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Sexuality, Violence and Psychological After-Effects

A Longitudinal Study of Cases of Sexual Assault which were Reported to the Police

by **Michael C. Baurmann**

What follows is the entire English-language summary of a study done in Germany under the auspices of the Bundeskriminalamt, the equivalent of the Federal Bureau of Investigation in the United States.

This summary appears on pages 523-33 of ***Sexualität, Gewalt und psychische Folgen: Eine Längsschnittuntersuchung bei Opfern sexueller Gewalt und sexuellen Normverletzungen anhand von angezeigten Sexualkontakten*** (Wiesbaden, Bundeskriminalamt Forschungsreihe Nr. 15, 1983).



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I. Preliminary remarks

Sexual behavior deviant from societal norms is usually discussed with mild, unconscious apprehension (page 47). Furthermore, only apparently rational arguments invariably appear in the debate (page 52). For decades, criminal lawyers have repeatedly deplored the irrationality of such discussions. A differentiated picture of the sexual offender, his crime and the victim is often lacking. Among other things, this has to do with the fact that sexuality -- despite the so-called Sexual

Revolution -- is still largely taboo. There remains an awkwardness in speaking about sexuality and, therefore, problems related to sexuality are not presented objectively.

The diffuse opinions and attitudes, the prejudices, the lack of information concerning deviant sexuality (page 51), either totally or partially affect our day-to-day lives:

- ◆ when, within the framework of an incorrectly understood sexual education, children at home and at school become frightened,
- ◆ when sexual crimes are publicly reported in a dramatizing manner (page 479),
- ◆ when sexual norms are discussed ethically and politically (page 54),
- ◆ when people who deviate to a greater or lesser extent from the norms are subjected to psychological or medical treatment,
- ◆ when sexual victims experience lack of sympathy from their environment (page 501).

What the victim's situation actually looks like and where the real dangers for the sexual victim lie were the subject of an empirical, comprehensive longitudinal study in the Federal Republic of Germany.

II. Purpose of the longitudinal study

The main questions posed in this survey were (pages 54, 84 and 137):

1. In which societal groups is the danger of becoming a sexual victim most pronounced?
2. What kind of sexual offenses are actually reported to the police? What role does use of force or violence play?
3. Is there a single type of sexual offense or are there different typical constellations?
4. What led up to the actual sexual activity? What did the suspect do? How did the victim act? Where did the sexual contact take place?
5. How does the victim view the reported sexual contact years after the charge was made?
6. What was the situation like for the victim? How did the environment react? How did the representatives of the authorities act?
7. How many of the victims feel violated or injured? In which cases does psychological injury occur?

8. In the opinion of the victim what causes psychological injury, if it occurs? Is the so-called primary injury triggered by the criminal act itself, or so-called secondary injury, which occurs on the victim later, as a result of the negative influences of the environment and the representatives of the authorities?
9. Is it possible to determine a typology of victims or of perpetrators or is there rather a typology of interactions between the two persons?

III. **Methods of the study** (pages 87, 127 and 205)

The victimological analysis was based on a 4-year questionnaire study (1969 - 1972) of virtually all sexual victims known to the police in the German state of Lower Saxony ($n = 8058$). In this study (page 127) victims were persons who either had declared themselves as victims or had been declared by others as being a victim. Both were considered here to be declared victims". The age of female victims was up to 20 years; male victims up to 14 years. Nearly all of the declared sexual victims were subjected to a questionnaire consisting of 29 items. The assertions of the 8,058 declared sexual victims contained in the comprehensive investigation were evaluated victimologically. As the distribution of the reported indecent assaults in the State of Lower Saxony does not differ significantly from the corresponding distribution in the Federal Republic of Germany, the results of this longitudinal study characterize the situation in West Germany.

In a second phase conducted in 1979 and 1980, 112 sexual victims randomly selected from the total were asked to participate in a follow-up study performed six to ten years after the offense had been reported to the police (page 127). The follow-up study consisted to a large extent of a standardized in-depth interview which integrated reliable psychodiagnostic tests and victimological items.

Depending on the age of the subject four psychodiagnostic inventories were used:

1. a biographical inventory ("MBI" or "BIV", depending on the age of the subject) to measure outstanding behavior patterns,
2. a personality inventory ("FPI"), which is a German version of the combination of MMPI, MPI, EPI and 16PF,
3. a scale measuring anxiety ("AFS - MA"), which is based on the American CMAS and TASC, and
4. a special inventory measuring neuroticism and extroversion ("EPI" or, depending on age, "HANES").

The interviews normally lasted from two to four hours and were face- to-face talks between the victim and a male or female psychologist in the home of the victim.

In addition, in a third part of the project, 131 files of cases of indecent assault which had been tried in court were studied for comparison (page 132). In this victimologically oriented document analysis, only those files were selected which contained a thorough psychological report on the credibility of the victim's testimony. These sexual assaults had occurred during a period comparable to that of the comprehensive study. The purpose of this third phase was to compare cases of sexual contacts merely reported to the police with condemned cases. This is in contrast to almost all previous studies, which had dealt with condemned sexual contacts (p 109).

IV. **Results and discussion** (page 215)

Sexual victims are, in 80% to 90% of the cases, girls and women (page 215). The age group varies according to the nature of the offense (page 227). In sexual assault on children nearly two-thirds were between 7 and 13 years of age. In the area of forcible rape, primarily young women between the ages of 14 and 20 were endangered. The age range of women who encounter an exhibitionist was more widespread, but the incidence was higher in the younger age groups.

Of the suspects and perpetrators 99.6% were men, primarily between the ages of 25 and 35 (page 234). The still widespread opinion that the majority of indecent assailants are older or aged men is incorrect. The age difference between victim and suspect was, on the average, 25 years; in cases of violent sexual assault, however, only 7 years. Sexual victims are therefore mainly young women and girls threatened by men who are "in the best years of their lives" (page 237).

The most important groups of sexual offenses registered in this study were (page 218):

◆ Exhibitionism (§ 183 German Penal Code)	23.9%
◆ Sexual assault on children (child molesting) (§ 176 German Penal Code)	35.5
◆ Forcible rape (§ 177 German Penal Code) and Sexual assault under duress (§ 178 German Penal Code)	22.2
◆ Other	<u>18.4</u>
Total	100.0%

Under "other" in this study were sexual assault of foster children or wards (§ 174 German Penal Code), sexual intercourse between relatives (§ 173 German Penal Code) with a total of ~8%. If injuries of victims of incest are diagnosed, one has to face the fact that victims of incest often live in broken homes and that there are many causes in such families to injure the child. In such cases the sexual contact is another symptom of

a disturbed family but not the only cause for the injury. An extremely small group was that of reported seduction (§ 182 German Penal Code); per year only about ten to fifteen offenders are charged in the Federal Republic of Germany under this paragraph.

Homosexual contacts played no important statistical or criminological role in this study. On the one hand, they composed only 10-15% of the cases, and on the other, the sexual contacts were described by the victims themselves as "harmless", almost exclusively without the use of violence by the suspect (page 287), and as a result, none of the male victims questioned felt themselves to have been injured. In addition no injury could be determined in these cases with the help of test procedures.

The exhibitionists were men unknown to the women and children in 93.0% of these cases. In the other kinds of reported sexual contacts, however, the sexual perpetrator was either known previously or even related to the victim (70.3% of these cases) (page 249). This means that warnings against unknown sexual assailants is preventively ineffective and, as far as sexual education and up-bringing is concerned, highly dubious, as a feeling of being threatened by strange men is conveyed, while for example, rape was usually performed by an acquaintance in the close social environment. With increasing acquaintanceship between victim and perpetrator, there was an increase in the intensity of the sexual contact ($CC = 0.53$), and often in the psychosocial injury to the sexual victim.

If the incident was reported to the police at all (the estimated dark figure is 1:10; page 90), then it was the cases of violent sexual assault and exhibitionism that were more quickly reported by the victim or relatives (page 287). Among the victims of rape, this declaration is usually an expression of indignation, fear, anger and affliction on the part of the victim. With exhibitionism, in contrast, it is more the indignation of the relatives of the victim about the deviant sexual behavior of a strange man. As the accused is a stranger, there is less scruple about reporting him.

The situation is quite different in cases of child molesting (§ 176 of the German Penal Code). In many of those cases the sexual contacts are not given much importance by the children, and sometimes they do not even tell anyone so that the delict becomes known accidentally. Even in serious delicts in this area, parents are often reluctant to report the incident as the accused is often an acquaintance. In both cases it is possible that -- for different reasons -- secondary injury to the victim may easily occur. *I.e.*, the child incurs additional injury from the behavior of persons in the environment or injury even first results from this behavior (page 461).

Studying the literature it was very interesting to note that very few attempts have been made to set up a definition for the term "injury", which could be operationalized for diagnostic purposes (page 163).

Therefore injuries caused by sexual offenses were defined for this study as follows (page 201):

Injury as a result of a sexual contact is a reactive, sexual, social, psychological and/or physical disturbance which the injured person is subjected to by a guilty party. This disturbance can be either subjectively recognized by the injured person, him-/ or herself, or it can be diagnosed by specific scientific methods. The disturbance can be caused directly by the event itself, or indirectly.

The measurement of injury was operationalized in an index of injury (page 409) ranging from 0 (no injury) to 100 (maximum injury). Half of this index was supposed to be determined by symptoms reported actively by the victim when questioned whether s/he had noticed, at any time afterwards, any physical, social, psychological, or sexual problems which were caused by the sexual offense. 25% of the index contained the answers to a check-list of possible injuries, drawn from the literature, and another 25% the extreme results ($SN < 4$ or > 6) in the above-listed psychological tests.

This method of operationalizing the measurement of injury emphasizes the subjective judgment of the victim, as we think that the victim knows best whether s/he was hurt or not. This method is in contradiction to that of a few authors who have reported on injuries without having asked the victims themselves about the symptoms and their causes.

In the present study about half of the victims of indecent assault (48.2%) showed no injury at all, about 18% a lower index and about 34% a higher or very high index of injury. On an average the index of injury was 8.7. In cases of forcible rape it went up to 22.3. The highest index explored in this survey was 50.0 (page 459).

Evaluation of the constructed index of injury revealed that self-reported injuries had the highest degree of validity. In contrast, common psychological tests used for other purposes did not provide much information. That means for the future that victimologists have to construct special inventories to objectively measure the grade of injury from which the victims suffer. For the years to come we then might be able to compare the victim assessment of injury in different groups of victimizations (criminal and non-criminal) with each other.

Of the reported sexual contacts, half of the sexual victims claimed the sexual act itself to be the main cause of their injury, one-third the behavior of the suspect and one-tenth each the behavior of relatives/friends or the police (page 461). This indicates that the police are less often responsible for psychological injuries of sexual victims than some have assumed up to now, but even these few cases should encourage reflection and improvement of police work. In the tried cases, the sexual victims could not be diagnostically followed-up. It can be assumed however that the distribution of primary and secondary victimization would be different if tried cases had been studied

exclusively. In tried cases it can be expected that relatively more victims are secondarily injured by the behavior of family members or representatives of the authorities.

In addition to the main causality for the injury, the victims were also asked to judge all conversations they had had about their experience with other people (page 438).

Talks with friends, the boyfriend, siblings, teachers, psychologists, the victim's own lawyer, specialists and the interviewers of this study were generally experienced as pleasant and helpful. Talks with school acquaintances and parents on the other hand, were generally rated as neutral. Closer analysis showed that some of the parents had behaved in an injurious, others in an helpful manner. In such situations, the parents assume an important role, as they are particularly close to the sexual victim emotionally, as they are the conveyors of moral values and as they spend the most time with their children. Therefore, they contributed highly to whether or not the child or young woman was able to work through the incident with or without long-term injury.

Conversations with medical doctors and officials of the Department of Juvenile Welfare, the police and the courts, as well as the attorney of the accused, were experienced as mildly to very injurious.

It must be taken into consideration here that in a large proportion of the reported sexual contacts, there was no court proceeding. The situation of the victim in court and the effects of the proceedings on the victim require an additional analysis.

Specialists in the field of police work are becoming increasingly aware of this problem. This can be attributed to groups which have specialized in victim assistance and publicized these negative circumstances (page 505).

In Germany, some of these organizations are the women's movement with its Rape Crisis Centers, Houses for Battered Women, Hotlines for Children in Trouble, and to some extent the so-called "White Ring".

The following characteristics of injured victims as opposed to the group of non-injured victims were determined. These variables correlated significantly with the degree of injury (page 418):

- ◆ The injured victims were all female (page 430).
- ◆ The injured victims were significantly older than the non-injured (p
- ◆ Because the injured victims on the average were older they tended to have had more sexual information ($p = 0.045$) (page 454) and more sexual experience before the offense ($p < 0.05$) (page 448).
- ◆ The injured victims had not started dating at an earlier age than the non-injured (page 448).

- ◆ Injured victims often had been brought up with relatively strict regulations concerning going out in the evening ($p = 0.035$) (page 448).
- ◆ Injury was associated with violent or threatening behavior of the assailants ($p = 0.0003$; $CC = 0.47$) (page 422) and defensive behavior or attitude of the victims ($p = 0.0016$) (page 420).
- ◆ Most of the sexual contacts which resulted in injury to the victims were of an intensive nature, such as sexual intercourse ($p = 0.001$; $CC = 0.43$) (page 436).
- ◆ Most of the injured victims went directly to the police to declare their victimization ($p = 0.028$). They often reported the offense themselves and had more conversations about the attack ($p = 0.004$) than non-injured persons (page 446).

To recapitulate, only half of the declared victims (51.8%) of indecent assault suffered from injuries or even severe trauma. The other 48.2% had no problems in connection with the experience. In most of these cases the sexual offense was relatively superficial and harmless and/or the "victim" consented to the offense (page 459).

Many experts in the field of prevention have assumed that sexual victims without primary injuries are rare. It certainly appears that this opinion must be re-evaluated. Adults who have the opinion that any sexual behavior is traumatic for children and young people have to face the fact that in many cases the young person becomes a victim only because grown-ups expect him or her to become a victim. On the basis of this expectation they act in such a way that the child really is victimized. This behavior then has a labeling function. It leads to the labeling of a victim (page 501).

This kind of secondary victimization can easily occur after exhibitionist and other non-violent sexual contacts if the child comes from a family with particularly strict sexual attitudes, or a family in which fear is created about "immoral assaults", or a family which, out of helplessness and fear, dramatizes the victimization. As another source of secondary victimization, members of prosecuting authorities, like policemen and policewomen can unfortunately not be excluded (page 461).

In this study it was not possible to determine a typology of victims of indecent assault, nor was it possible to determine a typology of the sexual offender in general (page 406).

In the field of indecent assault it seems to be necessary to differentiate on the offender's side between violent assailants and nonviolent offenders. In all probability violent sex assailants have more in common with other groups of violent perpetrators. In addition it could not be proved that a criminal career of the perpetrator begins with exposing

the genitals and leads to forcible rape. This result should have much influence on preventive interventions. Up to now, many parents and educators in general have expressed fear that an exhibitionist or fondler is a potential violent rapist or even murderer. The contrary is true. In situations of exhibitionism and superficial fondling, similar to doctor games, the perpetrator's behavior almost never becomes violent (page 299).

As most of the offenses of indecent assault (no matter whether they are violent or non-violent) are first of all interactions between two or more persons, the situation should be analyzed as a unit. We expected to find a typology of victimizing interactions or situations rather than a typology focused on the isolated participants. To find an answer to this question we calculated a cluster analysis with 47 variables for each case (page 386). Here it was found that the reported indecent assaults could be classified into three groups (page 406):

Group 1 (57.1%) The numerically largest group included the exhibitionist and comparatively harmless erotic sexual contacts with younger victims. All the male victims were found here. In this group injury was very rare.

Group 2 (11.6%) This group included sexual contacts of a more intensive nature. The suspects were mostly known or related to the victim; the victim's family situation could be considered as disturbed. A part of the (only female) victims of this cluster showed no injury at all. Another part had an injury index which fell within the average range for the entire investigation.

Group 3 (31.3%) In this group were sexual assaults under duress, rape and sexual contacts with highly emotional defensive behavior or attitude of the victim. The (exclusively) female victims were older, and the suspects younger than average and the assaults were reported immediately to the police. Victims in this cluster had the highest indices of injury.

The typology of interactions and cases discovered differs very much from the typology suggested by the German Penal Code (page 407). It also is in contradiction to the commonly held ideas about indecent assault, especially as the two large groupings of cases (the first and third) have nearly nothing to do with each other.

Any preventive, legislative, prosecuting, or victim-supporting activities should be influenced by these findings (page 467). All of the opinions and well known bits of advice are misleading and can injure victims secondarily or even make victims out of persons who would not have become a victim by dramatizing situations which are not really dangerous (page 479).

On the other hand, mixing non-violent and violent situations without any differentiation may result in bagatellizing the really dangerous cases of

brutal sexual attacks. In this respect it is necessary to state that there is in our society a widespread general attitude of tolerance toward violent sexual behavior. There are many opinions, attitudes, and social norms which support sexual aggressive behavior. Brutal sexual victimization, however, mostly happens in the neighborhood, within the circle of friends or even in the family (page 249).

V. **Consequences** (page 467)

For the future it is urgent to pay more attention to the situation of the exclusively female victims from group three and some of those in group two (see above). Political, preventive and social measures to improve their situation are discovered to be absolutely necessary (page 501).

With respect to prejudicial attitudes towards the assailant, his deed and the sexual victim, it should be stated that there is no homogenous type of indecent assault. Rather there are three clearly different constellations of deviant sexual interactions. Until recently conventional opinion has confused infringements of sexual norms and violent assaults in the sexual sphere. However, other studies have revealed that there are very ambivalent attitudes regarding sexual violence: While there is a formal ban on sexual violence, it is, at the same time, tacitly tolerated. Sexual violence, like other types of violent behavior, is very common and belongs, criminologically, more to the group of violent crimes than to the group of sexual assaults. The ambivalent attitudes of the general population toward sexual violence may pose problems when measures are undertaken (page 473). It is difficult to outlaw sexual violence effectively if at the same time violent behavior is tolerated in the society at large. These problems fall basically in the fields of sociology and politics and can only be effectively solved if tackled as a whole. The results of this survey suggest that the situation of the victims of violent and indecent assaults should be improved by applying suitable short- and medium-term measures.

1. **Differentiation**

To change the public attitude, the three main phenomena of deviant sexual behavior should be clearly differentiated from one another. These are:

- Exposure of the genitals,
- Relatively superficial, non-violent erotic and sexual practices, and
- Sexual violence and duress.

2. **De-dramatization and elucidation**

Objective and unbiased information about the phenomenology of indecent assaults and their after-effects would reduce dramatization in case groups (1) and (2) and elucidate the violent character of the other assaults in group (3). Especially for the

protection of potential victims it is necessary to differentiate between disagreeable or undesirable sexual molestation or menacing and brutal sexual attacks. In addition it should be made clear that generally speaking nearly no criminal career starts with exposure of the genitals and leads up to forcible rape and murder. The present survey reveals that -- contrary to the German Penal Code -- the situation of forcible rape has much in common with other violent offenses and that recidivism of any violent assailant can be expected more often in offenses like forcible rape and sexual duress than in exhibitionism and fondling. If non-violent child molesters and exhibitionists relapse, the probability is high that they will resort to their previous form of deviant behavior. It is improbable that a relapsed exhibitionist will display violent sexual behavior. These results should have a strong influence on prevention programs, prosecuting strategies and victim assistance programs. The police can work more effectively and should cooperate on a more friendly basis with the victim if these results are taken into consideration in day-to-day work.

3. Informing target groups (page 508)

The objective description of the phenomenology of punishable sexual contacts, their causes and consequences should influence the following areas:

- (a) The in-service training of officials responsible for victims should be improved.
- (b) When asked, specially qualified police officials should inform groups of teachers and educators.
- (c) Parents and professional educators should be fully informed and given opportunities for further training in the field of sexual education. The problems of sexual deviation should be integrated into modern sexual education.
- (d) The results of the present survey should be widely publicized so as to influence public opinion.
- (e) Corresponding laws in the Penal Code should be subjected to unbiased evaluation.

4. Coordination

The different institutions which professionally deal with the problems of sexual victims should cooperate more effectively. In the Federal Republic of Germany many officials responsible for victims still do not know that there are many organizations in most German cities which partially or fully deal with crisis intervention. There are for instance capable institutions for psychotherapy; there is a widespread organization, called "pro familia" which gives advice in cases of sexual

problems (especially birth control); there are rape crisis centers in larger cities with their telephone hotlines ("Notrufe für vergewaltigte Frauen") and houses for battered women ("Frauenhäuser"); there are hotlines for children and youth ("Sorgentelefon"). In nearly every town there is a day and night hotline for acute problems ("Telefonseelsorge"). During the last few years a private organization, the "White Ring", has developed and specialized in granting financial aid to victims of criminality. In addition to that there is a special federal law which guarantees financial aid to victims of violent offenses.

However, the victim in need and the experts in the field are usually not aware of the existence of appropriate institutions for the different problems. There is not enough cooperation and exchange of information. We still need to learn a lot from the various American victim assistance programs.

If victim assistance programs are initiated, care should be taken not to treat the victim as a sick person. Labeling the victim as mentally ill is another form of structural victimization. The aim of victim assistance programs should be the reintegration of the victim into her or his social environment, which is just as necessary as the social reintegration of the offender. This reintegration should lead to regaining or strengthening the victim's self-confidence. For the purpose of effectiveness victim assistance programs must be linked with an information service aimed at informing the public about how structural victimization causes individual victimization.

In the Federal Republic of Germany there is still a strong need for developing and organizing training programs for professionals and volunteers as well as strengthening the organization of assistance programs for victims. The current problems in this field in the Federal Republic are as follows:

(a) The phenomenon of sexual violence should be subjected to further empirical analysis. We would welcome a psychological and sociological analysis of structural victimization and a victimological analysis of the situation surrounding sexual violence, i.e., how the situation develops, between offender and victim, shortly before the offense occurs.

(b) The public must be informed about the problems and background of sexual violence.

(c) Police officials who deal with sexual victims must establish contact with women working in victim assistance programs in order to obtain feed-back concerning their work and promote an exchange of ideas.

(d) There is a strong need to develop in-service training programs for the officials named under (c).

(e) Cooperation between the different responsible institutions and Advisory Boards should be improved in the interest of the victims.

(f) Victims who are in crisis should be provided with solid information about several institutions they can trust.

(g) The present survey should be extended to study the effects of court procedures upon the victims.

(h) While discussing the laws dealing with sexual offenses, the objective and scientific ways of argumentation should be clearly separated from emotional and/or moral opinions.

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"Highlights" from Baurmann

Translated quotes from

Michael C. Baurmann, *Sexualität, Gewalt und psychische Folgen: Eine Längsschnittuntersuchung bei Opfern sexueller Gewalt und sexuellen Normverletzungen anhand von angezeigten Sexualkontakten* (Wiesbaden, Bundeskriminalamt Forschungsreihe Nr. 15, 1983)

- ◆ A Summary in English is here:
[Sexuality, Violence and Psychological After-Effects. A Longitudinal Study of Cases of Sexual Assault which were Reported to the Police.](#)
- ◆ The numbers in [square brackets] refer to the page numbers.

[15]

Persons who become known as victims of *non-violent* criminal sexual acts often find that the world around them attributes more significance to the situation than they themselves do, and that subsequently, they have scarcely any say in how the indecent sexual contacts are assessed. When the statements of persons who have become known as sexual victims are taken seriously, and psycho-diagnostic studies of victim harm are examined carefully, one comes to the inevitable conclusion that only a portion may be characterized as 'victims'; frequently, they do not personally feel they have been harmed.

[21]

In order to arrive at a realistic appraisal of the mortal dangers children face that is useful for purposes of prevention, it may be helpful to compare the risk of children being killed as the result of various kinds of events. For example, in West Germany, in 1982, the breakdown was as follows:

- ◆ 5 as a result of sexual victimization
- ◆ 112 by premeditated murder
- ◆ 727 in traffic accidents

There were 34,708 children who were injured to some degree from traffic accidents. [22] These figures provide a valuable point of reference in the search for ways to prevent child deaths. They indicate where the meaningful work needs to begin.

[24]

There is a broad alliance, composed of people with widely-differing political backgrounds, who nevertheless agree upon -- as a shared matter of principle -- certain ideas regarding fault and atonement, by which the suffering of victims is used for the purposes of criminal-political demagoguery. [Footnote 19]

(Footnote 19: In West Germany recently, groups have formed to back citizen initiatives to support and enhance victims' rights. Calls for law-and-order from within their ranks cannot be ignored. However, it is hoped that these "law-and-order factions" do not prevail, mainly because this would benefit victims least of all.)

[25]

At times this also produces a victimological slant which pretends to be victim-friendly, but in fact is victim-hostile, because it works against victim and/or perpetrator rehabilitation.

This is not merely a question of personal priorities -- and therefore cannot be discussed on this level alone -- but is also a question of legal policy and practice, because our legal system has itself set the goal of protecting potential victims from primary injuries caused by criminal acts (preventive aspect) as well as the analogous rehabilitation concept; i.e., that actual victims be protected from secondary or subsequent injury (caring-for aspect).

Admittedly, we are all responsible for the fact that the caring-for aspect has gotten the short end of the stick. One often gets the impression that nothing is happening along these lines, and that the public is presented with victims' suffering solely as a means of enhancing criminal sentences. Later on, the victim is frequently left to suffer alone.

[27]

Similarly, self-perception and declaration by others of victim status can diverge, as in the example of a love affair between a 13-year-old girl and 16-year-old boy becoming known when it is reported by someone looking at it from outside. An analogous conflict is created in many non-violent pedophilic contacts, when they are reported by third parties.

For better differentiation, a distinction could be made between

- ◆ a person who declares him/herself to be a victim and
- ◆ a person [28] who is declared to be a victim:

[Or]

- ◆ a self- or intrinsically-declared victim and
- ◆ an assumed or extrinsically-declared victim.

The 'victim' concept has come to mean merely a person who has, in some way, become known as a victim. But here, *intrinsic* is intended to signify that the perception of being a victim is really and truly felt internally, whereas *extrinsic* signifies that the role has been externally assigned as the result of someone else's determination. The customary and generally understood concept of "victim" must be abandoned: These persons should decide for themselves whether they are self- and/or other-declared victims.

Especially in other-declared victims, it can happen that, following the actual criminal act, an improper response from one's surroundings can cause initial or additional - harm. (secondary victimization).

Even more tragic are those cases where a person only turns into the victim of a criminal act because that is what their environment expects of them. This is a startling statement -- one can scarcely imagine such a constellation. What is meant here are situations in which, by the application of victim typologies or through processes of ascription, social settings or partisan groups are determined to promote the victim role.

[35]

"In order for a finding to be consistent with a social science-based analysis, and in order for people to be deemed victims, we must never overlook the fact that the victim-concept is always a particular kind of valuation, the definition of which is situationally dependent upon whether it originates from the 'victim' him/herself, the perpetrator, the agent of social control, or the researcher."

(Stephan: "Victim Typologies and a Proposal for a Social Psychology-Based Alternative: Toward a Taxonomy of Victimogenic Situations," in: Kirchhoff/Sessar (Eds.): The Crime Victim, pg. 237.)

[36]

One must say, however, that an overall societal failure to report criminal incidents can represent a reasonable approach, given the fact that better possibilities for conflict resolution may be found in the informal sphere. An increase in willingness to report should not always be sought in every case.

[39]

Secondary victimization is generally understood to mean those influences that are in some way connected to or alongside the primary

victimization, which in and of themselves cause harm to the victim. These influences are only indirectly related to the actual criminal act. Secondary victimization is frequently caused by the victim's close acquaintances and relatives, as well as representatives of formal control authorities such as police officers, judges, and attorneys.

Strictly speaking, secondary victimization occurs when people or institutional agents acts in such a way -- following the primary victimization -- that they inflict additional harm upon the victim; this secondary victimization is generally unintentional, frequently unconscious, and sometimes negligent.

Besides secondary victimization strictly-speaking, there are two additional types of indirect injury that are generally overlooked, and thus rarely investigated.

[40]

In the first type, though. the perpetrators act in a manner that is by no means unconscious or unintentional, they nevertheless do behave in ways that are generally crude and negligent. Researchers and functionaries who think of victims as means by which they can accomplish their own goals (i.e., careers) abuse and, moreover, harm the particular victims or groups of victims who have to put up with them.

[42]

Among the 'dark number' [unreported cases] there presumably are cases in which no one perceived him/herself to be a victim, [43] although a legally-defined victim does exist (for example: illicit gambling); and vice versa, where a victim self-perception does exist and yet a legally-defined victimization has not, in fact, taken place (for example: the application of psychological violence during upbringing, and marital rape).

Any consideration of victimless crimes necessitates a critical discussion of the term "victim." *Victim* definitions generally contain a harm aspect. But the definition of harm is equally problematic; we have merely traded the original problem for another. When, for example, the abstract damage to the moral or legal order is included without qualification, then the definition of harm -- and consequently of victim as well -- becomes too general.

The legal order [... is] dependent upon prevailing ideology. Historically, such ideologies change; surely, we must become accustomed to the reality that harm- and victim-concepts are altered by social changes; indeed, we must be willing to continuously re-evaluate our definitions of what constitutes a victim. Obsolete victim-definitions lead to structural victimization, such as the surveillance which sexual offenses are subjected to today.

The question of whether there is such a thing as criminality without a victim therefore hinges on the prevailing victim-definition, as well as the harm-definition it is related to.

[44]

There are whole groups of acts that disturb public order, and yet do not necessarily cause actual persons to become victimized: public drunkenness, disturbances, exhibitionism, driving without a license, exceeding the speed limit, sale of contraband, distribution of pornography, prostitution within and outside of prohibited areas, and so on.

Furthermore, there are deviate behaviors in which the "victim" agrees to participate in the act, or even -- depending on the type of perpetrator -- helps to bring it about: illicit euthanasia, illegal abortion, illicit homosexuality, child sexual abuse, drug abuse with or without concomitant drug-dealing, religious prohibitions that have turned into social ones -- suicide for example, youth gangs, illicit gambling, and so on.

[45]

At this juncture, arriving at more or less clear and all-encompassing definitions of "victim" and "victimization" is not possible. Fundamental -- and really, political -- problems have yet to be ironed out.

These areas are problematic for victimological research where, due to an often absent subjective victim-perception, an entire group of people remains uninvestigated, and thus, ignored.

[47]

Each and every human being has probably been preoccupied with sexuality at one time or another. Nearly all of us can recall experiences in this arena, so really, each of us is competent to express his or her views on the subject.

Even following the so-called sexual revolution of the 1960's, sexuality is still, undoubtedly, subject to taboos. To some extent, the idiom itself fosters this.

Even if in spite of this overwhelming reluctance we do begin to speak about sexuality, various methods are employed to then silence any discussion of sexual matters.

In refined academic discourse many of the terms are derived from Latin, such as "exhibitionism," "pedophile," "vagina," "penis," "emission," and

"coitus." The use of such alien, stripped-down words causes a bifurcation between personal experiences and matters which appear worthy of discussion.

[48]

It is through talking about them that a major portion of our collected experiences get stamped into our consciousness. Our consciousness, in turn, is conditioned by our rules regarding linguistic practice. Thus, this inability to speak about the sexual realm is considered to be simultaneously both a symptom and a cause of the extent to which sexuality has been repressed and secreted within ourselves.

Everyone, no doubt, knows something about sexuality; and yet, [49] relatively few know a lot about the experiences of their fellow men and women. Therefore many people take refuge in unexamined norms and ideas about morality. Frequently, even in scientific discussions, subjective prejudices have a way of coloring and over-generalizing what little is known, namely in the following ways:

- ◆ I have an opinion; a prejudice with regard to the issue. I have it despite the fact that I have neither run it by other people, nor checked it out by some other means. (There are many prejudices in the sexual sphere.)
- ◆ I observe the environment through glasses that are colored by these pre-judgments.
- ◆ I take notice of select cases and events that accord with these pre-judgments. I ignore all the others.
- ◆ My pre-judgment is thereby confirmed.
- ◆ I cite these cases so as to bolster my own prejudices. ("I once had a case where ...")

As problematic as the above-mentioned issues are for sexuality generally, they are even more so for sexualities which deviate so far from the norm that they may even constitute criminal sexuality; any objective discussion is then made even more difficult.

A presumption has frequently been expressed -- especially over the last sixty years -- that an erosion of norms has taken place in the area of sexual morality. On the other hand, various polls of sexual behavior and adjustment have indicated that, while a definite liberalization has indeed occurred, many of the traditional sexual norms have remained, with only slight cosmetic changes.

The changes so far appear to be only partial; it could take decades before they amount to a truly modern set of sexual norms. Published polls of sexual behavior, scientific or not, become more or less a guiding principle for one's own behavior. People want to be average. If a poll finds that a statistical average of the population has intercourse three times a week, citizens in the rest of the population get the impression that they should -- insofar as possible -- conform to this norm.

[50]

People have various urges and desires, sexual and otherwise. When people must suppress a portion of their urges and desires so that they will not be in conflict with established norms, in order to keep their desires in check, it is advisable for them to establish their own personal control mechanisms.

Strictly speaking, "decent" people should not even be aware of their own secret desires. Sometimes, people have the vague sense of always having to struggle against these secret desires. This struggle is a strenuous one; because their own imperfections are highlighted over and over again, it produces lasting feelings of guilt. When such people are confronted with those who have simply disregarded many of the above-mentioned prohibitions, their anxiety level increases dramatically. They fear their own moral dam might break.

This fear is typically coupled with aggression towards the rule-breaker who has taken liberties in order to satisfy his condemned urges and desires. Now this really hits them where they live, as they react to their own latent inadequacies now being sharply condemned, via the very person with whom they had previously equated their own "inner filthiness."

Jews formerly sent goats out into the desert, onto which they had symbolically heaped their sins in the form of piles of kindling. These scapegoats were said to carry away people's sins, so that God might forgive them. One's conscience was thereby unburdened of sinful thoughts or deeds.

This so-called scapegoat theory actually helps to account for many over-reactions towards norm-violators. Alexander and Staub argue that people react to norm-violators with especially strong condemnation when the behavior is associated with particularly "shaky" taboos. Along these lines we have seen, again and again, real-life cases in which good citizens, [51] who at one time vehemently opposed prostitution, are later found out to be customers themselves. There are also well-known cases where, though the condemners have never actually dared visit a prostitute, they are nevertheless perpetually "afflicted" with a desire to do so. Often, the condemner is not even conscious of this inner conflict.

When such conflicts remain unconscious, discussions about deviate sexual behavior are particularly difficult.

Public and published images of the sexual deviate generally contain the implicit message that the average citizen certainly could have anything in common with this sort of character. Because it is not obvious in everyday life that the transition from "normal" to "abnormal" is, in fact, a fluid one, we have developed stereotypes of the sexual perpetrator and his actions that bear little resemblance to actual reality.

It is often presumed that:

- ◆ Sexual perpetrators are sick monsters, frequently old and senile, who are always on the prowl for new victims for their perverse sexual pleasures. They rape women and children, and even kidnap them.
- ◆ The consequences of such attacks are awful for the victims, and lead to the development of various illnesses.
- ◆ The fiends must be punished severely. The public has to be protected from each and everyone of them. If such men were released, they would pose a permanent danger to women and children.

[52]

As far as public and published opinion is concerned: Even when an attempt is made to intercede in the citizenry's mistaken images and opinions, they generally revert to the same old and unsubstantiated prejudices mentioned above, which continue to be widely circulated. One therefore realizes there are psychological mechanisms at work here, influencing and distorting rational thought processes.

"First of all, a decision has to be made as to whether the criminal law is to be based upon morality, or protection [...] The moral concept, insofar as it truly strives for an empirical foundation, must be validly based on social norms, whereas the protection concept must attempt to evaluate and explain behavior in terms of its harmful effects."

(Jager: "Changing the Criminal Law Through Criminology: statement on the Establishment of Interdisciplinary Cooperation," in: *Criminological Journal*, 1976 , pg. 98)

[53]

The handling of criminal sexual acts as official offenses produces -- among other things -- subjective role assignments, which are essentially officially dictated to those involved. Even people who do not personally feel damaged -- by, for example, a non-violent sexual contact -- can therefore, contrary to their wishes and feelings, be declared by the ... criminal law to be "victims."

"[...] Pursuit [via the criminal law] never permits questions regarding whether the dangerous side-effects of criminal regulation might not be greater than its benefits." [Footnote 72]

[Footnote 72: Hanack: *On the Revision of the Sexual Criminal Law in West Germany: A Legal Opinion*, pg. 38. This is a problem related to pedophilia, which is also addressed by

Schorsch:

"Paralyzed by Sexual Fear: Irrational Criminal Law Harms Pedophiles and Traumatizes Children," *Sexual Medicine*, 1975, pg. 358.)

The legislator wishes to protect potential victims of (sexual) violence, and furthermore claims to be acting on behalf of (generally younger) victims, intending to protect them from moral corruption. Emancipatory sexual pedagogy's critique argues that, when a sexual contact is nonviolent in a legal sense, it may also be nonviolent in a broader -- i.e., psychological sense: In the nonviolent sphere, the sexual criminal law is seen as an instrument which fosters asexual or de-sexualized communication, for the purpose of maintaining repressive structures. It has arranged itself in such a way that it is repressive not only towards the "perpetrator," but even more so with regard to the "victim".

In a similarly critical vein, Schroeder himself has asserted that:

"Protection becomes merely the negative freedom to not have to engage in sexual acts which, [54] inconceivably, leaves out the other major component of a truly comprehensive right to sexual self-determination: the right to be able to participate in sexual activity."

(Schroeder: The New Sexual Criminal Law, pg. 17)

Until quite recently, the use of proper scientific methods was quite unusual in this field. These can even provide essential answers in fields which are not yet fully accepted as sciences. But people would prefer that all of this remained a matter of speculation. Conditioned by the same internal emotional barriers mentioned above, experts in the field frequently come to very contradictory conclusions. The layman is likely to respond

to this situation with a shake of the head and an assumption that, once again, even science is not of one mind. He or she lacks the ability to check whether a given assertion was made by a charlatan, a credible scientist, or just an outraged citizen. [Footnote 75]

(Footnote 75: One thinks, for example, of the many "validated scientific findings" which, until the middle of [the 20th] century, claimed that "spinal cord tuberculosis" was a consequence of pleasuring oneself. In those days, educators considered the prevention of masturbation a modern science: psychological findings indicated that pleasuring oneself led to loneliness and other psychosocial conflicts. Undoubtedly there are also more modern and 'enlightened' statements that also have no empirical basis. Here, sexual repression uses seemingly enlightened ways of thinking to its own advantage.)

[55]

Because of alleged or verified punishable sexual contacts they have been involved in, children are taken to the hospital or put into a home. This might have been done at the direction of a doctor, a psychologist, or a social worker. When such a sample is then used to investigate the proportion of sexual victims who are harmed, this can result in a vicious cycle. Obviously, they have now been placed among those sex victims deemed to have been especially traumatized, physically and/or psychologically. To claim that this highly-victimised group is somehow representative of all victims of reported or convicted sexual contacts is unacceptable. Generalizing such results to the 'dark number' of unreported cases is also impermissible.

[69]

According to [the German] penal code [...] [sexual] relations with children are forbidden because the legislator wishes to provide concrete protection for the "child's overall undisturbed development" from "premature sexual experiences." But the legislator is also working towards abstract goals; though this law indeed should be used to prevent actual psychological or physical injury, neither need have occurred for a conviction to result in a given case (abstract jeopardizing offense).

[71]

In earlier times, the fields of education and developmental psychology clung onto particular things regarding the stages and phases of a child's development. In these theories, it was assumed that children developed according to a phylogenetically determined road map, consisting of stages or phases,

- ◆ which are tied to life stages, are equally applicable to all children, and are therefore also relatively independent of external influences;
- ◆ which occur one after the other in precise sequence, and therefore are not interchangeable (and also, none of them may be skipped over);
- ◆ which are relatively distinct and separate from one another.

In this way it was made to appear that psychological development was tied to the stages of life, and consequently, children came to be brought up -- insofar as possible -- within their own age groups. Such stage theories also informed the age limits designed to protect children.

However, a simple example will help to clarify how this way of thinking can lead to a conflation of cause and effect. Since for a long time it was at the age of six that children were initially *treated* like they were ready to learn, it was correspondingly made to appear that this was the age at which children were naturally and innately *ready* to learn. Meanwhile, we know that children are able to learn to read even earlier, and that

furthermore, considerable individual differences exist. The idea of child development [72] occurring in fixed stages is also inapplicable to complex psychosocial interactions like group dynamics and particular sexual behaviors.

Many studies have now shown that this view of human developmental stages is simply incorrect:

- ◆ The process of a child's development is *continuous*.
- ◆ A child's development is driven by internal laws only to a small extent; it is predominately conditioned by the child's upbringing and experiences.
- ◆ The more complex and uncorrelated a behavior is, the more dependent it is on age, and the more dependent it is on experience.

It is wrongly assumed that psychological development is tied to particular age-levels, with no significant individual variations. [...] Before puberty, people are commonly treated as asexual beings (and therefore, in large part indeed do conduct themselves in accordance with this predetermined image). In contrast, following puberty, they are considered sexual beings. The pubertization process is made more difficult when young people are thus suddenly thrown into this new role, without having been previously allowed [73] to collect any detailed, 'real-world' knowledge about it.

The same sexual act may be inconsequential for a five-year-old girl, traumatizing for a pubescent, and experienced positively by a thirteen-year-old. The nature of the experience depends [...] almost entirely on the child's psychosocial situation, as well as on the reaction of his or her social environment.

[76]

The existence of age limits for the protection of children fosters the notion of unaffected and untouched childhood innocence, purity, and overall happiness. Often, adults cannot imagine that children's lives might be just as sad or happy, sorrowful or carefree, bad or good, as their own. This in turn leads to adults not being able to see children's lives as they really are. Frequently, adults will actually close their eyes completely to the reality of children's lives.

"We therefore need to talk about what childhood actually is, rather than the image of it that lingers in the minds of adults. One thing is clear: The myth of childhood flourishes because it fulfills adult needs. In a culture of the alienated, the belief that everyone must have experienced a worry- and carefree time at some point in their lives is one that is virtually impervious to challenge. We probably have no expectation that such a time lies somewhere in the future. Therefore, it must already be behind us. That is why the fog of sentimentality permeates all

discussions of children and childhood. In the name of the child, everyone lives out his or her own private little daydream."
(Firestone: *Women's Liberation and the Sexual Revolution*, pg. 15.)

These daydreams are especially prevalent among the upper middle class. Entire industries profit from the social segregation and educational patronization which result from children being kept in the child-role. There are toys, games, foods, books, comics, candies, radio and television programs, phonograph records, etc., which are produced especially for children.

[77]

Today, we scarcely even realize that childhood is a relatively recent invention; until two or three hundred years ago, children were in fact treated -- and depicted -- as little adults. The fine arts is just one of many areas where this is readily apparent. Formerly children were depicted as miniature versions of adults, whereas in today's fine arts and popular pictorials, they are represented as caricatures of childishness. In the course of infantilization, the child became both denuded and enburdened. This went so far as to engender a widespread belief that children had no sexuality whatsoever. Particularly in the middle class, in the context of the romanticization of children, their filthy sexuality with all its attendant problems -- was simply denied.

[78]

Kentler calls for a precise distinction between partial, socially *necessary* controls on instinctual drives, and *superfluous* suppression, which [...] could be dismantled, without unleashing the destructive, instinct-laden chaos that many fear. The removal of "superfluous" manifestations of sexual repression

"only jeopardizes the dominant hierarchical order, thus promoting both the democratization of society and political maturity." (Kentler: *Toward a Revision of Sexual Education*, pg. 40.)

Even though this is probably a goal that no one would reject openly, one nevertheless gets the impression that nothing along these lines is actually happening, and that there continue to be groups of people who are intentionally -- by their follow man -- kept in a state of dependence and political immaturity.

[79]

Criteria that we use to describe work -- such as performance, competition, wages and benefits, dirt and sweat -- are absentmindedly

carried over into other aspects of life. It is therefore not surprising that the same terms are frequently used when discussing sexuality. This framework seldom has a positive impact on sexuality; sex becomes something that takes place quickly and single-mindedly, within narrow slots of time. Sexuality often becomes a lot like work, becoming just as dirty and results-oriented. By this same logic, sexuality is not for children and youth, the elderly, the sick, prisoners, the disabled, or any other group of people not actively involved in productive work. Apparently, they are unworthy.

As with all social behaviors, sexual behavior has to be learned. But when we are left to our own devices, social learning in the sexual sphere becomes enormously more difficult; in fact, almost impossible. The innocence concept -- the existence of which is always asserted but never substantiated -- has now become ideologically entrenched. This notion of sexual innocence requires the maintenance of children's sexual purity. This in turn requires:

- ◆ that our children too rarely have the opportunity for learning experiences in the sexual sphere, and,
- ◆ that simultaneously, from very early on, the above-mentioned "superfluous" sexual sublimation becomes deeply embedded in our children.

The cause of many of today's social problems, including those involving our youth, may be found here. Persons who to a great extent needlessly become accustomed to "swallowing" their sexual needs all too easily become "wimps" who will submit to irrational uses of power in other areas. Routinely experienced guilt feelings, which are also part and parcel of the daily lives of those struggling with impermissible sexual desires, lead some people to underestimate their abilities and potential. Because of this, many children and youth come to believe they will always be failures. When these repressive mechanisms are at work in the sexual sphere, they produce an entire generation that is unwilling -- or unable -- to challenge the status quo.

And yet, it is clear that our suppression and denial of children's sexuality is only superficially "successful." Because children accommodate themselves to adult pressure, they practice and experience their sexuality in secret, as quasi "sexual co-conspirators."

[80]

This secrecy in which children frequently practice and speak about sexuality in turn leads adults to conclude that a repressive sexual upbringing can successfully preserve the child's (supposed) innocence. The oddly "romantic" image of childhood as carefree, pure, and untainted must be maintained. But this is nothing more than the dream-image of adults, who themselves practice and experience a sexuality which is -- in large part -- characterized by sorrow.

Therefore, the idea of the sexual seduction danger fits right into this worldview. Because children are seemingly asexual and pure, they can readily find themselves in great moral peril; therefore, children must be protected from being seduced into sex.

[83]

It is surely detrimental to children if it is only through the court trial itself -- or via the horrified reactions of parents that they first become "enlightened" about sexuality. It is not good for children to initially learn about and come to grips with sexual behavior in the course of a criminal prosecution, which is, in and of itself, a brand new experience for them. Moreover, they learn that the accused's behavior -- which they had perhaps originally considered inconsequential - is regarded by parents, the police, and the court as dramatic, dangerous, and criminal. Many children [...] suddenly find themselves in the midst of a sensation.

At the same time, discussion of the actual nature of the sexual act is typically inadequate, which can lead to children getting the idea that sexuality generally is very dangerous, even when it involves situations that pose no risk whatsoever. This would be an inauspicious beginning for successful sexual socialization.

[85]

The present study will empirically investigate what serious cases really look like, and where the actual dangers to sexual victims lie.

[88]

Any type of so-called sexual perversion that one could name has been accepted or even institutionalized by one society or another; furthermore, this did not cause the demise of the given society.

[89]

In the past sixty years, the social sciences have endeavored to work, insofar as possible, within the methodological framework of the "natural sciences." To do that, it was, firstly, necessary to get away from descriptions of individual case histories -- which practitioners and psychoanalysts are so very fond of -- and work instead with larger cross-sections. As in the natural sciences, where conclusions regarding phenomena become more reliable with repeated observation, one grew accustomed to the idea that in the social sciences as well, data regarding hundreds

or even thousands of persons was needed to accurately describe a given situation.

Longitudinal, cross-sectional studies are the most valuable -- and indeed, most versatile -- way of conducting research. In longitudinal cross-sectional research, a (hopefully representative) group of people is followed over a long period of time.

[90]

There are undoubtedly people who are engaged in a constant struggle to stay within the limits of normal, acceptable behavior.

Because taboos in the sexual sphere appear to be stricter than those in other areas, this phenomenon is especially prevalent here. The barrier of sexual shame causes many people to just blush, as their own latent sexual desires enter consciousness.

[91]

When an individual partially or completely accepts the often exacting demands of his surroundings, then he must obviously ascertain whether he has any desires that conflict with it.

In view of the apparent incompatibility of these externally imposed demands with his own needs, the individual is then often inclined -- due to earlier self-imposed limitations or even excessive self-censorship -- to free himself from these demands.

In the individual, there are fluid transitions from areas where the adherence to norms should be encouraged, and spheres in which it would indeed be advisable for the individual to risk offending or violating certain norms and laws. It is absurd to assume that any given person exists exclusively within either one sphere or the other. It is also absurd to assume that firm and clear boundaries exist between the two areas.

Because these latent individual aspects can make fluid transitions. while at the same time the outside world has established fixed norms, among certain people, strong fears are unleashed. Latent (sexual) deviation appears to be difficult for many of our fellow men to master.

[92]

In such situations, the individual would also be inclined to think that he was the only one with such deviant feelings, often even treating them as pathological; or, using a different technique, he simply projects his own desires onto his fellow men (scapegoats); or, he represses them in such a way that he is only rarely confronted with them.

[107] -----

For those who have only been declared *by others* to be victims, hardly any methods have been developed for asking questions and eliciting answers concerning either the sexual victimization itself, or the overall circumstances they face.

Although the penal code declares these persons to be victims, their own subjective feelings are not in accord with this view; therefore, convenience samples may be the only possible way of reaching them. In recent years, such convenience samples have been employed by Bernard [* Footnote 235] in the area of pedophilia [...].

*Footnote 235: Bernard's research is focused primarily on the life course ("modified biographical method") of the so-called younger partners, rather than the ways in which the undeclared victims have been affected by the acts.

These studies are generally based on the "snowball system," whereby those concerned express their views on the subject and then introduce the researcher to others, and so on. These studies have the advantage of being able to include exactly those studies that have crimino-legal relevance, but which have not been put through the grindstone of the law.

[108]

There are many practicing analysts and doctors who, in their practices as well as through the provision of expert legal opinions, deal with the problems faced by sex victims. When the victims in these cases -- due to diagnostic or therapeutic problems -- end up in the clinical arena, they have to be seen as constituting a very select group. Some members of the helping professions engage in a highly questionable practice when they make *general* statements about deviant sexual behavior, and its causes and effects, based on observations of such selected populations.

[109]

When authors in the field of nonviolent sexual offenses come to expect that harm is *always* done to victims, because they have seen this again and again in their own clinical experience, one can only conclude that these authors have never really been in a position where they would have encountered declared sexual victims who had not been harmed.

[113]

Analyses of convicted sexual criminality will always paint an overly dark picture of criminal sexual acts, especially when the findings are generalized to *all* punishable sexual contacts.

[145]

Criminologically and sexologically speaking, we must distinguish between the popular image of the brutal and violent sexual contact, and those in which -- though they too are indeed punishable under the criminal law -- the participating partner had, in fact, been agreeable to the act. Declared [146] child sexual victims appear to be especially unlikely to experience violent behavior on the part of the accused.

"The use of violence, such as that which is assumed in popular opinion to be ever-present in sexual contacts with children is, in reality, fortunately the extremely rare exception."
(Brongersma: "Pedophilia and 'Child Rapists': Differences in Terms," in:
Sexual Pedagogy, 1977, pg. 21.)

In specific cases, distinguishing between the use of physical versus psychological violence, as well as determining which acts were truly agreed upon, are not always simple matters. But from the victimological perspective this distinction is quite meaningful, because the extent of harm to the victim is very likely to depend upon the extent to which violence was employed. And yet, at the same time, it is difficult to get a handle on the problem that the mere existence of an age difference between the accused adult and the child may itself be experienced as a power imbalance. This can -- but does not always -- lead to an abuse of power.

Through rape, many perpetrators clearly practice a kind of desexualized, mechanistic, contemptuous coitus that is designed both to subjugate the victim, and as an aggressive abreaction to -- or self-confirmation of -- 'macho' status. The aggressive aspect appears to overwhelm the sexual aspect. Rape victims apparently experience the act as a deprecating and profound violation of their sexual and emotional being, or even the shattering of it.

Simultaneously, they frequently report a feeling of helplessness coupled with a fear of impending death. We therefore must acknowledge the fact that, to the victim, a rape is experienced as an attempted murder, with all the emotional destructiveness that entails.

Accordingly, particular harm -- due to the effects of physical and psychological violence as well as the coupling of sexuality *with* violence -- must be expected to occur to rape victims. Rape should, therefore, be regarded primarily as a violent offense.

- - -

[155]

Up until now [...] only two outcomes -- "harmed" versus "unharmed" -- have ever been considered; this ignores the possibility of sexual contacts being beneficial. Obviously, those interactions that result in "no harm" also comprise sexual contacts in which there were advantageous effects for the so-called 'victim.' This is quite conceivable in cases where the 'victim' him/herself felt respected, accepted, embraced, loved, supported and so on.

[157]

Public opinion presumes that boys and girls are sexually assaulted in similarly -- or even more -- severe ways than women are. But when one examines the few methodologically satisfactory studies that have been conducted, one must conclude that the persons who are at the highest risk of becoming victims of sexual aggression are in fact young women.

Boys, on the other hand, hardly ever experience sexual violence; likewise, it appears that young girls are far less likely to become victims of sexual violence than young women are.

[158]

- ◆ So-called sexual offenses are a very non-homogeneous group of criminal acts. They range from the consensual and tender sexual contact, to the quickest of exhibitionistic encounters [...] and on up to dramatic rapes.
- ◆ To a great extent, sexual behavior is of course still considered undesirable behavior. It is frequently claimed that children have no sexual needs at all. Therefore, for declared child victims, there are situations where they are undoubtedly interested in a sexual or erotic contact, but know that their environment expects them to demonstrate abhorrence of the idea.
- ◆ Declared sexual victims know that if they are to take on the victim-role, they have to feel disgusted about what occurred.

[166]

At least as far as sexual violence is concerned, the prevailing view is a properly unanimous one: Rape victims generally suffer serious physical and -- above all -- psychological harm, which often continues to effect them far into the future. Women are harmed by structural sexual violence, via the offense itself (primary harm), as well as the behavior of her surroundings subsequent to the offense (secondary harm). The issue of punishable sexual contacts which do *not* involve the explicit use of violence is far more complex. These cases predominantly involve declared child victims.

[167]

Psychoanalysis was born around the turn of the century; in the twentieth century it began to slowly establish itself, eventually becoming the prevailing doctrine. Many pre-existing scientific views were thrown into doubt by the concept of infantile sexuality, and the idea that (small) children have sexual needs. The concept of children's innocence, as well as the seduction hypothesis itself, began to crumble. Many psychoanalysts even expressed the opinion that sexual contacts provided a release for child participants. Moreover, it was almost exclusively the consequences of *nonviolent* sexual contacts that were discussed. Nevertheless, it must be emphasized that children's sexual activities were still quite taboo.

Therefore, initially, Freud believed that the sexual seduction of children caused the development of neuroses. But later on, he saw that sexual seduction merely served to accelerate the sexual development that was already occurring.

[168]

Abraham shared the view that the effects of sexual seduction on a child are quite vague and non-specific, and that, moreover, they were not as traumatic as some other kinds of childhood experiences.

As early as 1932, Ferenczi pointed out that it was the criminal *prosecution* that caused harm to children who had been sexually victimized by adults.

[169]

Though psychoanalysis -- which of course from its very inception has been more concerned with children's sexual development than any other field -- has expressed some quite varied (if also sometimes contradictory) views on the question of the damage done to children by sexual activity, prevailing opinion in *other* scientific and pseudo-scientific publications has, fairly unanimously, been that children suffer harm *whenever* they experience their own or others' sexuality.

It is very odd -- in scientific reviews of sexuality that have been conducted so far -- how seldom these champions of pure, asexual childhood have even *acknowledged* psychoanalytical observations that challenge their view, and how uncritically and flatly they have again and again warned of the dangers posed by the sexual seduction of children.

The many expressions of concern for the protection of children from sexual seduction probably originated -- and continues to originate -- from a sense that this is critical to maintaining a "healthy society." In particular, authors who wish to enlighten parents and children concerning the danger of "indecent

offenses" again and again grab ahold of *seemingly* scientific statements in order to legitimize their own personal views. Such "scientific" evidence generally lacks any empirical basis.

[170]

Thus, among many others', Erika Geisler's work often provides troubling examples of this kind of viewpoint. Referring to sexual victims who had been taken to her clinic, she wrote:

"We have encountered only a few children who have assimilated or at least, so far brushed aside -- the sexual events, such that these have not produced any disturbances."
(Geisler: "The Sexually abused Child," pg. 79.)

Based on her own selective, individual cases, she generalizes to the situation faced by
all sexual victims:

"Girls whose introduction to the sexual sphere consists of punishable acts experience nothing but lasting injury and pain; this became obvious from the female patients we treated in our clinical setting." (Ibidem, pg. 81.)

One gets the impression [...] that many of the statements concerning the dimensions and causality of harm to sexual victims have simply been plagiarized over and over again. These seemingly scientifically-based statements, however, most likely reflect nothing more than their authors' personal opinions.

It is still rare for a court to bring in an expert to personally evaluate the extent of any psychological harm from convicted sexual contacts. Instead, the assessment of the victim's situation proceeds, for the most part, along the lines of the old cliché about children's untouchability, and their desecration by the perverted perpetrator.

[185]

In March of 1968, the Dutch Secretary for Social Affairs and Chairperson of the Public Health Council commissioned a study of homosexual relationships involving minors. The Public Health Council appointed a commission under the leadership of the psychiatrist N. Speijer, to hear the views of all Dutch organizations with a substantial interest in the issue, including all of the professors of psychiatry, social psychiatry, child psychiatry, forensic psychiatry, psychopathology, and public health from throughout the Netherlands.

(Speijer et al.: The Speijer Report [...]. The Speijer Commission's work was later completed by the Melai Commission, established by the government to advise on a general reform of the criminal laws relating to moral protection.)

Over and over again, the Speijer Report expressed views critical of the presumed negative effects of non-violent sexual contacts with children and youth:

"The fact that it is now realized that children are not as asexual as had been previously assumed bolsters a conclusion that the dangers to children and youth posed by sexual acts are often overestimated. Many young children have already been confronted with sexual acts of various kinds, and many people have sexual experiences before they have reached sixteen years of age." [Sixteen is the age of consent in the Netherlands.]

"It can by no means be assumed, in a culture in which sexual themes are more and more openly and frankly discussed, that sexual acts youth under sixteen voluntarily engage in with adults will always cause significant psychological trauma."

The authors emphasize quite explicitly that using the law to prevent sexual seduction situations impedes sexual socialization in very real ways:

"It is herein submitted that a Society which tries insofar as Possible to eliminate sexual seduction situations is certainly not promoting public health. On the contrary, it is desirable that youth of both sexes become familiar with such situations. A wide latitude for experiences, experimentation, contacts, and initiation is necessary for normal development."

[188]

As a whole, the results of the various studies on harm to sexual victims may be summarized as follows: Only about one-third to a maximum of two-thirds of *all* sexual victims appear to have been harmed in a primary way by the punishable sexual act itself. Many studies have shown substantially smaller proportions of harmed victims. And yet, again and again, authors have claimed these percentages are higher, *without* any empirical basis for making that claim.

In order to avoid any misunderstanding, at this juncture, it must be explicitly emphasized that most of the above-mentioned studies were either *not* -- or not *exclusively* -- focused on cases of actual rape.

It has already been explained that there can be no question that, as a rule, the consequences for rape victims are serious and traumatizing.

[189]

Nevertheless, most studies which focus on the situations of *all* sexual victims, including those that involve a large proportion of child sexual victims, inevitably run into the problem that, among them, there are a lot of sexual contacts in which no -- or no apparent -- violence was employed.

Legal determinations regarding non-violent sexual contacts are designed to protect children from sexual experiences because, according to the lawmaker's opinion, such experiences could be ruinous or harmful to children. These non-violent punishable sexual contacts constitute approximately 70-80% of all sex offenses. Due to their large share of overall sexual criminality, they are also particularly well-represented in studies of sexual victimization and its consequences.

The issue of whether such non-violent sexual contacts cause harm to declared child victims is a problem that has now gone unsolved in the scientific literature for some eighty years, *without* all of the methodological measures for definitively answering this long-standing question having been utilized. Though useful scientific methods from other research areas are well-known, most authors are still reduced to mere speculation.

Again and again, many experts have deplored the fact that a solution to this problem has still not been found. Thus, as early as 1957, Jäger expressed the opinion that:

"The causality of harmful effects is, however, quite demonstrable, although it is possible that only later, in therapy, will it become detectable. consequently, to a great extent, we are forced to rely on conjecture. In any event, the issue as to whether sexual acts really cause developmental damage is still unclear. The question must remain an open one." [* Footnote 419]

(F419: Jäger: *Criminal Legislation and Legal Property Protection in Indecency Offenses*, pg. 52.

Twenty-five years later, Jäger expressed his views on the issue in almost identical terms.

See Jäger: "On Homosexuality's Equal status Under the Criminal Law," in: *Events*, 1981, Issue 4, pg. 20.)

This makes clear on the one hand that in 1957, Jäger was far ahead of his time, and on the other, how little empirical investigation into the harm to sexual victims had taken place in the intervening years.

Whoever, like Jäger, calls again and again for rationality to penetrate the criminal sexual law must remain immovable in the face of the inevitable frustrations and necessary challenges that will be set out for him or her.

Similarly, in 1965, Wallis appraised the situation in this way:

"Concerning this question (as to which crimes suffered cause harm), it seems to us, however, that secure and systematic knowledge is still lacking."

(Wallis: "Treating Child and Adolescent Victims of Indecent Criminal Acts," in: van Stockert (ed.): *The Sexually At-Risk Child*.)

Thus, as Schorsch, Schmidt, and Sigusch as well as Brongersma later admitted, as did Potrykus/Wöbcke in 1974, scientists have still not undertaken any truly serious attempts to verify the harm hypothesis.

(Schorsch/Schmidt/Sigusch: "Sexual Science Considerations for the Reform of the Sexual Criminal Law," in: Sigusch (ed.): *Outcomes in Sexual Medicine*, pg. 168; Brongersma: "Pedophilia and 'Child Rapists' [...], pg. 21.)

"Even using existing outlines of the potentially negative consequences of pedophilic offenses [190], we can ascertain that the assumption of negative consequences -- always presuming the absence of aggression -- can scarcely be maintained; in their 'materials,' authors hardly ever lay down sufficient foundations (i.e., through a research series), and are limited to their own bare assertions . [...]

As for the rest, none of the authors who have postulated the existence of negative consequences from the act itself have anything approaching an empirically secure foundation for making this assertion; for the most part, aside from their firm convictions, they appear to have no basis for their assumptions whatsoever. They remain predominantly uncritical and absolute, making their declarations without considering contrary findings (i.e., Van Stockert, 1965, and Friedemann, 1965)."

- ◆ (Potrykus/Wöbcke: *Sexuality Between Children and Adults*, pg. 70;
- ◆ Von Stockert (ed.): *The Sexually At-Risk Child*;
- ◆ Von Stockert (ed.): *Pedophilia and its Problems for the Criminal Law*;
- ◆ Friedemann: "Long-Term Damage to Children and Youth," in: von Stockert (ed.): *The Sexually At-Risk Child*.)

Obviously, this research area (child sexuality) and this issue (harm from non-violent sexual contacts) are so explosive, that those studying it may be characterized as downright fearful. Certainly, the sexual taboos and fears mentioned above are hindrances to scientists that curb their otherwise habitual "researcher drive." Some even move away from a rational way of proceeding, contenting themselves instead with a repetition of old prejudices:

"One discovers repeatedly and almost without exception, in the scientific as well as popular literature, how damaging it would be for children to encounter manifestations of sexuality,

especially adult sexuality. However, 'repeatedly' is really not the right word here; when examined closely, it becomes clear that these authors have simply copied one another: Each one cites, as a scientifically-verified act, something that another has said. The conclusion seemed so self-evident that no further argumentation was required." (Brongersma: Foreword to *The Speijer Report*, pg. 4.)

In 1963, Adorno had already made the simple demand that, at long last, the postulated harm and its causality of course *had* to be investigated:

"Though eminent difficulties unquestionably stand in the way of knowledge, there are empirical studies within reach that could bridge them, so that we might ascertain whether certain acts and ways of behaving cause demonstrable and inevitable harm to young people."

(Adorno: "Sexual Taboos and Privileges Today," in: Bauer et al. (eds.): *Sexuality and Crime*, pg. 316.)

[193]

As early as 1926, Goroncy had already pointed out -- unfortunately without any tangible or lasting effect -- another methodological error common to forensic psychology: the danger inherent in making "post hoc ergo propter hoc" conclusions.

[This translates roughly as "*Happened after* given event, so therefore *caused by* given event."]

(Goroncy: "Studies of Female Persons Who Were Raped in Childhood," in: *German Journal of General Legal Medicine*, 1926, pg. 1.)

[194]

"The preference for a direct causal explanation has frequently led to any neurotic disturbances among youth all too readily being attributed to a psychologically traumatic experience. For both general neurotic disturbances as well as the abovementioned psychosexual disturbances, the etiological implications are always complex, and constitutional bases are just as significant."

(Speijer et al.: *The Speijer Report*, supra, pg. 41)

"It must be said, for example, in further statements critical of the assumption of generally negative consequences, that in the authors' view (Hanack, von Stockert, Friedemann, and Wallis [supra]), we have never been able to detect whether the contemporaneous supposedly faulty development was actually a consequence of the act itself, or if it had already existed by the time the act took place.

Likewise, extreme examples of perpetrator personality, social milieu, and act constellation are often selected in order to highlight the negative consequences of such acts, even though these are rarely -- if ever -- characteristic of actual pedophilia." (Potrykus/Wobcke: *supra*, pg. 71.)

The Demands of an Ideal Methodology

Groffman ticks off five "ideal demands, which up until now have probably not been met by any work," that are necessary to be able to properly investigate harm to sexual victims:

- ◆ 1. A subdivision of the total number of persons into harmed and unharmed sub-groups, so as to obtain a brief overview of the quantitative distribution.
[195]
- ◆ 2. For the harmed sub-group: A distinction between transitory disturbances and serious developmental problems.
- ◆ 3. An investigation into surrounding etiological areas, in order to be able to assess the declared sexual contact's causal share.
- ◆ 4. An investigation into the indirect effects on children and youth of subsequent discussions concerning their participation in the sexual act.
- ◆ 5. An exploration of the psychological harm stemming from 'dark number' punishable sexual contacts.

(Groffman: "The Psychological Effects of Indecent Offenses Against Young Victims," in: Blau/Muller-Luckmann (eds.): *Legal Psychology*, pg. 174.)

With good reason, Bernard points to a serious problem in studying 'dark number' sexual contacts. (Bernard: *Pedophilia*, pg. 29.)

On the one hand, there are presumably many 'dark number' sexual contacts involving children in which the younger participants were not harmed by the act itself, the older participant's behavior, or environmental reactions. A self-perception of victimhood is frequently absent. If one intends to study the consequences of sexual contacts for child participants, one must also include a comprehensive study of these cases. And yet, any researcher who examines these punishable 'dark number' cases puts him/herself, the older participant, and -- indirectly the younger participant as well, at risk. The legality principle could lead to the scientist being forced to give statements within the framework of a criminal investigation.

Thus, we are confronted with an abstruse [absurd?] situation in which those victims who can be most readily studied are precisely those who are most likely to have been seriously harmed; at the same time, it is impossible to study those victims who, though they have indeed experienced punishable sexual acts, nevertheless do not personally feel they are victims. This means that existing laws make empirical

investigation difficult, if not impossible. To this extent, it will probably be hard for Groffman's important fifth ideal requirement to be realized.

[199]

Previous authors have looked at the occurrence of harm to sexual victims in predominantly unicausal, monocausal, and univariable terms. But the actual cause of such injuries remained unclear to them. Thus, the following have, at various times, been considered possible causes of assessed injuries to declared sexual victims:

- ◆ The declared sexual victim was already socially (and/or sexually) disturbed before the declared sexual contact even occurred.
- ◆ The declared sexual victim was traumatized as a result of discussions about the sexual contact.
- ◆ The declared sexual victim was harmed by environmental reactions, and as a result of the questionable sexual contact having become known to others.
- ◆ The declared sexual victim was secondarily traumatized by questioning/interrogation.
- ◆ [200]
The declared sexual victim was secondarily harmed as a result of legal proceedings.
- ◆ Where there is a close degree of acquaintance between the declared victim and the convicted perpetrator, the victim becomes (secondarily) victimized when the verdict is announced.
- ◆ The environment treats the victim as having been "disgraced." This is akin to the label of "sexually neglected." The victim thereby becomes (secondarily) victimized.

Of late, on the other hand, poly-causal, poly-etiological, and multi-variable ways of accounting for possible existing injuries among declared sexual victims are beginning to be discussed.

But of course, as early as 1926, Goroncy had already pointed out that a "post hoc ergo propter hoc conclusion" regarding this issue would be improper. Though not quite as clearly, even before him, in 1905, Haberda had already said of this problem:

"Besides proving the existence of nervous or psychological disease, it is essential, in order to establish whether a truly causal relationship exists, to also ascertain when the phenomena first presented themselves, as well as the

chronological course of the pathological disturbances; certainly, they can only have originated from the act itself if it can be proven that the person concerned had previously been free of such conditions."

He writes further:

"Caution is called for here, because lies are often told both consciously and unconsciously." (* Footnote 490}

(*Footnote 490: The author is speaking here of the sexual victim, not the researcher. - Haberda: "Sickness Conditions as Consequence of Sexual sbuse," in: *Handbook of Legal Medicine*, 1905 , pg. 254.)

[287]

One of the critical aspects in evaluating punishable sexual contacts -- particularly sexual interactions -- is the extent to which violence, threats, and the abuse of power play a role.

Some of the sexual criminal law paragraphs relate directly to violent or threatening sexual behavior, or to sexual situations that involve taking advantage of a position of power. Additionally, there are criminal law provisions that represent more moralistic conceptions, or, are intended to prevent potential harm to victims. (* Footnote 707)

(*Footnote 707: i.e., §176: Sexual Abuse of Children ...)

In the case of abstract risk offenses, as far as the criminal law is concerned, there is no requirement that actual harm be proven. From a victimological perspective, this certainly raises the question as to whether we are really talking about individual "victims" and "primary victimization" here.

A person

- ◆ a) who does not feel him/herself to have been harmed or
- ◆ b) for whom no damage can be observed or measured probably

cannot be classified as a victim, or even as someone who has been harmed. At the very most, what is harmed in such cases is the moral ideology that says certain sexual acts must not take place between particular groups of people.

[288]

Therefore, various legislators and critics of the sexual criminal law have demanded again and again that the criminal law has to have a strictly rational basis. It is not the task of the criminal law to protect morals, decency, and similar ethical values. [*Footnote 712]

(*Footnote 712: Hanack also believes that a modern sexual ethic cannot spring forth "in the corset of the criminal law." The evolution of an up-to-date sexual ethic is actually hampered when one attempts to ensure morality with the help of the law.
Hanack: *On the Revision ...* , pg. 43.)

Jäger saw a need for a decision to be made between a moral or a protective concept of the criminal law. (Jäger: *ibid.*, pg. 98.) In the framework of the protective concept -- which will be explicitly advocated here -- on the victim side there are the variables "self-determination" and "psychological/physical inviolability" and on the perpetrator side "formation of relationships free of violence and the abuse of power"; these constitute clear objectives which can be promoted with the help of the (sexual) criminal law.

[289]

The violence aspect would appear to be absolutely crucial to the analysis and evaluation of sexual offenses. As a group -- and even within any given type of criminal act -- sexual offenses comprise acts which are, criminologically speaking, quite different from one another. The most important differentiation and evaluation criterion would seem to be whether and to what extent the victim had experienced violence. Harm to the victim is also, to a great degree, a function of whether the perpetrator behaved in a coercive or violent manner.

[291]

The popular conception of sexual criminality cannot conceive that there are also sexual offenses in which the suspected perpetrator

- ◆ just stands there (exhibitionists),
- ◆ is actually friendly toward the declared victim (many pedophiles),
- ◆ or was even friends with the declared victim (participants in "sex play" or agreed upon but still punishable sexual relations).

[299]

Many studies no longer even pose the question as to whether the perpetrator might have had a neutral, non-violent, or even friendly contact with the "victim." When negative answer options are the only ones provided, negative descriptions of perpetrator behavior are, naturally, the only ones that will be given.

The rest would be labeled "other." And yet, we know that many provisions of the sexual criminal law are *still* applicable even when the accused uses no psychological or physical coercion at all.

[303]

Rapists have more in common with other *violent* perpetrators than they do with *sexual* perpetrators *per se*. A batterer, robber, or covertly aggressive and agitated person is much more likely to commit rape than an exhibitionist or pedophile is.

Berner, Grunberger, and Sluga, in a study of recidivism among sexual perpetrators, also maintain that exhibitionists, homosexuals, and pedophiles predominantly recidivate in their *own* offense areas, whereas rapists and violent perpetrators predominantly recidivate in the areas of robbery, assault, rape, and coercion.

(*A Study of Sexual Delinquency*, pg. 80. Schapira's views are similar to those of Berner et al.:

"The theory of a connection between power and rape is empirically supported by research carried out by some American sociologists on the relationship between 'Compulsive Masculinity and Male Delinquency' (Silbermann/Dinitz, *Criminology*, 1974), which posits that, above all, such men become rapists because they have no access to power and authority -- concomitants of the male role - in other, legal ways (through their occupations, as fathers). They must therefore strengthen their gender-role identification in illegal ways." -

Schapira: Administering Justice in Rape Cases," in: *Critical Justice*, 1977, pg. 227.)

[304]

Criminal sexual perpetrators who use children as *substitute* sexual objects seem to have less in common with pedophiles than with rapists. Members of this group are also more likely to be recidivist rapists and batterers. Once again, as a matter of principle, a distinction must be made between non-violent and violent sexual contacts with children.

[305]

Violent sexual perpetrators [...] are likely to behave *violently* in other spheres of interaction. It is thus not at all surprising when a robber is also found to be a batterer, (child) abuser, or rapist. [...] There is no doubt that non-violent and violent sex offenses are clearly distinguishable from one another.

[308]

Indeed, rape and sexual coercion obviously have a lot in common with other offenses involving violence and coercion. But the overall system for classifying these criminal acts needs to be revamped. Moreover, it is

essential that a distinction be made between perpetrators who act in a threatening or violent manner, and those who do not.

[312]

Violent sexual perpetrators, who pose the greatest danger to victims, are *different* from persistent, instinct-driven sexual perpetrators; they are, rather, normal-appearing persons in the victim's own familiar and related circle. Although exhibitionists and pedophiles [*Footnote 800] -- whom we deem particularly perverse -- are indeed more likely to recidivate, they nevertheless pose less danger to their victims.

(*Footnote 800: The *subgroup* of sexual offenses in which a teenage or more mature perpetrator uses a child as a *substitute* sexual object, where the perpetrator is just looking to have sexual intercourse with *any* female, are sometimes falsely classified as pedophilic contacts. When they do occur, these contacts with children who are substitute sexual objects are often violent and particularly traumatic for victims.)

[326]

There are [...] punishable sexual contacts that victims more or less consent to, but are nevertheless legally prosecuted because, for children and teenagers, the ability to consent and the possibility of sexual self-determination are largely precluded by law.

In some punishable sexual contacts between children and adults, an erotic or sexually-tinged relationship between the two develops in much the same way as it does in what are deemed 'normal' relationships between adults.

These have already been quite accurately described by -- among others -- Thea Schönfelder and Harald Körner:

"Using a series of examples, Schönfelder has now shown that, frequently, manipulative seduction tactics are nowhere to be seen, on the part of either the perpetrator or the actively-involved victim. On the contrary, the very construct of 'perpetrator' becomes ever more unstable as the act-initiating victim gradually eases into intimate situations, finding his or her way, little-by-little, towards ever more intensive sexual contacts."

(Körner: *Older Persons' Sexual Indiscretions with Minors*; (diss.), Mainz, 1975, pg. 129, citing Schönfelder: *The Role of Girls in Sex Offenses*, pg. 42.)

[409]

When one examines the literature, it is striking how frequently authors who are untrained in psychodiagnostic evaluation make layman's assumptions and declarations regarding harm to sexual victims. It is also striking that "experts" in this field frequently express a great deal of skepticism regarding victims' ability to personally describe the nature and causality of their own injuries. Instead, many "experts" uncritically ascribe certain symptomatology to victims.

The list of such observed and ascribed symptoms is very long, encompassing such varied phenomena as

- ◆ suicide,
- ◆ coughing up blood,
- ◆ rejection of sex roles,
- ◆ symbolic theft,
- ◆ prostitution,
- ◆ (homo-) sexual perversion,
- ◆ frigidity,
- ◆ neglect,
- ◆ proselytizing,
- ◆ heterosexual activity,
- ◆ stuttering,
- ◆ general neurotic disturbances,
- ◆ insomnia,
- ◆ and so on.

One gets the impression that many authors fail to clearly distinguish between symptoms that already existed prior to the offense, and those that have some *causal* connection with the victimization. In many published case histories, there are indications even in the portion of the case *presented* that the relationship between the described harm and the victimization is not nearly as clear as the author would have one believe.

Problematically, many of these authors appear to be captive to their own prejudices; but they cannot see it, because they have rejected both the personal descriptions of those effected as well as empirically-based methods. These "experts" may view such methods as violating their role; or, they may find that employing them is simply too burdensome.

Nevertheless, because the description and diagnosis of harm to [410] victims' is so absolutely vital to the assessment and evaluation of sexual victimization, we are obliged to employ the most advanced methodological standards available.

[424]

[I]n cases involving post-pubertal sexual victims, it is to be expected that harm -- to a greater or lesser degree -- will occur. For police interviews

of witnesses, this means that very different aspects must be considered when dealing with child vs. teenage/adult victims, so as to avoid inflicting any secondary harm as a result of the investigating officers' own behavior.

Child witnesses [victims] of punishable sexual contacts are generally not harmed by the contact itself; therefore, care must be taken that they are not initially harmed by the behavior of adults subsequent to the sexual contact being disclosed.

This should provide some reassurance to parents of (potential) sexual victims in this age range. On the other hand, it must be expected that most post-pubertal sexual victims (i.e., those over 14) will have already suffered primary harm as a result of the criminal act itself. Harm resulting from improper investigative techniques must be avoided here as well.

[444]

Perhaps in the future, the problem of unharmed, other-declared victims might be handled more properly, assuming a readiness to take seriously even young victims' assessments of their own situation. This applies to cases where [...] a punishable but superficial sexual contact with a child is referred to the courts so that a conflict between adults can be resolved. Hidden behind the moralistic anger are special interests, which are pursued at children's expense. In such cases the child is ascribed the role of victim, in order to serve the quite different interests of adults. Even more common among cases involving unharmed, other-declared victims are adults who, due to a faulty or misleading understanding of such situations are thrown into a panic, despite the fact that the punishable act was really rather harmless.

[461]

[I]t is clear that in addition to the larger group of harmless and non-injurious sexual contacts that get reported, there is also a smaller group of sexually violent acts that cause lasting harm to their victims. Obviously, it is very difficult for public opinion to distinguish between these two fundamentally different kinds of cases.

[467]

The various empirically-based case types in the area of so-called sex offenses are so different from one another, that they can no longer be considered as belonging to a homogeneous group of criminal acts.

At the most basic level, they may be subdivided into the following three

groups:

- ◆ a. The abuse of persons as (substitute) sexual objects and as a show of power, predominantly against female victims (sexual coercion, rape, and corresponding acts of abuse involving children);
- ◆ [468]
- b. Deviation from sexual norms, insofar as the age and/or gender of the sexual partner is concerned (nonviolent sexual contacts with children, nonviolent homosexual contacts between men and boys);
- ◆ c. Violations of norms that are defined as shocking (i.e., exhibiting the penis and masturbating in public).

The uncritical conflation of these three groups, combined with anxious attitudes regarding sexuality, prevent the rational discussion of deviant sexual behavior which is so urgently needed.

When the media reports on sexual offenses as a group, or when individual cases are presented, such publications frequently contain prejudice-laden, emotional expressions of opinion that have very little to do with actual reality.

Such publications demonstrate that the authors as well as their readers often have ideas about "deviant sexual behavior" that are based on inchoate fears and prejudices. Again and again, shocking individual cases are brought up in order to show that familiar fears (i.e., of "strange men") are really quite justified.

There are many other cases that could demonstrate that these risks are actually rather small; moreover, crimes which take place in locations where we want to feel we are safe (i.e., family violence) are then, consciously and unconsciously, overlooked or downplayed. Anxious prejudices and fear-inducing mistaken ideas are thus maintained.

[469]

Looking at the effects of criminal sexual acts on the declared victim, it turned out that many reported sexual contacts did not cause any harm at all. From this, it follows that the uncritical use of terms like "victim" and "harmed" is, for a large portion of those who are registered as sexual victims, inappropriate [...]

Obviously, the words "victim" and "harmed" strongly imply that the person in question has been injured. But for many of the persons interviewed here who became known as victims, these terms just do not apply.

Some of them were, in fact, initially *made* victims *secondarily*, when they were exposed to the negative effects of both prejudice and the instruments of criminal prosecution. It is therefore also not surprising that only a very small proportion of the numerically large group of child

victims personally made the decision to file a report. Correspondingly, most reports were filed by parents. Thus, children who did not feel that they had been harmed were nevertheless treated as if they had.

Sometimes, in the course of further criminal proceedings, they are then actually harmed by prejudiced adults (who are just trying to protect them)

(i.e., secondary victimization via overdramatization, questioning their credibility, assigning blame, etc.).

Because of these problems, herein, the helpful terms

- ◆ "declared victim"
(a person who became known as a victim in some way or another),
- ◆ "self-declared victim"
(a person who characterized -- or declared -- him/herself as a victim),
- ◆ "otherdeclared victim"
(a person characterized by others -- i. e., parents or agents of social control -- as a victim), and
- ◆ "perceived victim"
(someone who personally felt that he or she was a victim)

were employed.

[470]

If one takes seriously the subjective assessments of those most directly effected, one finds that, among reported sexual contacts, based on primary harmful effects to declared victims, there is actually a very large proportion of criminal acts for which there is no victim.

In cases involving nonviolent, consensual yet punishable sexual contacts, only a small portion of effected victims would be protected from some kind of abstract harm. Many of the persons who were declared to be victims in this way were initially harmed by the existence of the particular laws themselves [...].

When, within a given group of criminal acts the probability of individual harm occurring to the declared victim is very small, and at the same time it is clear that the existence of the law can cause secondary harm in both the criminal process arena as well as informal spheres, a kind of social 'cost-benefit' analysis should then be performed.

When the mere existence of a law causes a lot of harm and only rarely serves a protective function, its advantages and disadvantages should be conscientiously and responsibly weighed against one another, taking all of the consequences into account. In such an assessment one should, above all, employ more scientific methods, and rely less on speculation and ideology.

Simply put, declared victims' own assessments should figure more prominently in evaluations of offense situations. What is repeatedly overlooked is that, [471] as a rule, victims are able to describe their injuries or lack of injury quite accurately, if only they can be questioned free of distorting influences.

It is desirable, from a psychological and victimological perspective, that ways be found to make the criminal law and criminal procedures more responsive to individual victims. It should be possible for creative legal scholars to come up with legal frameworks that would better protect potential victims from both primary as well as secondary victimization.

According to the requirements for the study of sexual taboos and privileges laid down by Adorno in 1963, criminology and victimology must also undertake the following:

- ◆ The origin and effect of sexual prejudices and sexual-ideological predispositions should be examined.
- ◆ The basis of opinion with regard to criminal sexual matters should be evaluated. Moreover, the categories and logic of argumentation employed, as well as the accuracy of such judgments, should be checked against scientific findings.
- ◆ Court records pertaining to arrested sexual perpetrators would be examined to empirically establish whether they allow scientifically verifiable statements to be made regarding perpetrators and their acts. The course of sexual perpetrators' personality development should also be observed using long-term cross-sectional studies. In addition, it would be particularly useful to compare criminally prosecuted cases with those that were not prosecuted. This would probably be especially interesting in the area of nonviolent sexual offenses. Admittedly, such research would entail special criminological problems (the pressure to prosecute).
- ◆ Furthermore, criminal law categories should be subjected to rational re-examination in light of more recent findings.
- ◆ Subsequent to that, the overall process of criminal prosecution should be re-assessed, to make sure that it incorporates more recent findings.
- ◆ The dogmatism of the sexual criminal law should be subject to rational re-appraisal -- especially in light of philosophical ideas [472] and concepts -- so as to make it intelligible psychologically, but in such a way that prevailing irrationalities are able to be rejected.
- ◆ Lastly, all agents of social control must demonstrate a willingness to always be ready to re-assess sexual norms in the event they are shown to be obsolete or irrationally motivated -- so that they may

be improved. The scientific investigation of moral demands and laws should be encouraged.

(Adorno: "Sexual Taboos and Privileges Today," in: Bauer et al. (eds.): *Sexuality and Crime*, pg. 315.)

[501]

Originally, infringements of rights were deemed *private matters*, and were handled directly between perpetrator and victim. With the support of his or her inner social circle, the victim took revenge and obtained redress of some sort or another. This informal practice gradually gave way to a system of negotiations, whereby the victim was materially compensated. The Babylonians, Jews, Greek, Roman, and Germanic peoples laid down detailed rules as to what the perpetrators of particular offenses needed to do, in terms of punishment as well as victim compensation.

The rising power of rulers allowed crimes to be treated as *violations against public order*. Because the ruler had the authority that comes with having the most power, he had the right and the duty to ensure internal and external security; he also assumed the right to intercede in cases involving criminality. Therefore, above all, the perpetrator had to "pay a price" to the ruler. Though the victim was given some compensation by the state, the governmental authority took almost all of the fines levied as "punishment," effectively giving the victim no further assistance. The restoration of rights and therefore also of social accord between individual victims and perpetrators was increasingly neglected.

Schneider, agreeing with Ferri (1896) and Garafalo (1914), quite rightly characterized this development a "rather absurd."

(Schneider: "Victimology: The Science of Crime victims," in: *Criminalistics Handbook*, 1975, pg. 24.)

All in all, it must be said that the criminal prosecution process de-personalizes both victims and perpetrators. Today, the effected persons are assigned pre-determined roles. The previous system of civil resolution was replaced by a requirement for criminal-legal punishment, in which the victim gets the short end of the stick.

Kirchhoff, [502] Kirchhoff, and Dussich summarized this development as follows: The victim fell

"from the status of an autonomous individual with his/her own reactions to the event, to merely a means of providing evidence, to the status of witness. Only the state -- not the victim personally -- would decide how and when he or she would become an active participant."

("Victimology: An Introduction to the Problem of Youth Discipline and Its Importance for Social Work," in: *Probation Assistance*, 1980, pg. 315.)

[503]

Outside of the realm of sexual violence, there is a group of criminal acts against the right to sexual self-determination in which explicit violence is not employed. The victims here are predominantly children; mainly girls. Aside from a problematic definition of *violence* in such cases

(Does a large age difference between the two sexual partners *automatically* indicate a power imbalance?),

there is another problem specific to this group of 'light number' offenses. Some of these children who do not feel they suffered primary harm as a result of the sexual act -- for example, it really wasn't a big deal when the exhibitionist exposed himself -- then experience alarming reactions from their environment when the incident becomes known.

Horried parents who fear "the worst," startled teachers with visions of sexual murder, eager police officers who do not sufficiently distinguish between the harmfulness of exhibitionists vs. rapists, as well as district attorneys who want to hold up the case as an example of the "moral decay" in our society can do serious secondary harm to children by imposing the victim and witness roles upon them.

[504]

Setting right the harm done to victims should always take precedence over punishment [...]

"If [...] those who were harmed were given a voice in deciding what it would take to make things right, those who were not effected might be able to see that their own demands for severe punishment were really quite superfluous. When even the injured person is satisfied with a moderate degree of recompense, why does the rage of nonparticipants still demand severe [505] reprisal? Maybe, if all involved could be made whole without any punishment being imposed, this might serve the greater good."

(Plack: *A Plea for Abolishing the Criminal Law*, pg. 122 [...]. cited in Sessar:

"The Role and Treatment of Victims in Criminal Proceedings: Current Conditions and Implications for Reform," in: *Trial Assistance*, 1980, pg. 337.)

