last three sub-sections (classification chaos, prevention and stigmatization) can be seen as research gaps and previous research, which will be integrated and picked up upon throughout

the thesis. Concerning the limitations, we have to remember that for different reasons research on pedophilia has been slow. Due to a lack of therapist/patient confidentiality, many PWP are not willing to participate in any studies or treatment programmes, thus, existing research is often based on convicted child sexual abusers as their samples, often without diagnosing whether they are in fact pedophilic or not (Hall & Hall, 2007, 460 & 469; Seto, 2004, pp.326-327).

2.1. Etiology

The etiology of pedophilia is still largely unknown. While studies and tests have been conducted regarding neurological, psychological and biological factors that may contribute to the cause of pedophilia, none of the tested explanations have been found sufficiently and empirically proven to constitute an evidence-based etiology model (Fromberger, Jordan & Mueller, 2013, pp.1128-1129; Hall & Hall, 2007, pp.462-464). Due to the limited knowledge of the causes for pedophilia, the focus within this thesis will lay on the societal and legal perspective of pedophilia, leaving etiological factors aside.

2.2. Prevalence and female pedophiles

Generally, the prevalence of pedophilia within the population is not known. But it is assessed that amongst men less than 5% of the population have a pedophilic disorder. While there is less knowledge about the prevalence of pedophilia in women, there are existing report cases of women with sexual fantasies of children (Seto, 2004, pp.327-329). Estimations suggest that around 1% of the general population is female, although no empirical studies regarding female PWP have been conducted (Fromberger, Jordan & Mueller, 2013, p.1128; Hall & Hall, 2007, pp.458-459; Murray, 2000, p.211; Seto, 2004, pp.328-329). Because of the scarcity of knowledge and data concerning female PWP; and the prevalence of pedophilia within men, the focus will lay on male PWP exclusively.

2.3. Pedophilia as sexual orientation

As for now, pedophilia is being defined as a sexual attraction to prepubescent children that includes recurrent sexual thoughts, fantasies, urges, arousal and/or behaviour (Seto, 2012, p.232). However, a recently written article by Seto (2012) claims that pedophilia can be categorized as a sexual orientation (Seto, 2012, pp.233-235). To take a stance on that

contestable issue is beyond the focus of this thesis and therefore will not be further pursued.

2.4. Classification chaos

A further delimitation within the field of pedophilia is the previously mentioned lack of differentiation of the term's child molester or child sexual offender and PWP, both within the research domain and society at large. Some PWP have not committed any sexual offences against children, while some child sexual offenders are not pedophilic (Berlin, 2014, p. 404; Feelgood & Hoyer, 2008; Seto, 2004, p.323). Yet, most often the terms are still being used interchangeably, making it difficult to obtain reliable data and generalize it to other work. Feelgood & Hoyer (2008) conducted a study where the confusion of the legal, - (child sexual abuse) and medical/psychological (pedophilia) terms is being examined. After analysing 714 empirical studies from 1972 – 2004, the authors concluded that diagnostic pluralism is hindering the research of pedophilia (Feelgood & Hoyer, 2008). In order to circumvent the issue of classification chaos within this thesis, the scientific data, which is being used throughout the thesis, will be based on authors or articles where the differentiation has been made or the authors are aware of the issue.

2.5. Prevention

The *Prevention Project Dunkelfeld* (PPD), the German term 'Dunkel' translates to 'Dark Field', was officially launched in 2005 in Berlin-Germany and aims at preventing CSA by addressing men who think they may sexually abuse children. This study was the first study that investigated preventive treatment options for PWP that are willing to seek help (Beier et al., 2015).

2.6. Stigmatization

Within the article 'Stigmatization of People with Pedophilia; A Blind Spot in Stigma Research' (2017), the authors showed that a scarcity of empirical studies regarding the topic of stigmatization against PWP exists. Only few studies/articles of the reviewed literature focused exclusively on pedophilia as their subject matter, revealing a blind spot within the research field (Jahnke & Hoyer, 2013).

3. Method

The intent of the thesis is to investigate the discriminatory behaviour and human rights violations of PWP in the US, UK and Germany. This chapter will provide an explanation of the methodology used to conduct this research.

3.1. Comparative case study and qualitative content analysis

For the purpose of gaining a wider understanding on the topic of discrimination and human rights violations of PWP within western democratic countries; and to make a more reliable generalization from the results, a comparative case study of the US, UK and Germany will be conducted. While the comparative case study is often referred to as method, a distinction needs to be made between *method* and *approach*. The comparative case ‘method’ is not a specialized method per se, as it can be said about a discourse analysis or content analysis method. Instead, it is rather referred to as comparative approach or basic strategy, because ‘it lacks the preciseness to call it a method’ (Goldschmidt as cited in Lijphart, 1971, p.683).

The ‘scientific knowledge’ material within the thesis will not follow an explicit method, instead, the presented empirical data will be gathered after reviewing the existing scholarly sources on the topic of pedophilia and its linked discrimination. After collecting, analysing and evaluating relevant publications on the topic, the most important and relevant empirical data will be presented.

The ‘narrow’ method chosen for the rest of the material is a qualitative content analysis. A qualitative content analysis helps the researcher to relate the findings from the data to the context in which they have been generated, or as Krippendorff defines the method: ‘a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use’ (Krippendorff, 2004, p.18). This type of research is thus characterised by describing the content of the material, focusing on finding and analysing underlying themes and categories within it and understanding its meaning and context (Bengtsson, 2015, p.8) A qualitative content analysis can be applied to any type of written material, regardless of where the material has been found and without specific rules that must be adhered to (Bengtsson, 2015, p.10). Therefore, media sources, particular newspaper articles, and implemented legislations and policies in all three countries will be coded. The material will be reduced in its volume, themes will be identified and their relation or influence on each

other and the role they play in the wider context in which they have been produced, outlined. The intent regarding the legislations and media material is to understand the motives behind them and the implications they create for society and PWP particularly; and to find differences and commonalities between them. Additionally, the analysis will be based on the legal and political theory of Agamben, to identify the political and social environment each theme was produced in (Bengtsson, 2015, p.9).

4. Material

In the following chapter, the thesis material will be presented. Firstly, the used material will be outlined, after which the material's selection will be considered.

4.1. Material

An expanded part of the thesis was conducted by relying on secondary sources, which consist of empirical articles and academic journals from different academic disciplines, as well as empirical conducted studies, which were mostly conducted in Germany, the UK or the US. In order to understand the media's depiction of pedophilia, articles in newspapers, but also reports by NGO's, such as Human Rights Watch, have been used. However, this information has been backed up by empirical articles within journals, conducted studies or legal documents that prove and underline the findings, and often refer to particular media events or campaigns. The thesis also makes use of primary sources, such as country specific laws and policies, e.g. Megan's Law, Sarah's Law etc., which exemplify controversial patterns within the justice system towards PWP.

4.2. Selection

Generally, the majority of the used material within this thesis has been conducted within the past 10 to 15 years. Although some older studies or articles may be referred to, current data will be provided to ensure that the presented information is up-to-date and still in line with the contemporary knowledge. In order to gain a broader understanding of the issue within modern democratic countries, the discriminatory behaviour against PWP will be exemplified by choosing a comparative case study of the US, UK and Germany. These countries have been selected due to the availability of existing data and the affinities between the countries in terms of being modern western democracies, their treatment of pedophiles by society, and the

difference, as well as similarities in regard to their regulations and laws. – The US presents an extreme case, due to the enactment of some of the most severe ‘anti-pedophile’ regulations. The UK shares the inherently negative perception of PWP, including one of the most vicious media-campaign in the last decades. However, although strict regulations and legislations exist, and some reflect those of the US, they are not as wide-ranging as it is the case in the US. Germany on the other hand, is a unique case, because even though the stigmatization against PWP is as high, and the portrayal of PWP within the media often negative, the before-mentioned legislations and policies do not exist as such.

While it would have been possible to do an in-depth case study of a singular country, choosing an extreme case such as the US, the aim of the thesis is to show that the finding of the thesis can be generalized to other western democratic countries. While some countries apply more extreme forms of legislations, policies and media campaigns than others, the discriminatory behaviour against PWP is nonetheless observable in all cases.

5. Theory

The theory of this thesis is being presented in the following section. The legal and political theory of Italian philosopher Giorgio Agamben (1998) will be applied to this thesis and was chosen because it can serve as a theoretical foundation for understanding different aspects of the control and treatment of pedophiles as a form of punishment and discrimination; while exploring the basic correlation between the *community*, *sovereignty* and *bare life*. The theory will also be able to show the exclusive discriminatory behaviour against PWP. Due to the fact that a legal framework will be implemented and used throughout this thesis, Agamben’s legal part of the theory can help to highlight different issues regarding the laws and their resulting implications.

5.1. Agamben’s ‘Homo sacer: Sovereign power and bare life’

In his work: ‘Homo sacer: Sovereign power and bare life’, Agamben begins by examining the distinction between the two ancient Greek words of life, *Zoe* and *Bios*. 1) *Zoe*, also understood as ‘bare life’, is the simple form of living, which is attributed to all living beings due to their common biological existence. 2) *Bios* is the form of qualified living, which constitutes the political and social form of life. *Bios* is the construction of politicized life, also seen as form

of citizenship, in which all people engage with the community, influence it and are influenced by it (Agamben, 1998, pp.1-2).

Homo Sacer is the individual who has been, as a form of punishment, expelled from the social and political sphere (bios), which means that this individual's life status is defined solely as biological being (zoe). However, homo sacer is placed in an inclusive exclusion, meaning that even though the individual is excluded from the general legal and political sphere, including its legal protection, it still keeps a legal connection to the law in the sense that it has been excluded from it (Agamben, 1998, pp.180-188). As such, the sovereign, in that case the state, decides whether the life status of an individual shall be defined as 'bare life' or 'qualified life', and it is only the state that is entitled to change that status (Agamben, 1998, pp.46-50).

Agamben compares the 'bare life' to that of an outlaw or bandit, someone who is denied its legal status and forced into a state of nature. As Agamben clarifies, the life of the bandit can be seen identical to that of a werewolf, being neither man nor animal, placed within a threshold of indistinction. 'A monstrous hybrid of human and animal, divided between the forest and the city- the werewolf- is, therefore, in its origin the figure of the man who has been banned from the city.' (Agamben, 1998, p.105). By being denied the legal status, homo sacer is exposed to the constant threat of being harmed and even killed by anyone. 'To ban someone is to say that anyone may harm him' (Cavalca, *Il bando*, p.42, as stated in Agamben, 1998, pp.104-15).

The method that can be used by the state to reduce citizens to their bare life and ban them from society, is called the 'state of exception'. This method, the state of exception, is usually enforced in the case of an emergency, where the state suspends the law temporarily and provides provisional measures instead (Agamben, 1998, p.167). However, this state of exception, which used to be a temporary suspension of law and order, has now become the new permanent state of rule. *The camp* is the space where no longer a normal juridical and political order exist. In that space, sovereignty is without limitations and legitimizes violence on bare life (Agamben, 1998, pp.173-176). As Agamben states: 'The camp is the space that is opened when the state of exception begins to become the rule.' (Agamben, 1998, pp.168-169). As such, the camp, as a state of exception, is the space where the bare life is being placed, violence and death may be imposed upon it; and the 'hybrid of law and fact [...] become indistinguishable (Agamben, 1998, p.170). It follows, homo sacer is being held in the lawless space of the camp.

6. Scientific knowledge

The material of the thesis will be presented in the following three chapters. Firstly, scientific knowledge will be outlined, which describes empirical data in terms of criminological facts and in terms of the psychological facts and has been chosen in order to show that empirical data exists that highlights clear contradictions in the approach of the effectiveness of anti-pedophile legislations, how pedophiles are being treated and the surrounding knowledge about it. Secondly, the representation of pedophilia within the media will be laid out, because it is oftentimes for many people the only 'information source' on the topic of pedophilia and lastly, a legislative framework will be provided in order to get a better understanding on the existing laws and policies against sex offenders, which includes convicted pedophiles. While the scientific knowledge section will be divided into two sub-sections, - criminology and psychology, the other two aspects will be applied to the case of the US, the UK and Germany, where similarities and differences between them will be highlighted.

6.1. Criminology

6.1.1. Recidivism

Just as many different aspects in the research field of pedophilia are still largely unknown, the rate of recidivism is also difficult to determine. Recidivism, depending on the applied definition, will affect the reported rates of offenses. Therefore, the current rates of recidivism vary from 10% to 50%, differing on how the rates have been conducted (Hall & Hall, 2007, p.467).

Within a conducted project in Vermont, a sample of sex offenders, most of the participants were PWP, participated in cognitive behavioural treatment, supported with additional interventions, such as job training and attendance at Alcoholics Anonymous, lasting for around 4 years. After 5 years, a follow-up study for recidivism was conducted and showed that only 1.5% of the participants had reoffended (West, 2000, p.525).

A few studies suggest that PWP can be reached for prevention of CSA. The leading example is the PPD in Berlin, Germany, with hundreds, if not thousands of (potential) pedophilic child abusers seeking therapeutic help (Beier et al., 2009, pp. 859-862). The first results of the PPD has shown, that not only are pedophilic men willing to seek help, but also that emotional

deficits and offense-supportive cognitions decreased, whereas post-therapy sexual self-regulation increased. The authors concluded, that therapeutic treatment can help to reduce CSA, as well as related behaviours (Beier et al., 2015, p.529).

6.1.2. Effectiveness of laws

So far, the effectiveness of current residency restriction laws and community notifications on CSA crime prevention has been unexplored. However, there is extensive debate as to whether the current criminal justice system is indeed promoting public safety.

The Minnesota Department of Corrections (2003, 2007) conducted studies regarding the effectiveness of residency restrictions laws and whether residential proximity to public places have an influence on recidivism. The studies monitored the behaviour of sex offenders/PWP that were discharged from correctional facilities, but sexually re-offended again. All analysed cases have shown that residency restriction laws would not have been able to prevent any of the crimes. While only a handful of the offenders reached out to their victim in public places, the majority of offenders reached the victim through family members or friends. And in cases where the offender actually gained access to unknown victims, it was unlikely that that was in close proximity to where the offender lived. In view of that, the researchers determined that residential proximity to public areas are not influencing sex offender's recidivism. Consequently, Minnesota has not implemented any state-wide residence laws (Levenson, Zgoba & Tewksbury, 2007, pp.6-7; The Minnesota Department of Corrections, 2003, pp.3-11; Minnesota Department of Corrections; 2007, pp.20-26).

Residency restrictions limit housing options for sex offenders and PWP rigorously, with some areas nearly completely banning them from living in residence areas. The effects of those laws resulted in thousands of sex offenders/PWP being denied housing, becoming homeless or transient, making it more difficult to effectively track and monitor them. The Colorado Department of Public Safety (2004) found that sex offenders who had a stable support system, including employment and family relationships, lowered recidivism rates and law violations, in comparison to people without that support (Colorado Department of Public Safety, 2004, pp.3-5; Levenson, Zgoba & Tewksbury, 2007, p.8).

Sex offender registries have been used by law enforcement to identify potential suspects when offences have been committed within their jurisdiction. However, many sex crimes are not

being committed by registered offenders. With the sheer amount of over 600,000 registered sex offenders' in the US, the police are unable to possibly track all registrants. And the enormous number of registrants makes it even impossible for law enforcement officials to ensure that all the offenders that are meant to register, are in fact doing so. In 2003, California disclosed that it had lost track of 33,000 convicted sex offenders (44 % of all offenders that should have been registered), and in 2005 a study conducted in Florida found that over 7,000 registrants were undetectable (Human Rights Watch (HRW), pp. 45-46; POL staff, 2003, January 8).

Community notifications, their impact and effectiveness, have received very little attention in the research domain. Nonetheless, a few studies tried to identify if community notification reduce the re-offense rates of sex offenders. - None of the studies were able to determine that they actually do (HRW, 2007, p.59).

Community notifications and civil commitment laws have been challenged regarding their constitutionality, mainly concerning violations of due process, such as the inability of challenging the indefinite community notifications, double jeopardy, ex post facto clauses and unusual punishment, for example color-coded licence plates and bumper stickers on cars that identify the individual as sex offender. Mostly the Supreme Courts upheld the laws, however, it acknowledged that public shaming and social ostracism may be the results of the laws (Alexander, 2004, pp. 365-366; *Smith v. Doe*, 538 U.S.).

6.1.3. Mistaken premises

'Anti-pedophile' laws, such as community notification schemes, are based on the assumption that most sexual offences are being perpetrated by strangers. However, CSA is mainly being committed by close members of the victim. So far, contemporary data has not confirmed that PWP are preying upon children on public places, such as playgrounds and schools. In fact, the majority of all child sexual offences are not being perpetrated at public places or at the home of a stranger, but instead at a victim's own home (40%) or at the home of close acquaintances (20%). Also, most children are actually being sexually abused by someone they already know or are close with, for instance family members or members of close relationships, such as friends or colleagues; with only 7-14% of CSA being committed by strangers (HRW, 2007, p.24; Levenson, Zgoba & Tewksbury, 2007, p.5).

The comprehensive media coverage of CSA cases that have been committed by strangers, creates a general fear within society, even though in reality such crimes only reflect a small number of crimes against children. Yet, the media created the impression that CSA is constantly increasing, where as a matter of fact it is actually steadily declining. A survey conducted by Finkelhor & Jones (2004) has shown that CSA (and sexual assault against adults) have been declining since the early 1990's (Finkelhor & Jones, 2004, pp. 1144-1147; HRW, 2007, pp.24-25).

Sex offender laws are also built on the belief that PWP and sex offenders can't be cured, making rehabilitation ineffective and therefore pointless. While it is indeed true that PWP can't be cured, they can nonetheless be helped to understand their thoughts, feelings and behaviour; and change, adjust and control them accordingly. Obviously, treatment options can't be expected to be 100% effective all the time and for all patients, however, research has shown that many PWP benefit from mental health treatment and even wish to receive it (B4U-ACT, 2011, July-October; Levenson, Zgoba & Tewksbury, 2007, p.5).

6.2. Psychology/Psychiatry

6.2.1. Public attitude

Research on the public perception of pedophilia has proven that the public holds particularly negative sentiments against the group and feels negative emotions, such as disgust, anger and fear. Jahnke, Imhoff & Hoyer (2015) found within two surveys that 84% of all participants (854 participants in study 1) agreed to feel anger towards PWP, while only 10% would accept PWP in their neighbourhood. Whereas 39% would want PWP to be imprisoned (study 1), 14% would want PWP to be dead (study 1). Only 5% of the participants would be willing to befriend PWP (201 participants in study 2). These findings seem to be in line with other research, even though those numbers tend to be even higher. In study 2, 27% wanted PWP dead and 49% of the participated called for incarceration, findings that are in accordance to those of Neutze & Osterheider (Jahnke, Imhoff, Hoyer, 2015, pp. 25-28; Neutze & Osterheider, 2015, pp.7-8). Also, one third of the questioned participants believe that PWP can choose whether they want to have a sexual attraction towards children. However, that belief is not in line with the existing scientific data, which has shown that PWP are not able to choose a sexual preference in children (Hall & Hall, 2006, pp.462-465; Jahnke, Imhoff, Hoyer, 2014, p.29; Seto, 2012, p.233).

Often, public's opinions can be influenced and shaped by the media, since media is for many individuals the only 'informed' opinion, - or information source on the topic; and therefore has a great deal of power and influence in society and the shaping of societal attitudes. McCartan (2004, 2010a) found within his studies, that the majority of people agreed that the media created a 'witch hunt' against PWP, while at the same time having an impact on them and their personal opinions. Within the studies it also became apparent that the majority of people believe that PWP are evil, that the re-offence rate for PWP is higher than for any other crime and that PWP 'sexual abuse children' (McCartan, 2004, pp.333-334, McCartan, 2010a, pp. 270 & 279).

6.2.3. Mental health care professionals

Most people with pedophilia suffer from various mental health issues, however, they rarely seek professional help. Often that stems from the stigmatization of PWP and their fear of being misunderstood by therapists, unfairly treated or being reported. An online survey conducted by the B4U-ACT (2011, March-April), asked 193 PWP about their behaviour, efforts to find mental health assistance and suicidal thoughts. The findings revealed that while 54% of the participants believe that health professionals would not treat them with respect and 62% that they would not be treated non-judgemental. The majority of individuals also disagreed that therapists have a good understanding of pedophilia, with 59% stating that they would not seek professional help (B4U ACT, Inc., 2011, March-April). The described fears concerning the stigma of psychotherapists seem to reflect the reality rather accurately. - Stiels-Glenn (2010) investigated whether treatment options for child sex offender and PWP are available, asking psychotherapists in Germany whether they would be willing to treat PWP/child sexual offenders. From the 86 psychotherapists that answered, only 4,7% were willing to consider treating PWP. Reasons given for the reluctance to work with PWP included a lack of knowledge, other work fields than psychotherapy, negative feelings towards the group or negative experience (Stiels-Glenn, 2010, p.77). However, Jahnke, Philipp & Hoyer (2014) conducted a survey regarding the low willingness of psychotherapists in training to treat people with pedophilia, by using a stigma reduction program. The authors created a 10-minute online intervention and questionnaire. The authors found that attributes such as dangerousness, social distance and controllability can be positively influenced and reduced (Jahnke, Phillip & Hoyer, 2014, pp.97-100).

6.2.4. Preventive treatment

As of today, there have been only few studies on treatment options to prevent CSA, which may be said to be due to the lack of available treatment programs generally (Beier et al., 2009, p.865; Shields et al., 2020, p.2). While services vary widely by geography, many services are nonetheless hard to access or unavailable in different parts of the world. In the US, for example, resources regarding preventive efforts only exists sporadically. Although, an exception constitutes the U.S.-based organization *Stop it now!*, which offers help through an anonymous helpline to people that have sexually abused children or have a risk of offending; and is now available in different countries, such as the Netherlands, Germany and UK (Eisenberg, Mulder, Van Horn, & Stam, 2014; Grant, Shields, Tabanick & Coleman, 2019; Van Horn et al., 2015).

From a public health approach, however, the scarcity of resources can be seen as a considerable gap within the treatment provision, which aims at preventing CSA *before* abuses occur. By severely stigmatizing PWP, PWP are being placed into isolation and consequently out of societies social control; making preventive measures nearly impossible. Despite that, a large number of individuals with a pedophilic disorder, who fear of potentially committing a sexual offense against children, can in fact be reached for preventive treatment options (Beier et al., 2009). Existing empirical data has proven that a high demand for prevention efforts by PWP exist. The pilot study ‘Stop it now!’ UK and Netherlands, for example, has received over 3,000 calls from help-seeking PWP and individuals worried about a friends/family’s members sexual attraction, between the months of December 2013 and April 2014 (Van Horn et al.,2015, pp. 859-860). And during the first ten years of the PPD, over 5000 individuals expressed interest in participating in the treatment therapy, with inquiries to the participation of the project coming from all over Germany, Austria and Switzerland (Beier et al., 2009, pp. 859 & 863; Wagner, 2015, p.140).

6.2.2. Consequences of stigma

In contrast to the rest of the population, stigmatized individuals, particular those with a pedophilic disorder, have been reported to have shown higher rates of mental health issues and negative emotional functioning, including anxiety, substance disorders, low self-esteem and a deficit in coping with emotion regulation; all factors that are being regarded as having an etiological role in sexual offending (Hall & Hall, 2007, p.462; Jahnke, Schmidt, Geradt and Hoyer, 2015, pp.2175-2176; Meyer, 2003).

Within a study of Schaefer et al. (2010), 160 PWP were asked questions relating their mental health status. While 65% of participants had been under professional supervision due to psychiatric problems, 31,3% had at least once been admitted to a psychiatric hospital. However, it is not clear whether the evidence found regarding the connection of pedophilia and mental illnesses is a direct consequence of stigma or a predecessor of the condition. Notwithstanding, the majority of all participants (73.8%) stated, that they had severe/very severe distress as a direct consequence of their sexual attraction in children (Schaefer et al.; 2010, p.158).

Moreover, data published by B4U-ACT (2001, March-April) indicated that many PWP have had thoughts about suicide throughout their life, with the majority of them having their first suicidal thoughts around the age of 16. The data is also in accordance with Walter & Pridmore's (2012) findings, which suggests that PWP that have been publicly outed or are under threat of exposure, are 183 times more likely to commit suicide than the general population (Walter & Pridmore, 2012, p.50).

By not getting professional help, which simultaneously intensifies mental health issues, such as depression, low self-esteem or suicide, an increasing risk for acting on the sexual interest in children may be the result. Therefore, stigma against people with pedophilia may not only have negative impacts on the mental health of PWP and hinder them from seeking help, but at the same time also restrict meaningful prevention of CSA (B4U-ACT, 2011, July-October; Jahnke, Imhoff & Hoyer, 2015, p.22; Shields et al., 2019, p.8).

7. Media Portrayal

7.1. United States

The US press tends to discuss pedophilia in a negative and emotional way, applying language that reflects the promotion of negative social reactions. Not only the headlines but also the articles themselves describe PWP as monsters and beasts. An article from the *New York Post* starts its article with the words: 'Brooklyn child-molester monster' and continues within the text with: 'New York's most notorious child molester' and 'Bin Laden of Pedophiles' (Dan, 2012). *The Washington Times* published an article in which the authors call for lifelong imprisonment for pedophiles, by referring to them as 'predatory monsters' (Nugent, 2011), while *The U.S.*

SUN repeatedly refers to ‘monsters’ and ‘paedo’ (Burrows, 2020; Sales & Coyle, 2020; Stewart & Cavanagh, 2020).

7.1.1. Oprah Winfrey Show

In 1998, Oprah Winfrey was named one of the 100 Most Influential People of the 20th Century by the Time Magazine and the Oprah Winfrey Show, which existed for 25 years, is one of the most successful daytime TV shows in America, broadcasting in over 145 countries (Time staff, 2010; Usborne, 2009).

In 1990, Oprah broadcasted an episode called ‘*A Town’s Dirty Secret: Child Molestation in Montana*’, starting the show with the word: ‘Child molester or pedophile, words that mean the same.’ (OWN, 2019, 0:01). And in 2006, the episode 62 of season 22 starts with the headlines: ‘*Oprah’s Latest Capture: From Boys’ School Director to Most Wanted Pedophile*’, while summarizing the show under the words ‘Another accused child molester has been captured [...]’. What becomes apparent is that within both episodes’ different types of sex offenders, i.e. PWP and child sexual abusers, are not being distinguished from one another, with all individuals being labelled as PWP.

In 2005 Oprah initiated then the ‘*Oprah’s Child Predator Watch List*’, which highlighted accused child molesters who were listed on the FBI’s most wanted list. Oprah planned on helping the law enforcement to catch the perpetrators and reward anyone who helped with information’s to the arrest with \$100.000. During several episodes, photographs, along with details of the crimes and possible hideouts were displayed. The same year, the Sunday Morning Herald reports about the campaign in the following words: ‘Oprah brings swift results to pedophile campaign’ (Anonymous, 2005). While the campaign was successful, because it contributed to the captures of several wanted fugitives, the applied terms throughout the campaign and surrounding the campaign underlined the classification chaos and wrongful labelling of PWP.

7.2. UK

In recent years some British newspapers, such as *The Guardian*, have occasionally written about pedophilia in a non-generalized and rather appropriate way. In 2017 one of the articles within *The Guardian* reads as follows: ‘To stop pedophiles, we need to help them. But no one

wants to hear that.’ (Orr, 2017). Beyond that, the media coverage in the UK tends to discuss the topic in rather hostile, negative terms. Particularly tabloid newspapers apply generalized, negative language to PWP, both in the headlines as well as within the articles. *The Sun* writes in March 2020 ‘ROT IN HELL – Peado who raped girl, 7 [...]’ and in January 2020 ‘PURE EVIL – Peado monster sentenced to chemical castration after raping 12-year-old girl’ (Burrows, 2020 & Lockett, 2020). In both cases the perpetrator is in fact a child molester, instead of a pedophile, however, the newspaper falsely labels the individual with the diagnostic term ‘pedophilia’.

7.2.1. News of the World campaign (NOW)

One of the clearest examples for this negative media coverage and the influence the media can have, can be found in the *NOW* campaign surrounding the death of Sarah Payne. In July 2000, the dead body of eight-year-old Sarah Payne was discovered, after having been missing for two weeks (Critcher, 2002, p.522).

Six days later *NOW* published a series of anti-paedophile campaigns, calling for stricter government policies, including the introduction of public disclosure notifications, the so-called ‘Sarah Charter’, which is similar to those of Megan’s Law. *NOW* ran the campaigns in order to convince the public and the government for the need of the implementation of Sarah’s Law. In the following two weeks, *NOW* published the ‘Name and Shame’ campaign, which included the publishing of 49 of UK’s convicted PWP and child sexual abusers, including their names, photographs and personal details, such as address and offences (Critcher, 2002, pp.522-523; McCartan, 2010b, p.255). On August the 4th, vigilantes started to protest in front of the house of a ‘known’ pedophile, Victor Burnett, who got named in the *NOW* campaign just days earlier. Many more protest followed, which resulted in whole families having to flee their houses (Critcher, 2002, p.524). The reaction to the campaign varied. While the Payne family welcomed the campaign, the government condemned the public disclosure of the newspaper and the call for Sarah’s Law, due to the direct opposition to the Human Rights Act 1998, in which the right to privacy is being preserved; and the fear of driving pedophiles underground. However, even though the government rejected the law in the beginning, it reconsidered its decision and then implemented a pilot project in 2008, which it valued as successful and was thus launched in 2010 across all of England and Wales (Critcher, 2002, pp.526-527; Griffin, 2010, pp.997-998; McCartan, 2010b, p.256).

7.3. Germany

In Germany, the media portrayal of PWP is twofold. – On the one hand, German tabloid newspapers such as the *B.Z.* or *Bild* can be seen as case-based, emotional and negative. It is mainly about current reports on CSA cases, which are being written in a very emotionally and personalized manner, automatically fusing the terms pedophile and child molester, without knowing the actual differentiation of the applied terms; and whether the person in question is indeed a pedophile. An article written by the *Bild* presents the headlines ‘Swedes are testing injections against pedophilia’ (The authors own translation). Obviously, an injection/vaccination against pedophilia is non-existing, because it is a sexual preference for which no cure has been found. What the author intended to say was that the medication at issue is a drug that reduces sexual activity and sexual fantasies, factors reducing CSA (Anonymous Bild, 2016). On the other hand, there are factual and informative media coverage related to the clinical term of pedophilia. In 2016, *Der Tagesspiegel* wrote an article titled ‘How a pedophile learns to resist his urges’ (authors own translation), in which the author writes about PWP, their struggles and how they find their way into therapy as patients to the PPD, the first prevention project that aims at providing people who feel they may offend professional therapeutic help (Heine, 2016).

7.3.1. PPD

The PPD which started in 2005, was initiated to reach people that fear they may sexually abuse children. The overall goal of the project is to reduce the frequency of CSA by a regionwide establishment of professionally qualified, preventive outpatient therapy offers, directed at PWP in the Dunkelfeld. Furthermore, the project aims at increasing the readiness of accepting therapeutic help; and to raise awareness of the issue in the general population, in order to show that there are affected men who are conscious of the existing problem and in turn want to prevent any harm to children. Dunkelfeld translates to ‘dark field’ and refers to cases that have been committed but are not officially known. While the project aims at people that feel they may re-offend, it also addresses PWP that have not acted upon their sexual attraction but are worried they might. In order to reach potential participants for the therapy, an extensive media campaign was established in 2005. Media campaign poster were placed across the city of Berlin and a TV spot was broadcasted on numerous German TV channels and cinemas (Beier et al., 2009, pp.855–856). Within the first ten years, 5.828 individuals reached out for help, from which 477 people started a therapy and 207 completed it. As of today, the prevention project

has been expanded to eleven cities within Germany, with the aim of expansion over the whole country (Wagner, 2015, p.140 in *Sexuologie – Schwerpunkt Zehn Jahre Präventionsprojekt Dunkelfeld*).

In short, the depiction of PWP within the media is mainly based on fear, inhumanity and emotions. Although some daily newspaper started to reflect factual information's, tabloid newspapers tend to dismiss the existing knowledge surrounding pedophilia and the distinction between different types of sex offenders. In all three countries, the representations of pedophilia can be said to be mostly emotional driven and case-based, usually focusing on specific CSA events. Especially in the case of the US and UK, parallels can be drawn in the implementation of sex offender schemes. In both cases, the implementation of Megan's law and Sarah's Law followed high profile cases involving children and the campaigning for new or stricter laws by the parents of the victims and in support of the media.

8. Legal Framework

8.1. US

In the last decades, the US has developed different legal efforts intended to protect society from sex offenders. Whereas in the 1930's civil commitment laws against pedophiles and sex offenders aimed at treating them in mental health institutions, withholding severe forms of punishment and incarceration for the most (mentally) unstable and sick individuals; a shift occurred in the 1980's/1990's, with new legislations being implemented that aim at punishing and controlling sex offenders, shifting the focus of treatment towards that of the dangerousness of the offender. From the 1990's onwards, the US, as well as the UK saw further concerns regarding the regulation of sex offenders, specifically after the release of convicted paedophiles from prisons (Brown and Pratt, 2000, p.50-52; Spencer, 2009, p.227). Some of those 'newly' implemented legislations will be elaborated upon below.

In 1994, the 'Jacob Wetterling Act' got implemented in response to the abduction and murder of eleven-year-old Jacob Wetterling. The law demands of states to form registers of sexual offenders and recommends minimum standards for those. State registration policies usually last for around 10 years and include at least personal details, such as address, social security number, photographs and fingerprints. As for today, all 50 states have created sex offenders'

registrations accordingly (Griffin, 2010, p.988; Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 1994, section b).

1994 was also the year seven-year old Megan Kanka got raped and murdered by a previous convicted child sexual offender living across the street from the family. Laws were then enacted in 1996 following the offence. The new law, named ‘Megan’s Law’, provides the public with all relevant and necessary information concerning convicted sex offenders. The information will be made available by law enforcement agencies and can include the offenders’ name, address, picture and offence (Griffin, 2010, pp.989-990; Megan’s Law, 1996, section 2).

’The Adam Walsh Act’ was signed into law by Former President George W. Bush in July 2006. Adam Walsh, a six-year-old boy, got abducted from a shopping mall in Florida in 1981, and found dead two weeks later in a canal. The Walsh Act categorizes offenders into different risk levels by using three different tiers. Tier 3 offenders (most serious) have to update their whereabouts every three months with lifetime registration requirements. Tier 2 offenders must update their details every six months for 25 years and tier 1 offenders every year for 15 years (Adam Walsh Act, 2006, section 2, 111 & 115; Griffin, 2010, pp. 991-992).

Since 2005, laws that are restricting where sex offenders can live, have become more popular and widespread. These laws prohibit sex offenders to live within certain distances, usually between 150 to 600 meters, from schools, parks and any other public places where children may be present. Additionally to state-wide residency restrictions (over 30 states have implemented restriction laws), hundreds of municipalities have enacted local ordinances that go beyond the states’ requirement, including restriction zones such as churches, theatres, stadiums etc. (HRW, 2007, pp.100-102; Levenson & Cotter, 2005, pp. 168-169). In certain cases, restrictions are as far reaching as covering entire cities, only allowing the smallest areas to live in. - In 2006, San Diego County in California placed 97% of all rental housing under residency restrictions. Even though some restriction laws have been found unconstitutional and had to be amended (since 2020, San Diego applies its law to sex offenders on parole ‘only’), most laws are still in place with similar and still severe restrictions (Bowen, 2020; City of Milwaukee – Public Notice, 2015, pp.3-6; Kyle & Saavedra, 2015; Sheboygan, Wisconsin ‘Sexual Offender Residency Restrictions’ 2018, section 70-263).

In 1996, California became the first state to authorize the procedure of chemical and surgical castration for sex offenders that are being discharged from prison. As of today, eight states

have passed laws that allow for the chemical castration of sex offenders. While some states base the procedure on mandatory grounds, others frame it as a voluntary decision. In May 2019, Alabama signed a bill that requires sex offenders to undergo chemical castration at least a month in advance of being released into society and to pay for the procedures (Alabama House Bill 379, 2019, section 1; Hamblin, 2019; Spencer, 2010, pp.231-232).

8.2. UK

In the last decades, the UK implemented similar registration and notification laws to those of the US. However, even though the laws are similar, they differ in regard to public access. The UK's Sex Offender Registers are not widely accessible for the public, but only to an assorted group of people.

In 1997, the government enacted the 'Sexual Offenders Act', which applied nation-wide notification requirements, thus creating a sex offenders registry. The Act requires sexual offenders to register with the police within 14 days of their release, and provide personal details, such as name, address and photo. Offenders are also to notify the police if any changes regarding their details occur. Depending on the offence, sexual offenders (18 years and older) remain in the register between five and indefinite years (Sex Offenders Act 1997, section 1 & 2). The Sexual Offences Act 2003 replaced the Sex Offenders Act 1997 completely. While it sets out similar provisions, the Act uses more specific wording, created several new offences and requires sex offenders under section 85 (1) to register within their local police every year, instead of every five years. The Act also requires now a registration by the local police force within 3 days. (Sexual Offences Act 2003, section 83).

The Child sex offender disclosure scheme, better known under Sarah's Law, allows for members of the public to ask the local police, whether an individual around them, such as a neighbour or family member, is a convicted sex offender. On that request, the police will share the information's to relevant individuals of the public. Sarah's Law was introduced in 2008 as a pilot project in four areas of England. After valuing the project as successful, the Home Office decided in 2010 to launch the law across all police force areas in England and Wales (Griffin, 2010, pp.997-998; Home Office, 2010).

As of today, the UK has no official laws concerning castration laws for sex offenders. However, around 120 serious sex offenders are undergoing voluntary chemical castration treatments, and a proposal for the implementation of castration laws is being considered (Maddox, 2018).

8.3. Germany

In comparison to the US and UK, Germany does not have any nationwide sex offender registration laws, residency restriction laws or community notifications. However, some states within Germany, such as Bavaria or Brandenburg, have developed different information systems for the surveillance of potential re-offending sexual offenders, only accessible by police officials, in order to track and supervise dangerous sex offenders after their release from prison (Bayerisches Staatsministerium der Justiz, 2007; Ministerium des Innern Brandenburg, 2008).

In 1969, Germany enacted a law that allowed the use of surgical castration in the context of treatment of sexual offenders. After heavy criticism in regard to that procedure by the Council of Europe in 2012 (Report CPT, 2012, pp.54-57), Germany responded to the report and amended its law accordingly. Since 2016 ‘only’ voluntary chemical castration is being offered as treatment procedure, while having the surgical castration procedure removed. The chemical castration can be applied to sex offenders once the minimum age of 25 years is met, the procedure is being voluntarily requested by the individual in question, the castration will not result in any physical or psychological adverse effects which are disproportionate to the sought intent and the intervention is in conformity with the latest findings of medical science, in order to prevent, cure or improve severe illness, mental disorder or suffering related to an abnormal sex drive (Law on voluntary Castration, section 2 & 3).

In summary, while the UK and US have certain similarities regarding the implementation of community notifications and registration laws, the UK differs in regard to the implemented community notifications. While the US allowed for open public notifications, meaning that anyone has access to the whereabouts and information’s of sex offenders, the UK only allows certain individuals of the public to apply for the access to those information’s. Germany, on the other hand, does neither have any nationwide registration, - or residency restriction laws, nor any community notifications; and therefore differs to both the US and the UK. Distinct to the UK and Germany, the US is the only country to prohibit sex offenders of living in certain areas. Chemical castration laws for sex offenders are not nation-wide enforced in the US.

However, 8 different states have implemented laws that call for the castration upon release from prison. The UK, on the other hand, has not yet implemented any castration laws. And in Germany, 'voluntarily'- based chemical castration laws have existed since 1969.

9. Analysis

This chapter provides the analysis of the material by applying Agamben's political and legal theory. It will be argued that the pedophile can be understood as homo sacer. The theory can be understood as a useful tool which helps to show the discriminatory behaviour and human rights violations of PWP and the resulting implications of it thereof.

9.1. The pedophile as homo sacer

Homo Sacer 'is in fact a curse; and homo sacer on whom this curse falls is an outcast, a banned man, tabooed, dangerous...' (Agamben, 1998, p.79). The depiction of homo sacer as the life considered accursed and 'the person or the thing that one cannot touch without dirtying oneself.', underlines the strict differentiation from the bare life and that of the qualified life, and reflects the conception of the contemporary pedophile all too explicit (Agamben, 1998, p.79).

Within the last decade, the populist media depicted PWP as ruthless sexual monsters, the accursed and predatory stranger looming around school grounds awaiting its next victim. Especially tabloid newspapers in the US, UK and Germany tend to describe PWP as the most dangerous offender, the outsider from whom society must defend itself (Richards, 2018, p.835). Whereas the comprehensive media coverage of specific CSA cases conducted by strangers generates a greater fear within society, which contributes to the general belief that the distancing from PWP is necessary, actual CSA committed by strangers is rather less frequent ('only' 7-14%) and even decreasing. As the empirical data has shown, the majority of CSA occurs in the victim's own home (40%) and is being perpetrated by close relatives. Also, the survey by Finkelhor & Jones (2004) has shown that sexual assault against children and adults has been declining since the early 1990's; premises that the media, as well as the public at large, dismisses in its entirety (Finkelhor & Jones, 2004, pp. 1144-1147; HRW 2007, p.24; Levenson, Zgoba & Tewksbury, 2007, p.5). However, tabloid newspapers rarely write about the danger of abuse and sexual exploitation that children are subjected to within their own homes and which are more predominant than attacks from sexual predators. Instead, the media

writes about singled out CSA cases, depicting PWP as monster who are usually found outside the normal family setting.

The clearest example of the media distancing PWP from the home and community, while at the same time fuelling the public concern of PWP within society, can be found in the British NOW campaign of 2000. The ‘naming and shaming’ campaign presented the 49 sex offenders as evil predators ready to attack innocent children at any given moment. The sex offenders were portrayed as strangers that are living among the community, while nonetheless not really being part of it (Cricher, 2002, pp.522-523; McCartan, 2010b, p.255). Important to note here is the terminology applied to the campaign: While the campaign referred to convicted *pedophiles*, the men depicted within the newspaper were in fact convicted *child molesters*. Irrespective of the actual separation of the terms, the campaign regarded pedophilia synonymously as CSA. That lack of differentiation and wrongful labelling can not only be observed in the ‘anti-pedophile’ campaign of the NOW, but also in the general popular media, with most tabloid newspapers in Germany, the UK and US contributing to the classification chaos alike. Several episodes of the Oprah Winfrey Show fell within the same trap as well, confusing the terminology of child molester and pedophile, labelling it as all the same (OWN, 2019, 0:01).

The problem that arises from the classification chaos is that the fear of further attacks within society is being increased and negative and discriminatory reaction towards *pedophiles* intensified. PWP, merely seen as a diagnostic term, are being discriminated against even before they have actually done anything; and are being outcasted due to their sexual attraction in children, which they neither chose, nor can change. Thus, people tend to assume that every PWP is automatically a child sexual abuser, even though the term pedophilia solely implies that the sexual attraction towards children is existing. While pedophilia does not entail that everyone with a pedophilic disorder is automatically sexually abusing children and many individuals are able to control their sexual impulses and refrain from acting upon sexual desires, the public, as well as the media, does not make this distinction, interchangeably seeing the pedophile as child molester. Studies conducted by McCartan (2004, 2010a) confirm the classification chaos and negative public perceptions, with the majority of people believing that pedophiles sexually abuse children and that they are evil (McCartan, 2004, pp.333-334). McCartan’s study (2004) also showed that the majority of interviewed people agreed that the media created a ‘witch hunt’ against PWP, while at the same time having an impact on them

and their personal opinions (McCartan, 2004, p.334). As such it can be said that the media plays an important role in modern society. - It got the ability to reach and influence society and to a certain degree shape and impact public opinions. By receiving most of the information and knowledge on the topic of pedophilia from the media, the general public's opinion may even be influenced by the information given to them by the media (McCartan, 2010b, p.250).

The issues resulting from that are twofold. – Firstly, the false and negative perception of PWP by the public, as well as the media, is being conveyed throughout the whole of society, including the professions that are meant to be impartial instead of judgemental, such as psychotherapists (Stiels-Glenn, 2010). The very same people that are most capable of understanding the disorder and are able to provide help, refrain from doing so because of the negative attributes they associate with pedophilia. Apart from the fact that many PWP are willing to seek help in order to come to terms with their own sexuality, and to prevent offences or re-offences against children, as the pilot-study 'Stop it now!' UK and Netherlands and the PPD in Germany have proven, the higher rates of mental health issues in PWP would entail that PWP should be provided with intense therapeutic psychotherapy; taking into consideration that an unstable, depressive and emotionally distressed pedophile may pose an increased risk for acting upon its sexual attraction against children (Beier et al., 2009, pp. 859 & 863; Van Horn et al., 2015, pp. 859-860). The majority (73,8%) of the 160 questioned PWP within Schaefer's et al. (2010) study have stated that they had severe/very severe distress as a direct consequence of their sexual attraction in children and data published by B4U-ACT (2001) showed that many PWP have suicidal thoughts and that PWP are 183 times more likely to commit suicide than the general population; indicating that therapeutic psychotherapy is a strong necessity (B4U-ACT, 2011, July-October; Schaefer et al.; 2010, p.158; Walter & Pridmore, 2012, p.50). By not getting professional help, mental health issues, such as depression, low self-esteem or suicide, may be intensified and an increasing risk for acting on the sexual interest in children is the result. But the lack of willingness by psychotherapists to offer treatment options, combined with the general scarcity of available therapies, restricts meaningful prevention efforts against CSA (B4U-ACT, 2011, July-October; Jahnke, Imhoff & Hoyer, 2015, p.2; Shields et al., 2019). Secondly, the media is able to use their influence in order to reinforce their own agenda, such as demanding stricter 'anti-pedophile laws', as it was the case in the NOW campaign, without actually being aware of the full impact and effectiveness of those laws.

The depiction of PWP within the popular media as monsters, preying upon its victims from outside the community, can be seen as a reflection of Agamben's definition of the werewolf. 'The werewolf, who is precisely neither man nor beast, and who dwells paradoxically within both while belonging to neither.' (Agamben, 1998, p.105). The *wolf-man* is placed into the zone of indistinction, a space between nature and city, between animal and man and exclusion and inclusion (Agamben, 1998, p.105). Due to its perceived evil nature and its lacking possibility for rehabilitation, the pedophile or werewolf is best expelled from society. For Agamben, the creation of the ban is the state of exception which has been declared by the sovereign and where the law is being suspended and bare life is being *abandoned* by it (Agamben, 1998, p. 28).

The implemented civil commitment and community notification laws by the US and partly the UK, exemplify this suspension of the law and the creation of the bare life of the pedophile. In the 1990's, both the US and the UK observed a growing concern by the public about the release of convicted sex offenders from prison, which sparked new debates for the regulation of, - and protection from sex offenders. In 1994, with the enactment of the Jacob Wetterling Crimes Act, the notification of the location and registration of sex offenders with the local law enforcement got firstly adopted. Other laws followed quickly, with the most-cited community notification law 'Megan's Law' in 1996 and the Adam Walsh Act in 2006 being implemented. Indefinite civil commitment laws, which follow after an offender has completed his prison sentence, are originally intended to protect society from further offences and punish the offender. However, informing entire communities of the presence of a registered sex offender, posting the registrants' details in a newspaper or on TV, the notification is no longer limited to the people at risk, but instead widened to the entire country. As such, the information disclosed to the public, regardless of the level of danger posed by the offender, are going beyond the scope and duration of what is needed and often lead to violence against the offender and their acquaintances. Indefinite community notifications and civil commitment laws have also been challenged regarding their constitutionality, most often in regard to the violation of due process, such as the inability of challenging the indefinite community notifications, double jeopardy, ex post facto clauses and unusual punishment (Alexander, 2004, pp. 365-366). Unusual punishment can include having color-coded licence plates and bumper stickers on cars, which help to identify the individual as sex offender, the placement of an advertisement in the local newspaper that states the offence and criminal background or clearly identifiable signs on the property of the offender, which reads that he is a child molester; measures that

publicly humiliate and degrade (HRW, 2009, p.52; Vess, 2009, pp.269-270). These implementations often lead to the ostracizing of the pedophile, making rehabilitation - and reintegration efforts sheer impossible.

In several court cases the judges have upheld community notification laws, rejecting claims related to due process, ex post facto claims and violations against fundamental human rights, such as the right to privacy. In 2003, the Supreme Court upheld the state community notifications laws regarding the violations of due process and ex post facto clauses on the ground that a sex offenders' conviction is sufficient enough to include them in the registry and that the registration is a preventive, instead of a punitive measure. The Supreme Court acknowledge that public shaming and social ostracism may be the results of the laws, but that 'for the efficacy of the scheme, the attendant humiliation is but a *collateral* consequence of a valid regulation.' (Smith v. Doe, 538 U.S. paragraph 99). Right to privacy claims have also failed in most cases, claiming that the states public safety outweighs the privacy interest of a convicted sex offender (Griffin, 2010, pp.993-994).

By having the highest instance in the American judicial system confirming the civil commitment laws and community notifications and confirming the priority of the community's rights over that of the sex offender, the precise law that was intended to protect the pedophiles right is suspended and the nature of the pedophile as homo sacer uncovered. And by the abandonment of the pedophile by the anti-pedophile laws, the pedophile is being hold in relation to the laws through the seizure of the laws. Yet, the rejection of the individual (former) offenders' law has collateral consequences for the offender that goes beyond the legal sphere (that of the infringement of various individual rights as stated above) and in turn extends to the social sphere. The ban of the pedophile by the law, which results in the labelling of the pedophile as dangerous sex predator that needs to be separated from society, leads to a further ban of the pedophile from society. By having the Supreme Courts upholding the laws against pedophiles, the dangerousness of the pedophile and its lower status within society is being highlighted, which society may see as a confirmation, justification and even a necessity to socially ostracise the pedophile from society.

In the UK, the implementation of a sex offender registry occurred first in 1997, with the adoption of the Sexual Offences Act. After that, the NOW was running its series of anti-pedophile campaigns in the summer of 2000, demanded policy changes in regard to the existing Sex Offender Registry Act. The then-editor Rebekah Wade called for the introduction of the

Sarah Law, similar to that of the US implemented Megan's law. By running the 'name and shame' campaign, the newspaper tried to convince the public of the necessity of the law, as well as putting pressure on the government for its implementation. Their main rationale for the implementation of Sarah's Law was that the public disclosure of convicted sex offenders would have saved the life of the victim, Sarah Payne. Unfortunately, that belief does not reflect reality. The killing of Sarah Payne occurred at her grandparent's home who lived in Kingston Gorse. The murderer, however, was not living in Kingston Gorse and therefore would have not been registered there. Thus, the public disclosure for which the NOW newspaper campaigned, would have not prevented the events of the murder (McCartan, 2010b, p.255). While the government seemed to have been overwhelmed with the attention the campaign has received and the pressure it created, the government firstly rejected the law, then reconsidered its implementation, agreed to implement it and finally implemented it with conditions. Today, the implemented Sarah's law consists of a limited registration scheme which enables certain members of society (usually close acquaintances of a potential child victim) to require personal information about a potential threat within close proximity (Griffin, 2010, pp.997-998; McCartan, 2010b, p.256).

A striking parallel between the implementation of community notification laws in the US and UK (Megan's Law and Sarah's Law), which are absent in the case of Germany, can be seen in the power of the public and media of influencing and implementing policy agendas. In both cases the campaign for the implementation of stricter sex offender laws have been led by the parents of the victim in combination with the support of the popular media and sympathetic child protection groups. The supporters called for the implementation of those laws, claiming they would have saved the life of the child; and the public together with the media were the key player in pressuring the government into its implementation, without having the government been directly involved in its legal formulation. While the government of the UK raised concerns regarding the effectiveness of the laws and the possibility of being counterproductive by driving convicted sex offenders underground, it eventually gave in under the pressure of the public and implemented an adjusted version of the demanded law. In contrast, the US government usually supports sex offender laws unconditionally and without questioning the effectiveness of them, whereas in Germany it seems that legislations are based on scientific expertise and sound scientific evaluation, as it was the case in the adjustment of its castration laws after the report and its criticism by the Council of Europe and the focus that is being placed on preventive treatment options. Due to the incurability of pedophilia,

prevention efforts have been understood as wanted, needed and effective or at least more effective than the current approach against CSA prevention that is based on ostracism and unfounded and ineffective anti-pedophile laws (Beier et al., 2015; Critcher, 2002, p.529; Levenson, Zgoba & Tewksbury, 2007, p.5; McCartan, 2010b, pp.254-257).

The concerns by the UK government regarding sex offender registers are not entirely ungrounded. – As the case of the US has shown, it is an impossible task for the police to track and monitor all registrant, with thousands of convicted sex offenders going underground and being undetectable. Also, many of the committed CSA are not being perpetrated by registered offender, questioning the effectiveness of the registers generally (HRW, 2007 pp.45-46).

As a result, the UK and Germany (with its limited surveillance system in specific states that is only accessible by law enforcement) are taking a more balancing approach in regard to the right of the community to be protected and the post-release rights of the individual convicted offender. By having a restricted registration scheme which is not accessible by the public at large, but only to assorted members of the public, the sex offender registry in the UK and the limited surveillance system in Germany can be seen as balance between the individual's right and the communities right.

For Agamben, the camp is the space that is established once the state of exception becomes the rule, and which no longer is only temporary, but instead permanently. It is within that space that harm and violence can be placed upon the bare life, without having to fear any consequences (Agamben, 1998, pp. 168-169). Contemporary residency restrictions laws, the use of surgical castration procedures and discriminatory and violent behaviour against PWP exemplify the sovereign violent act being acted upon the bare life/pedophile.

Whereas convicted PWP are frequently chased away from their homes by vigilant neighbours and denied housing options by landlords, implemented residency restrictions in the US legally prohibit PWP from living in specific areas, making it even more difficult to successfully reintegrate into society. In certain cases, such as San Diego County in California where 97% of all housing options were placed under residency restrictions, local ordinances ban PWP from entire communities and even cities, only leaving the smallest areas as residency option. The laws are predominately intended to create exclusionary zones, - areas that are prohibited for PWP, in order to create safe 'sex offender free zones', while making it as difficult as possible for PWP to find housing, employment or a support system; so that the only available option is

to eventually move to a different state (HRW, 2007, p.100). They are built on the assumption that sex offenders will re-offend against children that live in close proximity, because it is easier to reach them. However, those assumption are not being based on research. There is no evidence that proves that those laws are effective in preventing sexual offences or re-offences. As several conducted studies have shown, most of the committed offences are not being perpetrated within close proximity to public places and in the cases where it was the case, residency restriction laws would have not been able to prevent it. In fact, residency restrictions can have the reserve affect to community safety: Often, the laws are pushing convicted offenders away from their homes and jobs and into homelessness and transience, making it more difficult to effectively monitor and track them (Levenson, Zgoba & Tewksbury, 2007, pp.6-8; Minnesota Department of Corrections, 2003; The Minesota Department of Corrections; 2007, pp.20-26;).

Also, residency restrictions make it harder for pedophiles to take part in supervision or treatment meetings, factors that play an important role in establishing a stable and healthy life. As the study of The Department of Public Safety (2004) has shown, sex offender that have a secure support system, including being in close proximity to family and friends, being employed and having housing, are less likely to reoffend, while at the same time less frequently violating the law (Colorado Department of Public Safety, 2004, pp.3-5). Similarly, the project in Vermont has shown that PWP that participate in cognitive behavioural treatment, supported with additional interventions, such as job training or attendance at Alcoholics Anonymous, can have a positive influence in the recidivism rate (West, 2000, p.525). Seeing it in terms of effective reintegration into society and public safety, social stability, a support system and accessible therapy increase the chances of being successful.

Both in the UK and Germany, the adoption of unlimited community notifications and residency restriction laws have not been implemented due to a lack of proven effectiveness the US experience with vigilante violence against PWP (HRW, 2007, p.118).

The creation of inclusionary and exclusionary zones of PWP through the enactment of residency restriction laws can be seen as an illustration of the relocation of the camp on the whole population. The laws monitor PWP and put them under surveillance in order to effectively prevent them from entering certain areas. This production of the camp through residency restriction laws enables the persistent detention of the bare life of the pedophile.

Currently, chemical castration laws in the US and Germany are used as treatment option to reduce testosterone with the intent of lower recidivism by reducing sexual urges and fantasies of pedophiles/sex offenders. In Germany, therapeutic treatment for pedophilic individuals combine psychological and sexological treatment options, social interventions and voluntary pharmacotherapy. In the beginning of every therapy program, therapists inform the participants about the existence and possibility of pharmacological modulation. Nearly one fifth of all participants choose to use that form of treatment. Therapists in Germany base the life-long prevalence of sexual arousal patterns and effectiveness of sexual impulse modulation as justification to offer and combine the treatment option. However, the option of chemical castration is only voluntarily based, under well-controlled circumstances within a therapy setting and not used as punishment or probation option in prisons (Beier, Amelung & Pauls, 2012, pp. 53-55). In contrast, different states within the US implemented castration laws that vary in their approach on whether castrations are mandatory or voluntary. Some states require voluntary consent to surgical castrations, whereas other states, mandate castration for convicted sex offenders. However, voluntary decision-making to castration is doubtful, considering that most sex offenders are being imprisoned when having to decide upon it. Individuals, in the believe that they may be released or having a milder sentence, are being put under pressure whether to undergo castration or not (Scott & Holmberg, 2003, pp.503). In regard to ‘voluntary consent’ Agamben states: ‘To speak of free will and consent in the case of a [...] detained person who must pay serious penalties is, at the very least, questionable. And it is certain that even if similar declarations had been signed by the people detained in the camps, the experiments that took place would not have been considered ethically admissible’ (Agamben, 1998, p.157).

As previous mentioned, within the NOW campaign in 2000, convicted sex offenders found themselves in a space of lawlessness where vigilante groups started to protest and attack ‘known’ sex offenders, such as Victor Burnett. Vigilantes demanded the physical removal of sex offenders from the community, protesting through the streets, while destroying cars and houses. As a result, some sex offender committed suicide and many men who were believed to be PWP attacked. Innocent families believed to be linked to sex offenders had to flee their estates and over 50 people had to be arrested (Evans, 2003, p.164; Spencer, 2010, p.233). In the US, attacks against convicted PWP and the attempt to remove PWP from the neighbourhood are not uncommon either, given the easy accessibility of information throughout the country. The findings of Jahnke, Imhoff & Hoyer (2015) and Neutze &

Osterheider (2015) confirm the events. Within their conducted studies the majority of people that were questioned answered to feel anger towards PWP and would not want them to live in their neighbourhood. Up to 27% of the public would even want PWP dead and nearly 50 % of all people would want to see them imprisonment (Jahnke, Imhoff, Hoyer, 2015, pp. 25-28; Neutze & Osterheider, 2015, pp.7-8). Obviously, the above-described legislations and behaviour against PWP have a huge impact on their, - and that of their families and friends' lives. Apart from the difficulty of reintegration into society, registered PWP are often completely outcasted by the community, unable to gain employment or find housing and under the constant threat of being verbally or physically abused by neighbours or anti-pedophile groups (HRW, 2009, p.78; Vess, 2009, p.270). As such, the laws and policies stand all too often against the former offenders' right to privacy, right to employment and personal safety.

The life of PWP as homo sacer is an endless struggle. Placed into the camp, where he faces a continuous threat of harm and death to his body, he must permanently flee from the danger in order to survive. It is precisely due to the fleeing and the refraining from death of the sovereign that the bare life can be preserved. It is through the accessibility of personal details that the sex offender is being exposed to the sovereign violence. The violence by vigilantes against the pedophile reveals the groups provisionally status as sovereign. It is in this established camp where the sovereign power circulates and displays the qualified life of the citizen and the accursed life of the non-citizen, the pedophile.

10. Conclusion

This thesis sought to examine the discriminatory behaviour against, - and human rights violations of PWP, deployed by the public at large, the popular media and implemented legislations within the US, UK and Germany. In all three cases it can be argued that the public perception of pedophilia is dominated by negative sentiments, such as fear, anger and disgust; emotions that led to the distancing of PWP and the banning of them from society. Oftentimes those emotions are based on the false assumptions that PWP are evil predators that constitute the biggest threat to the safety of children, that they are beyond the reach of rehabilitation and that they all sexually abuse children.

In all three countries the media, particularly tabloid newspapers, depict the pedophile as evil monster, a stranger that is preying upon children and waiting for its next chance to sexually abuse children. The media also tends to dismiss the existing differentiation between the

diagnostic term pedophilia and legal term child molestation, labelling all offenders as pedophiles. A parallel between the US and UK can be noticed regarding the public's and media's role in influencing and implementing 'anti-pedophile' laws. Whereas in Germany the implementation of legislations seems to be based on scientific expertise, in the US and UK, 'anti-pedophile' laws are enacted regardless of their lack of proven effectiveness and the resulting discrimination. Instead they are being considered and often implemented on the request of the public and its support by the media. Indefinite civil commitment laws and community notifications, as it is the case in the US and to a lesser degree the UK, are excessive in scope and extensive in duration. They often lead to the ostracization of PWP, making rehabilitation, - and reintegration efforts extremely difficult. While the constitutionality of community notifications and civil commitment laws have been challenged several times, yet mostly been upheld by US Supreme Courts, fundamental human rights, such as the right to privacy, the right to personal safety or ex post facto laws are only justified in that the right of the community stands over that of the individual former offender. And the residency restriction laws implemented in the US, though absent in the UK and Germany, can be seen as unfounded and arbitrary, taking into consideration that no empirical data has proven that the laws are effective in preventing sexual offences against children. They create exclusionary zones that make it impossible to find housing or employment, to keep a support system and therapeutic help, factors that are extremely important in helping to abide the law and refrain from reoffending. Instead, convicted PWP are being chased away from their homes, pushed into homelessness or transience and verbally and physically attacked by neighbours and vigilante groups. As such, it can be concluded that PWP are being discriminated against by the public at large and the media in the case of the US, UK and Germany alike, with restrictive and arbitrary legislations in the case of the US, partly the UK and very limited in the case of Germany.

10.1. Discussion and future research

PWP find themselves in the unfortunate dilemma of either living 'a form of sexuality that [...] is in conflict with a central social covenant based upon sexual self-determination and consensual sexuality' or 'denying himself the experience of love and sexuality' (Schmidt, 2002, p.476). Considering the above described discriminatory behaviour against PWP and previous conducted research in that area, this dilemma seems to be even worse, given that PWP are being ostracized even when living a law-abiding life. While research on stigma and discriminatory effects on PWP is still a blind spot and more studies are needed to prove a

definite validity in various areas, the discrimination against pedophilia is an important research area regarding the upholding of fundamental human rights of PWP, as well as children's safety, which might be indirectly compromised by public discrimination against PWP. - Public stigma and discrimination against PWP are counterproductive to the prevention of CSA, because it discourages PWP from seeking professional help or confiding in family or friends, factors increasing the risks of abusive behaviour. Preventive treatment efforts, such as the implemented PPD in Germany, have shown promising outcomes regarding the willingness of PWP to seek help and efforts in reducing abusive behaviour that is linked to CSA. Further research is warranted in that regard, considering the impact that research could have on preventing CSA. The findings within this thesis are in line with previous conducted research. However, as it became apparent in chapter 2. *Limitation & Previous research*, the topic of pedophilia as a whole, but particularly the discrimination against PWP, is an under researched study area, which generates a wish for continued research in that field. Considering the (potential) impact the research can have on the prevention of CSA, researcher should not ignore the discrimination and human rights violation of PWP, only because it is controversial to define PWP as victims of stigmatization and discrimination.

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