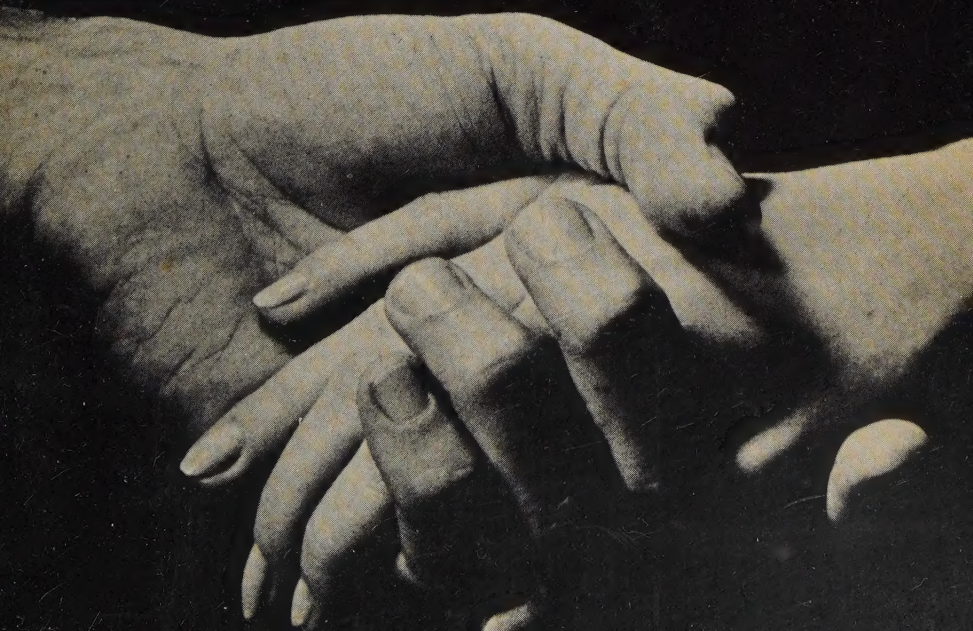
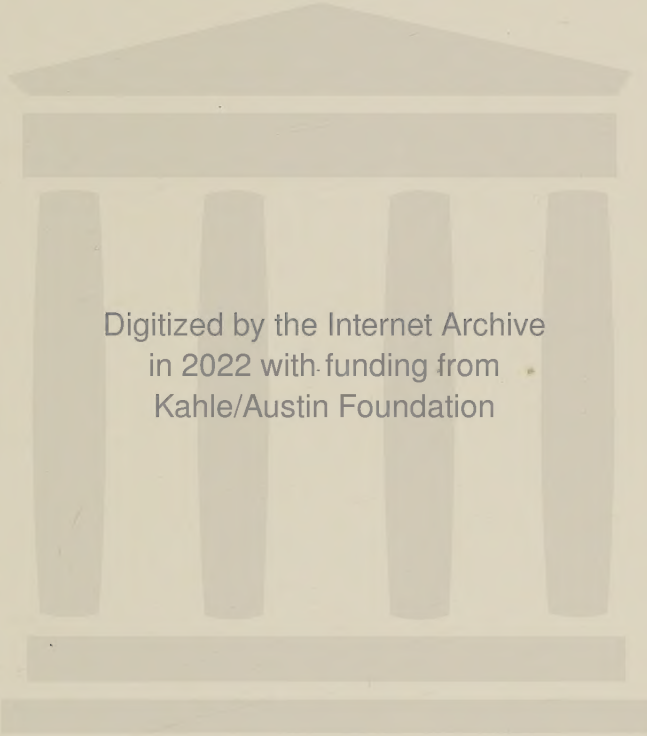


SELECTED STUDIES IN SOCIAL PROBLEMS

PROBLEMS OF SEX BEHAVIOR

**EDITED BY EDWARD SAGARIN
AND DONAL E. J. MacNAMARA**





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PROBLEMS OF
SEX BEHAVIOR

Selected Studies in Social Problems,

Bernard Rosenberg

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Editor's Foreword

A Chilean leader with much experience of the world once remarked that all political problems could be reduced to those that solved themselves and those for which there is no solution. Such limited wisdom applies, *pari passu*, to many so-called social problems. How often, if we only let them be, will they disappear. A thoughtful president of the United States may reflect that when he decides to stay out of Indonesia, things go his way; but when he plunges into Indochina, the results are disastrous. Spirited intervention might sometimes be required; but just as often, it boomerangs. Little problems or illusory problems suddenly become big and real for no other reason than that we have acted when it would have been advisable not to act. Prohibiting the consumption of alcohol or the ingestion of narcotics drives these substances inexorably into the organized underworld which battens on an illicit traffic that need never have existed in the first place. Outlaw prostitution, abortion, fornication and cohabitation, or legislate anywhere else in the sphere of private morals, or criminalize previously legal and possibly uncontrollable behavior, and you get a society of inveterate offenders. Ours is such a society. We, who like to believe that the American government is not one of men but of law, have piled law upon punitive law until countless inconsistent criminal codes produce juridical elephantiasis, and men become lawbreakers by definition. Our partially lawless police, trying, and then not trying, to contain "vice" are thrust into collusion with professional thieves, venal politicians, corrupt judges, and a wide assortment of reputable citizens similarly involved in the maladministration of criminal justice.

And all this accounts for only a fraction of the energy expended in unmaking problems initially made by misguided attempts to solve them. The impulse to do something, almost anything, in an apparently intolerable situation (which worsens

as we proliferate our blunders) alternates with blindness, fatigue, indifference, and apathy.

Herbert Spencer, the founder of Anglo-American sociology, understood the desirability of inaction. His followers, inspired by that great proponent of laissez-faire ideology, favored hands off a problem when the laying on of hands could only be fatal. These liberals, who did not wish to meddle with the economy, the polity, or the society at large, and who, when pushed, found themselves exposed as anarchists, were not in possession of the whole truth. Yet, that part of the truth which they did grasp seems largely to have been forgotten. We go on fatuously defining, and thereby creating problems beyond our capacity to solve except by generating even graver problems. Finally, the myth of absolute omnipotence yields to the myth of absolute impotence. Then, with neither action nor inaction as a purposive and effective principle, the world is allowed to drift. At that stage, things, as the Poles say, are worse than they were but better than they're going to be.

When to do something and when not to are the major questions of our time. They weigh heavily on the mind of this writer as he launches still another and, he hopes, better series of books, each devoted to a social problem.

And what, pray, is a social problem? Or better, in a totally problematic situation, what is *not* a social problem? As the categorical imperative within disappears and man literally reaches for the starry heavens above, while awaiting oblivion by self-destruction, anything and everything may be regarded as a problem. That, like all human enterprises, it is also social to some no doubt large extent, goes without saying.

If the editors and authors of this series are at all able to distinguish between remediable and irremediable problems, if they can admit the immense and universal ignorance that prevails as we all grope our way in darkness toward a little bit of light, if sociological arrogance is eschewed in favor of a more becoming modesty, and above all, if a hierarchy of values is sustained—such that well-subsidized trifles do not eclipse impoverished areas of investigation—then these books will have been worth our while. If not, let the reader beware.

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INTRODUCTION

A generation ago, few sociologists were addressing themselves to problems of sexual behavior. When the veils of secrecy and silence were lifted, and some publications on various aspects of the sexual lives of men and women were published, they came mainly from the pens of psychologists, psychiatrists, physicians, biologists, not to speak of poets and novelists, rather than from the burgeoning discipline of sociology.

Theologians had written of sex for many centuries, and were deeply concerned with moral judgments and with both temporal and spiritual punishments for those who bowed to the temptations of the flesh. Men of letters, from Ovid and Petronius to Joyce and Lawrence, had illuminated this area of darkness of the human condition. Criminologists of the eighteenth and nineteenth centuries—Tarde, Lombroso, Beccaria—were deeply concerned with the sexual offender. But a literature of the sociology of sex could hardly be said to exist.

The great authorities who broke down the walls of silence were Krafft-Ebing, Freud, Havelock Ellis, together with several other names now less frequently remembered: Forel, Hirschfeld, Bloch; and all were oriented toward preempting the field for psychology. Havelock Ellis called his magnum opus *Studies in the Psychology of Sex*, though it was an interweaving of history, biology, social thought, and many other areas in which the au-

thor was learned. And Freud influenced the Western world for half a century in the belief that sexual difficulties were at the bottom of many of man's personal ills, and since these could only be treated psychotherapeutically, sexual idiosyncrasies hardly seemed to be fair game for sociological analysis.

True, now and then an effort was made to bring the world of the erotic within the scope of the world of the sociologic. As early as 1907, W. I. Thomas, the very wise and influential professor who was later to become president of the American Sociological Society, published a work entitled *Sex and Society*. Note, however, the subtitle: *Studies in the Social Psychology of Sex*. Even more revealing of the distance that still separated sociology from sexual behavior was the subject matter of the work, for Thomas was not concerned so much with sex in this book as with gender, and less with modern man than with primitive man.

In fact, so long as one looked at primitive societies, sex was not an entirely forbidden area of study; so that it was not sociology, but its sister discipline, anthropology, that produced early studies that related man's sexual life with his social life. Witness, among others, Westermarck, Malinowski, Briffault, and later our own Margaret Mead.

It was a long way in the sexual revolution from 1907 to 1946, the year in which Georgene H. Seward published a book with the title, *Sex and the Social Order*. An investigation of the author, book, and subject matter, however, reveals that the title did not, at the time, mean quite what it would today. Dr. Seward was a professor of psychology, her work appeared in a series of publications in psychology, and much of the work dealt with infrahumans and with primitive societies.

Perhaps it is from Kingsley Davis that we must trace much of the beginnings of the effort to correlate sexual behavior with social structure, and to see such behavior (normative as well as deviant) as a form of response to cultural pressures and conditions. Starting in the 1930's, and continuing in the following decade, Davis made a series of influential analyses of the nature of illegitimacy, prostitution, jealousy and sexual property, and other aspects of this subject. Later, in 1948, there came Kinsey

—a zoologist by training, with if anything an anti-sociological bias—and the floodgates were open.

Since 1948 and the first Kinsey study, the literature has grown to the point where it is almost respectable to investigate the world of sexual disrespectability. Techniques for the gathering of data have become sophisticated, and no longer is one suspect if one chooses to make a study of nudism, homosexuality, or wife-swapping, even if one does participant observation research.

Here is a little taste of that new literature. All of it comes, we believe, from exciting and influential thinkers, who are doing a great deal to challenge the taken-for-granted shibboleths, and to replace them with a scientific sociology of sex. Perhaps in so doing they are creating new shibboleths to replace the old, new myths no more valid than those being discarded; but that remains for the reader to judge, and for the thinkers of next year, or more likely next decade, to state.

Here we have, among others, the Kinsey group (following through with the work of their late founder); the Wolfenden Committee, with its controversial report; Albert Ellis, champion of sexual freedom, although often accused of espousing sexual anarchy; Edwin Lemert, founder of an entire school of sociology of deviance. And here we have studies of prostitution, child molestation, rape, illegitimacy, male homosexuality, pornography, and incest. One wishes that the student will continue, will see in this only a beginning, and will not only pursue the individual topics more thoroughly (following some of the leads in the bibliographies), but will extend the study of the sociology of sexual behavior and of sex problems into other areas not found here: lesbianism, transvestism, transsexualism, abortion, nudism, exhibitionism and voyeurism, sadism and masochism, premarital and extramarital (and let us not forget nonmarital) heterosexual acts, and others. It is not a subject that the student is likely to fall asleep over in the library.

THE AMBIGUITY OF CONTEMPORARY SEX ATTITUDES

Albert Ellis

Mention sex in a serious discussion in America, and sooner or later (more often sooner than later) you have to get around to talking about Albert Ellis. No other single individual—at least since the death of Alfred C. Kinsey—so completely epitomizes in the minds of large numbers of people the idea of sexual freedom, liberation from superstition and fears, from irrationality and guilt, as does Albert Ellis. Founder of a school of psychotherapy, a practicing therapist with a considerable number of clients himself, head of an educational group called The Institute for Rational Living, lecturer, marriage counselor, and voracious reader, active in a dozen or more professional associations, contributor or associate editor or book reviewer for numerous professional journals, Ellis nevertheless finds time to write many books. Some (but not all, he reminds us) are on sex, and they have sold literally millions of copies, and have been translated into at least a dozen languages.

Ellis sees himself as a missionary in a philistine society, teaching

Source: Albert Ellis, *The Folklore of Sex* (New York: Charles Boni, 1951; Grove Press edition, 1961), pp. 235–55. Copyright 1951 by Albert Ellis. Reprinted by permission of Charles Boni, publishers, and the author.

the gospel that man can live a rational life, and that part of this rationality should be an acceptance that sex is good, so long as it is guiltless, freely chosen by the participants, and not participated in because of compulsions, fantasies, obsessions, or for other neurotic reasons.

The passage reproduced here constitutes the closing section of one of Ellis's earliest books, *The Folklore of Sex*. Originally published in 1951, and then brought up to date in 1961, it has again been slightly revised by the author for publication here. *The Folklore* was an ambitious work and stands unique in the literature of sex. For Ellis undertook to study all of the magazines, metropolitan newspapers, fiction and nonfiction best-sellers, comic books, movies, television and radio programs, at a given moment in time (and then again, one decade later) to determine what American society was preaching, through its mass media, on masturbation, birth control, illegitimacy, homosexuality, fornication, and any and all other aspects of sexual behavior. It was a content analysis of the most thorough nature; and after *The Folklore of Sex*, no serious account of the changing sex mores in America could afford to ignore the influence of the writings of Albert Ellis.



STATISTICAL CONSIDERATIONS

Modern science apparently cannot escape statistics: this book included. Where we have thus far presented the facts of our study through illustrative quotations and have used a kind of case history or anecdotal approach to the subject of sex attitudes in the 1950's and 1960's, we shall now make some attempt at quantifying and comparing some of our data. While the figures we are about to present are not very formidable, and while they have—as, indeed, have all attempts to quantify human attitudes—distinct limitations, it is to be hoped that they will help objectify and round out some of the facts that we have been presenting in this volume.

Our main method of gathering the statistics we are about to present was as follows: In reading the publications or listening

to the productions analyzed in this study, each observed reference to sexual behavior was examined to determine (a) whether it expressed an attitude that was liberal, permissive, or accepting; or (b) whether it expressed a sex attitude that was conservative, restrictive, or rejecting. In the original study that was made of attitudes in the early 1950's, 1,095 concrete references to sexual feelings and behavior were found, of which 551 expressed liberal and 544 conservative attitudes. Since, however, some of the media investigated in the original study, including plays, radio, television shows, and scientific journals, were not employed in the follow-up study of attitudes in the 1960's, it was decided to use for the statistical presentation in this revised edition only 984 of the original attitudinal references, which were derived from exactly the same kind of mass media as those found in the follow-up study. In this way, comparisons between the two studies are possible.

Table I indicates the sex references found in both studies, classified in accordance with the type of sexual behavior to which these references apply. Some highly interesting information can be noted from examining this table. First of all, it can be seen that although the total number of sex attitudes in the early 1950's was almost evenly divided between liberal and conservative sides of the fence, the balance, by the time the 1960's arrived, had swung far over to the liberal side. This was true in every single aspect of sex behavior examined in this study; and in most of the cases when the observed differences were tested by Chi-square analysis they were found to be significant. Only in the cases of extramarital coitus and noncoital sex relations was it found that even though significant trends toward liberalization of mass media attitudes took place, these trends were not statistically significant. In all other areas, and in sex behavior as a whole, the trends toward liberalization were highly significant.

Whereas, in the 1950's, almost 40 per cent of the observed sex attitudes were found to relate to extramarital coitus, in the 1960's attitudes toward sex organs, desires, and expressions had taken the center of the stage and constituted over 50 per cent of the observed references to human sexuality. This trend itself indicates even more liberalization of views than the rest of the

TABLE I

Number and Kinds of Sex Attitudes Expressed in American Mass Media, Classified According to Type of Sex Activity

TYPE OF SEX ACTIVITY	NUMBER OF LIBERAL ATTITUDES	NUMBER OF CONSERVATIVE ATTITUDES
<i>Extramarital coitus</i> ^a		
1950	182	187
1960	266	163
<i>Noncoital sex relations</i> ^b		
1950	125	30
1960	65	11
<i>Sex relations leading to pregnancy</i> ^c		
1950	8	34
1960	75	33
<i>Sex organs, desires, and expressions</i> ^d		
1950	138	68
1960	740	60
<i>Sex "perversions" and crimes</i> ^e		
1950	5	20
1960	79	68
<i>Sex control, censorship</i> ^f		
1950	51	136
1960	116	51
<i>Totals</i>		
1950	509	475
1960	1341	386

^a Includes fornication, adultery, sexual promiscuity, prostitution and venereal disease.

^b Includes kissing, petting, and masturbation.

^c Includes illegitimacy, birth control, abortion, and pregnancy.

^d Includes nudity, sex organs, scatology, "obscenity," lasciviousness, and sexual intercourse.

^e Includes sex crimes, incest, sex "perversions."

^f Includes censorship, puritanism, romanticism and sex, sexuality of women, sex rites and superstitions, and sex education.

information in the table would at first indicate: since the discussion of extramarital relations is practically old hat in American literature, while only recently have more down to earth matters become the frequent subjects of novelists, story writers, and other publicists. If the women's magazines and the general periodicals debate the advisability of premarital or adulterous behavior, that is hardly news; but if, as increasingly is the case, they mention nudity, sex organs, and sexual intercourse, that is certainly an indication of radically new permissiveness.

Speaking of different types of magazines, it was thought advisable to compare the references listed in Table I for the early 1950's and the 1960's when they were categorized in accordance with the kind of mass medium in which they were noted. These comparisons may be found in Table II. From the data in this table it may be seen that for every type of medium used in the two decades that were studied there was a tendency for sex attitudes to be distinctly more liberal in the later than in the earlier period. When tested for statistical significance by Chi-square analysis, it may be noted that in all categories of media except the humor magazines and the women's magazines, this tendency toward greater liberalization in the 1960's over the 1950's is highly significant.

It may also be seen that there are some rip-roaring reversals of direction in some instances. Thus, in the 1950's sex attitudes were preponderantly conservative in the fiction best-sellers, the general magazines, and the miscellaneous media; while in the 1960's attitudes in these three classifications of media, especially the first two, had changed to preponderantly liberal. While references in the men's magazines remained on the liberal side, they became considerably more so than they had been in the earlier decade.

To return to Table I for a moment, it can be seen that there, too, highly interesting reversals of attitudes between the 1950's and 1960's are shown in several of the main categories of sexual behavior employed during this study. Thus, whereas in the 1950's mass media attitudes toward sex relations leading to pregnancy, sex "perversions" and crimes, and sex control and censorship were much more often than not on the conservative

side, by the time the 1960's had arrived attitudes in these three categories, especially the first and the third, were significantly reversed.

Not only the proportions of liberal over conservative responses have changed between the 1950's and the 1960's, but the absolute number of liberal references has significantly increased in

TABLE II

Number and Kinds of Sex Attitudes Expressed in American Mass Media, Classified According to Type of Medium

TYPE OF MASS MEDIA	NUMBER OF LIBERAL ATTITUDES	NUMBER OF CONSERVATIVE ATTITUDES
<i>Best-selling fictional books</i>		
1950 (N-27)	27	57
1960 (N-20)	247	81
<i>General magazines</i>		
1950 (N-61)	44	71
1960 (N-56)	60	82
<i>Humor magazines</i>		
1950 (N-19)	277	65
1960 (N-12)	123	20
<i>Men's magazines</i>		
1950 (N-28)	37	19
1960 (N-47)	774	80
<i>Women's magazines</i>		
1950 (N-49)	32	99
1960 (N-32)	72	67
<i>Miscellaneous periodicals and productions^a</i>		
1950 (N-85)	92	164
1960 (N-62)	72	67
<i>Totals</i>		
1950 (N-269)	509	475
1960 (N-226)	1348	397

^a Includes newspapers, motion pictures, religiously oriented magazines, and best-selling nonfictional books.

almost all categories of sex behavior during the decade. Thus, even though 226 different publications and productions were investigated in the 1960's as against a larger number, 269, in the 1950's, more than two and a half times as many sex references are turned up in the latter period. Increases in the number of liberal allusions is to be noted in all categories except that of noncoital sex relations, where there is a decrease. This single decrease may well be caused by the fact that mass media today are so much more frank about intercourse, sex organs, nudity, etc., that they can well dispense with many of the references to kissing and petting that previously were used to titillate their readers.

As indicated in Table II, absolute numbers of liberal attitudes toward sexual behavior have increased in all categories of mass media examined except humor magazines and miscellaneous publications and productions. In both these instances, however, only about half the number of publications and productions were examined in the 1960's as had been examined in the 1950's; and this decrease in the number of outlets investigated may well have accounted for the fewer liberal attitudes discovered. In the case of the women's magazines, where only a slight increase in liberalized attitudes was found, this increase may again have been considerably greater if as many of these kinds of periodicals had been analyzed in the later as had been in the earlier decade.

In spite of the fact that most categories of investigated mass media became more liberal and permissive in their sex attitudes in the 1960's than they had been in the 1950's, distinct inter-media differences remained. Even in the 1950's women's magazines (and especially those that cater to teenage girls) remain considerably more conservative in their sex outlook than do other kinds of media; and humor and men's magazines remain far more prosexual in their numerous references than do other kinds of mass media. If the present trend continues, however, the fiction best-sellers may well catch up with the humor and men's magazines in the proportion of prosexual attitudes they include.

To return again to a consideration of the data in Table I, differences in the acceptance of certain kinds of sex behavior are

again still prevalent to some degree in the 1960's, even though they were more prevalent in the 1950's. That is to say, in the earlier decade there was a much greater acceptance of noncoital sex relations and sex organs, desires, and expressions than there was of extramarital coitus, sex relations leading to pregnancy, sex "perversions" and crimes, and sex control and censorship. In the later decade, most nonacceptable modes of sex behavior have become significantly more approved; but there is still relatively less acceptance of extramarital relations and sex "perversions" and crimes than there is of the other categories of behavior.

The information in Table I also shows that in the 1960's, as well as in the 1950's, many more references to extramarital relations and to sex organs, desires, and expressions are to be found in American mass media than references to most other categories of sex behavior, especially to noncoital sex relations, relations leading to pregnancy, and sex "perversions" and crimes.

THE WHYS AND WHEREFORES OF THE FACTS DISCOVERED

Some of the facts brought forth in the course of the present study were to be expected and their explanations obvious. Some are surprising and their explanations subtle or unknown. We shall now try to answer the main questions raised by these facts.

1. *Why are so many references, both liberal and conservative, to extramarital relations and to sex organs, desires, and expressions found?*

Probably because millions of Americans, in fact the great majority of them, actually do engage in fornication or adultery sometime during their lives; and because, when they do not do so, they still have distinct desires thus to engage and are concerned with the propriety of their desires. Also, American attitudes toward extramarital as well as marital relations seem to be changing in a more liberal direction; but because the older and more conservative attitudes are by no means yet eradicated, considerable controversy still exists and tends to make the issue a lively one.

There is a tendency for mass media to portray the masculine viewpoint as a liberal one and the feminine view as conservative.

Thus, male characters in both men's and women's magazine stories, novels, and motion pictures more often express favorable attitudes toward adultery and fornication than female characters. These mass media presently reflect a dichotomously trended male-female viewpoint in regard to extramarital affairs and, to a lesser degree, sex enjoyment in marriage.

2. *Why are most attitudes regarding kissing and petting liberal rather than conservative?*

Probably because kissing and petting are relatively mild forms of sex behavior and are virtually ubiquitous in our society. On the other hand, while kissing and petting are frequently mentioned in mass media, masturbation is one of the least mentioned sex acts. This tends to indicate that modern Americans are far more ashamed of masturbating than they are of engaging in kissing and petting and that, in spite of our sex books condoning masturbation (while still often emphasizing the dangers of petting, fornication, and adultery), the nineteenth-century attitude toward autoerotism lingers on in our mores.

3. *Why are attitudes toward abortion, birth control, illegitimacy, and pregnancy relatively few?*

Probably because these are not "romantic" sex topics and therefore not as likely to be included in fictional presentations as are more "respectable" subjects. While attitudes toward pregnancy and abortion seem to be loosening up recently in our society, they have not yet sufficiently done so for fiction writers to accept them too enthusiastically and use them for romantic effects.

4. *Why are so many attitudes toward nudity and sex organs extant and why are they so preponderantly liberal?*

Because nudity and references to sex organs apparently represent, in our communities, toned-down modes of sex activity which may be favorably espoused, while more direct modes of sex behavior are often greeted with more mixed or unfavorable reactions. Thus, viewing a nude woman or thinking about her hips and breasts is a step removed from *having* sex relations with her and is apt to arouse less guilt in a prim person.

5. *Why are relatively few attitudes toward incest, sex crimes, and sex "perversions" found, and why do they tend to be relatively conservative?*

Probably because these acts are still considered so heinous that they can directly be mentioned with only relative infrequency—especially in “respectable” outlets such as the women’s magazines and general magazines. In this respect, our mass media doubtless mirror the contemporary attitudes of the majority of Americans who violently oppose most manifestations of sex crimes or “perversions.”

6. *Why are so many attitudes, and especially liberal attitudes, found in relation to women’s sexuality?*

Probably because, owing to the large amount of sexuality appearing in contemporary literature, readers have become somewhat jaded and can more easily be titillated by, say, a heroine’s lustiness and unconventionality than by similar behavior on the part of a hero. Just as sadistic and other extreme types of sex activity are now being used to arouse sex-glutted novel and story readers, so, for purposes of sensationalism, promiscuous women are to some extent replacing promiscuous men as the protagonists of popular fiction.

7. *Why are sex attitudes in the 1960’s so much more predominantly liberal than those in the 1950’s?*

Largely because of the much greater freedom now apparent in fictional best-sellers and in the men’s magazines. Particularly in relation to attitudes toward sex organs, desires, and expressions these two outlets have become amazingly more permissive in the last decade; though in regard to almost all other forms of sex behavior they have also become more prosexual. Whereas the women’s magazines have remained similar in sexual tone to those of the 1950’s, and other kinds of media have changed only moderately, the men’s magazines and the best-selling novels are now radically different from their forebears and seem to be becoming still more openly sexual every year.

8. *Why are some kinds of mass media, such as best-selling novels and men’s magazines, considerably more liberal than other kinds of media?*

Probably for several reasons. First of all, some outlets, such as the men’s magazines, are patently read by male rather than female readers; and there is no question that a double standard of sexual morality still exists in the United States, with males generally more prosexually oriented than females.

Secondly, there would seem to be a considerable educational and intellectual difference in the readers of various types of publications. The best men's magazines, such as *Esquire* and *Playboy*, and the most literate novels, such as those of William Faulkner, Robert Penn Warren, D. H. Lawrence, and Vladimir Nabokov, are almost certainly perused by a reading public that is distinctly more educated and intelligent than readers who generally dip into the motion picture and TV magazines and the true-confession type of periodicals. In consequence, publications which cater to the more educated and more intelligent reader seem to be, on the whole, vastly more liberal and pro-sexual than those which cater to duller teenage readers.

Thirdly, several types of mass media, such as motion pictures and general magazines, are more widely read or witnessed than other types of media such as humor or men's magazines. Various groups of readers of these most popular media—for example, Catholics and hardshelled Baptists—tend to complain to editors and producers when sexually permissive ideas are presented; and, being economically dependent on their vast audiences, these media feel (rightly or wrongly) that they cannot afford to antagonize even minority groups. Consequently, they tend to stay much more sexually "pure" than do publications or productions with a more select type of audience.

Fourthly, some modern publications, such as the men's magazines, seem to be particularly designed to provide sexual release for the members of the public who are strongly denied titillation and education in the more "respectable" type of outlets. Just as various types of prostitutes will tend to flourish when "good" women are strict about denying their sexual favors to males, so will various highly sexualized publications develop when publications such as the *Saturday Evening Post*, the *Ladies' Home Journal*, and the *Reader's Digest* remain rather prim about their sex attitudes.

Fifth, as Ivor Williams has recently shown in a perceptive article in *Playboy* ("The Pious Pornographers," reprinted in Ray Russell's *The Permanent Playboy*), although today's women's magazines are still conservative about their formal presentations, they actually contain considerable lascivious portrayals and allusions in their stories, articles, and advertisements, which make

some of the more honest (and hence less salacious) material in the men's magazines seem a little cloistered by comparison.

9. *Why is there still relatively less acceptance of extramarital relations and sex deviations and crimes than there is of other forms of sex behavior?*

As far as extramarital relations are concerned, the anti-sexualists are still fighting a strong, if losing, battle. The very heart of the Judeo-Christian sex ethic is that men and women shall remain virginal until marriage and that they shall be completely faithful after marriage. In regard to premarital chastity, this ethic seems clearly on the way out, and in many segments of the populace is more and more becoming a dead letter. Premarital coitus or petting to orgasm are now being experienced by the great majority of American males and females. The churches and other social institutions, however, are still battling this tendency and their influence is strong in popular literature, especially in general and women's magazines.

Adultery is less practiced and condoned today than are premarital sex relations—partly because it is more likely to be disruptive of marriage and family ties. Although there is probably a trend toward increasing adultery (including adulterous petting) on the part of many men and, especially, women today, this trend is not half so pronounced as the trend toward increasing premarital affairs. Again, the churches and other social institutions are waging a heavy war against adulterous relations and still wield a considerable amount of influence in this connection.

Sex deviations (when properly defined) and crimes are certainly not healthy or happy in their own right; and even though negative attitudes toward deviants and sex offenders have ameliorated in recent years, it is not to be expected that they will ever become enthusiastically approving. Moreover, many puritans who today cannot effectively rant against premarital intercourse, petting, kissing, nudity, and other forms of sex behavior seem to be making the most of the fields where their efforts are still effective—namely, in the fields of deviation and sex crime.

10. *What are some of the main factors that influence contemporary sex expressions as they appear in our mass media?*

(a) The factor of human psychobiological *needs and desires*:

which, sexually speaking, cannot easily be downed and which, when sexually unsatisfied, encourage the presentation of considerable liberal sex attitudes and salacious sex materials that, officially and traditionally, are supposed to be taboo in our society.

(b) The factors of social change in general, and change in sex codes and ideas in particular, which encourage confusion, doubt, and ambivalence concerning a good many of our current sex views.

(c) The factors of sexual discomfort and inconvenience, even when basic sex needs are partly satisfied, which motivate millions of Americans to act differently than they think and unconsciously to think differently than they consciously permit themselves to think they think.

(d) The factors of individualism, democracy, and secularism, which discourage men and women from uniformly following traditional, authoritarian, religiously based sex tenets.

(e) The factors of fear, guilt, and inhibition, which influence readers and auditors to resist and discourage the publication of many direct sexual representations and which encourage, instead, their indirect (and often salacious) presentation.

(f) The factor of modern romanticism, which bolsters traditional sex mores on the one hand, but leaves loopholes, under certain circumstances, for more liberal codes and modes on the other hand.

(g) The factor of differing masculine-female standards in our society, which encourage one kind of sex attitudes and usages for males and quite a different, often conflicting, kind for female readers and auditors.

(h) The factor of unconscious feelings, urges, desires, and beliefs, which encourage men and women, sexually and generally, to think one way and to act another and even think they think one way, while actually thinking another.

(i) The factor of exceptionally strict, puritanical, and traditional sex views which linger on in such a straitlaced fashion as to necessitate some semi-automatic counterbalancing tendencies on the part of many people who try most rigorously to hold to the letter of these traditional views.

(j) The factor of certain strong pressure groups, particularly church groups, which stoutly defend conservative sex mores and attempt to bar and censor liberal or salacious^s sex references in public media.

(k) The factor of capitalist enterprise, which views sex as another commodity which may be profitably sold for public consumption and which therefore encourages highly salacious presentations in those media which are hospitable to them.

(l) The factors of sexual displacement and erogeneity, which make it possible for highly genitalized sex acts (like intercourse and incest) to be symbolized by quasi- or nongenital modes of sex behavior (like kissing or gazing at nudity) and which thereby allow for a good deal of public presentation of toned-down sexuality that, in more direct modes of presentation, would otherwise be banned.

(m) The factor of the prevalence of modern humor, which also enables much sex material of a liberal or salacious nature to be publicly displayed that, if presented in more serious guise, would not be allowed.

(n) The factors of modern technology, scientific discovery, literacy, and universal education, which are making it increasingly difficult for traditional-conservative views of any type, including sexual views, to flourish unchallenged, unopposed, and unalloyed.

(o) The factor of cultural lag, which permits many highly illogical, inconsistent, and immature sex views to linger on decades and centuries beyond their original usefulness and logical applicability to human affairs.

THE BEHAVIORAL IMPLICATIONS OF THE FACTS DISCOVERED

Now that we have seen what the facts of sexexpression in America are, and why they are, the question arises: What are the behavioral implications of these facts? Or, in other words, what do these facts mean in terms of the thoughts, feelings, and actions of the average American man and woman?

The most important implications would seem to be the following:

1. *The average American—in fact, virtually every living American—is completely muddled-, mixed-, and messed-up in his sex views, feelings, and acts. Much of the time he is quite consciously confused and knows that he does not know sex “right” from “wrong.” Or else he keeps changing his mind about what is sexually proper and improper. Or he engages in sex acts which he feels he should not perform but which he would feel even more uncomfortable about not performing. When—occasionally—this average American does manage to get consciously straight in his sex views, he still remains unconsciously caught and tangled in beliefs that are frequently as consistent with his conscious thoughts as Isadora Duncan was with Anthony Comstock. The result, in terms of the modern American’s external and internal sex harmony, is a degree of peacefulness remarkably like that now existing between the United States and the Soviet Union. (This goes, incidentally, for the consciously libertarian sexualist, who normally—in our culture—has underlying puritanical attitudes and feelings, as well as for the consciously strait-laced antisexualist, who underlyingly has distinctly libertine impulses.)*

(a) In consequence, the typical American male or female has no monolithic sex attitude, but only very pluralistic attitudes. And, while his or her attitudes on politics, religion, economics, or what you will may tend to be fairly consistent and self-harmonious, his or her sex beliefs normally tend to be self-contradictory and, in many ways, self-defeating.

(b) Officially, legally, and traditionally most of the sex views of our society are negativistic and disapproving, and (consciously) the majority of Americans appear to adhere to these traditional antisexual viewpoints. Unofficially, extralegally, and actually, however, the sex attitudes of millions of Americans (and particularly of male Americans) are at least partially positive, approving, and prosexual.

2. *Whenever official and legal American sex views tend to become too rigid, negative, and puritanical, an unofficial and extralegal reaction against these views appears to arise and to take one or more of the following forms:*

(a) The views on the banned mode of sex behavior itself may

become (unofficially or semi-officially) more liberalized. For example, ultra-strict views on fornication may give way to more liberal views.

(b) The views on the banned form of sex behavior may remain fairly constant, but views on related, substitutive, or sexually toned-down forms of behavior may become more liberalized. Thus attitudes toward fornication may remain conservative, but attitudes toward kissing and petting may become more liberal.

(c) The views on the banned sex act may remain consciously constant, but unconsciously they may become more liberalized. Thus people may continue to *say* that adultery is wrong but may remain relatively guiltless when they actually commit adultery.

(d) The views on the interdicted mode of sex behavior may remain the same as far as one's personal behavior is concerned but may become more liberalized when the behavior of others is at issue. Thus a girl may think it wrong for her to lose her own virginity but may think it perfectly all right for her girl friends to lose theirs.

(e) The views on the "bad" sex activity may remain steadfast, but the actions concerning it may be decidedly more liberal. Thus people may think it quite wrong to be "obscene" in public—and may then continually recount the most "obscene" kinds of jokes.

(f) The official interdictions against certain types of sex activity may be unofficially channelized into certain restricted areas and may be liberalized or ignored in other areas. Thus bans against telling "dirty" stories or jokes may be upheld when one is in mixed company, but relaxed in men's smokers or women's dressing rooms.

(g) Specific outlets may arise where more liberalized sex attitudes and acts are unofficially tolerated, even though they are officially taboo. Thus burlesque and night-club shows may be permitted to display nudity openly, and "lovers' lanes" may spring up where heavy petting is unofficially tolerated.

(h) Where liberal expressions of sex viewpoints are not permitted, substitutional salacious uses of sex material may arise instead. Thus those who dare not *say* that masturbation or adultery is a good mode of sex behavior may continually write

about them in a lascivious way or greatly enjoy reading or hearing salacious references to them.

(i) Sex activity that is banned and condemned may easily become "naughty" as well as "wicked"—and its naughtiness may give it a spice that makes both its discussion and its participation more enjoyable, and perhaps more frequent, than would otherwise be true.

(j) When specific sex acts (like masturbation or fornication) are banned, nonsexual or semi-sexual acts (like defecation or urination) may take on a super-sexualized meaning and may serve as sexual outlets.

(k) When direct, normal sex acts—e.g., masturbation or heterosexual intercourse—are banned or discouraged, indirect, abnormal acts—e.g., exhibitionism or sexually assaulting young children—may tend to rise in their stead.

(l) Violent, antisexual protests on the part of some individuals may provoke and serve as a mask for bizarre, prosexual acts by them. Thus people who are most vituperative and crusading against sexual "vice" may prudently be indulging their sexual sadism.

(m) When extreme forms of antisexuality become rampant—such as asceticism or inquisitorial persecution of sexual non-conformists—the energy and drives behind the antisexual crusading tend to take on a highly sexualized character and to serve as an (unconscious) sexual outlet. Thus the antisexual fervor of certain religious sectarians seems to result in orgasm-like releases.

3. *When specific modes of sex behavior are officially banned, they often tend, by the very virtue of their banning, to become particularly pleasurable and inviting to many of our citizens.*

(a) Prohibited sex acts may become unusually exciting in themselves. Thus kissing seems to be a fairly mild form of sexual entertainment where it is freely permitted—so mild, in fact, that many peoples of the world do not engage in it at all—but to become unduly sexually arousing and enjoyable when it is discouraged.

(b) Proscribed kinds of sex behavior may take on aspects of novelty and adventure which otherwise they would scarcely hold. Thus American men and women frequently seem to desire

adulterous relations not because their mates are no longer sexually satisfying to them, but because there is an element of danger, thrill, and novelty in illicit adultery which adds to its pleasures.

(c) Tabooed sex behavior frequently enhances the pleasure of substitutive modes of sex activity which ordinarily would not be too exciting for their own sake. Thus enjoining fornication often puts a premium on kissing and petting, which are normally found to be far less satisfying when fornication is freely permitted.

4. *When certain modes of sex behavior are interdicted, people often resort, instead, to various types of neurotic symptomatic behavior.*

(a) Prohibitions of sex acts may encourage repression of sex desires—with consequent frigidity, impotence, fear of marriage, unconscious hatred of one's spouse, et cetera.

(b) Prohibiting certain modes of sex conduct may abet guilt about very normal sex desires, an intensification of normal desires, and an intensification of guilt about the intensified desires. The result may be neurotic symptomatology of many different kinds.

(c) The bottling up of certain modes of sexual expression may urge normal persons to turn to compulsive modes of behavior and to do precisely those sex acts which they are most (consciously) ashamed of doing. They may compulsively, and joylessly, perform normal illicit sex acts (e.g., fornication or masturbation), deviational sex acts (e.g., homosexuality or intercourse with animals), or offensive or criminal sex acts (e.g., exhibitionism or forcible rape).

(d) Discouragement of sex pleasures, and designation of them as "disgusting" and "revolting," may foster neurotic loss of feeling and enjoyment in normal sex acts—including loss of pleasure in marital intercourse.

(e) Discouraging or toning down sex education may help many men and women to become irrationally and neurotically fearful of normal sex acts like masturbation, nocturnal emissions, menstruation, et cetera.

(f) Interdicting various sex acts may provoke neurotic over-emphasis on and preoccupation with these acts which may result in compulsive promiscuity, prurient obsessions on "obscenity," backhanded preoccupations with scatology, continual lascivious thoughts, et cetera.

(g) Damming up sex urges may encourage all kinds of unconscious personality distortions and impulses. Thus preventing a man from having adulterous relations may incite him to hate a wife whom he otherwise loves, and may even eventually induce him to harm or kill her. Forcing women to live in accordance with a double standard of sex morality may help them to become obsessively jealous, or to become compulsively enamored of aggressive, masculine life goals.

(h) The essence of good mental hygiene is to enable people to face squarely their desires and behavior and to understand their conscious and unconscious impulses. But banning sex acts normally involves concomitantly banning the discussion of many of these acts, and thus banning the individual's facing his underlying sex feelings and urges. Hence, good mental hygiene procedure and even effective psychotherapy are not given a chance, and sexually impelled or aggravated neurosis tends to run rampant in our society.

(i) Banning a sex act frequently makes it, at the same time, more desirable (because of the scarcity, novelty, and danger thereby attached to it) and less desirable (because of the guilt, anxiety, and fear thereby attached to it). This concomitant heightening and lessening of its desirability inevitably leads to serious conflict on the part of many individuals who have psychobiological impulses to perform a banned sex act. And since conflict partially lays the grounds for neurosis, an unhealthy mental situation thus arises for many of our countrymen and countrywomen.

(j) Once a sex act that is still psychobiologically urgent is banned, it can easily abet mental anguish and conflict: for if we frankly enjoy the act, on the one hand, we may still feel guilty about it underneath; and if we strictly abjure the act, on the other hand, we may feel distinctly deprived and may have (con-

scious or unconscious) cravings for it. In either eventuality, we will often build up (largely unconscious) feelings of doubt, anxiety, and depression—which may easily encourage neurotic outbursts and symptomatology.

(k) The banning of certain sex outlets—e.g., homosexuality—which would be, under normal circumstances, merely peculiar and idiosyncratic modes of behavior, serves to help make the users of these outlets neurotic—and to impel neurotics to use these outlets. In this sense, sex “perversion” does not render society sick, but society helps make sick people out of “perverts”—and induces disturbed individuals to use “perversions” as neurotic symptoms.

5. *Debarring certain modes of sex behavior often results in individual and social hypocrisy, evasion, and downright lying.*

(a) Sex behavior may be wholly excoriated when it is frankly enjoyed, and hypocritically accepted when it is mildly disguised. Thus prostitution is roundly condemned when it directly involves a man paying a woman for sexual favors, but is quite acceptable when the same man indirectly spends money on the same woman or supports her in legal marriage only to gain sex favors from her.

(b) Sex behavior may be tolerated when its genital aspects are disguised, but condemned when they are obvious. Thus a woman may publicly display most of her breasts, but she dare not show the tiniest bit of her labia. And, among certain elements of the American populace, heavy petting up to and including mutual orgasm is not considered to be engaging in sex relations, while the slightest interpenetration of the male and female genitalia, even without orgasm, is definitely so considered.

(c) Those who are no longer capable of various types of sex behavior may tend hypocritically to assume smug, holier-than-thou attitudes and to look down upon those who are still desirous of engaging in banned sex acts—and do. Thus judges who might have been sex hellions in their youth may hand out stiff sentences for minor sex infractions by the current younger generation.

(d) A double standard of sex behavior tends to grow up, under which certain acts are tolerated for one group but not for

another. Thus a man who openly has a mistress roundly condemns his wife for taking a lover. Or a wealthy girl is envied her sexcapades, while a salesgirl is excoriated for hers.

(e) In actual practice, banning sex acts in our country has often resulted in (1) an increased desire for them and (2) little lessening of participation in them. This means that millions of Americans consciously *think* one way (e.g., that adultery is "bad") and then *desire* and/or *act* quite another way (e.g., actively commit or desire to commit adultery). Such Americans frequently (consciously or unconsciously) look upon themselves as arrant hypocrites.

(f) Since direct approval of many banned sex acts is impossible in our society, and since the desire for these acts remains high (and often is, ironically, aggravated by the ban), many quasi-serious or humorous allusions to these acts are publicly presented—and this indirect form of presentation constitutes another mode of social hypocrisy. Thus bald-faced "obscenity" is rarely employed in America—but humorous stories, the very essence of whose wit lies in their "obscene" core, are ubiquitous.

(g) Rigorous puritanical sex codes, as we have seen, frequently encourage prurience and lead to the most hypocritical forms of sex behavior. Thus, in order to collect "obscene" material legitimately, men and women may become "vice" crusaders.

6. *Interdicting various types of sex conduct normally incites considerable individual and group antagonism between those who conform to the interdictions and those who do not.*

(a) In contemporary American society there seems to be a good deal of antagonism between the sexes, part of which stems from the fact that our double standard of morality allows much greater sex freedom to males than to females. Thus girls resent boys' trying to seduce them—and then insisting on marrying virgins.

(b) Within individual couples there presently appears to exist much antagonism and much inhibition of potential love as a result of differing sex goals. Thus girls try to get boys to marry them before having intercourse, and boys try to get girls to have intercourse with them before marriage. Frequently mas-

culine and feminine sex goals are so diverse that, primarily on that count, boy-girl romances never get started or break up quickly after they do start.

(c) Individuals and groups who are forced to conform to prohibitory sex codes frequently become antagonistic to other individuals and groups who manage to evade these codes to some extent. Thus married individuals may tend to resent the comparative sexual freedom of single individuals and violently to condemn the latter.

7. *The contrabanding of various sex acts often leads to illogical and self-contradictory individual and social sex philosophies.*

(a) Some aspects of sex behavior may be discouraged which, were they not banned, would help uphold the bans on other aspects of sex behavior. Thus masturbation, which normally acts as something of a substitute for and inhibitor of fornication, is illogically interdicted along with fornication itself. And birth control, which would prevent abortions and illegitimate pregnancies, is excoriated along with the latter aspects of sex behavior.

(b) Some sex acts (e.g., illegitimate pregnancy) are unofficially prosecuted although not legally banned, while other sex acts (e.g., fornication) are legally banned (in some states of our union) but unofficially highly tolerated.

(c) Some intrinsically harmless sex acts (e.g., masturbation and homosexual relations between adults) are placed in the same condemned category as other intrinsically harmful acts (e.g., assaultive rape).

(d) Publicly anathematizing a given mode of sex conduct may, ironically, give additional status and esteem to some of those who frankly partake of this mode of conduct. Thus men become envious of other men who are notorious fornicators or whoremongers; and even women may prefer promiscuous men for their bedmates. Again, being able to employ "obscenity" or scatological language in a frank and open manner may become a mark of sophistication or hardboiledness and be thereby duly (and even unduly) esteemed.

(e) Emotionalized, illogical sex attitudes grow up because of banning certain activities; and these emotionalized attitudes

often lead to inadequate, emotionalized types of sex education, which, in turn, maintain the original emotionalized, illogical sex attitudes, thus effectuating a continuing vicious circle.

(f) Men and women, because of sex bans, often crave the sexually impossible. Thus current sex contradictions cause men to want wives who are "pure"—and wanton; and cause women to want husbands who are good economic supporters—and unpredictable, exciting lovers.

(g) Sex prohibitions encourage obscurantism and sex superstitions, which are most idiotic and illogical. Thus lack of adequate sex education encourages people to believe in astrological influences on their love lives, or to hold to sex rites—e.g., taboos on intercourse during menstruation—which have long been scientifically invalidated.

8. *Forbidding various modes of sex conduct frequently results not in the disappearance or even lessening of that conduct, but in its continued performance—with concomitant self-punishment, guilt, anxiety, pain, and anguish on the part of those who practice it.*

(a) Even when people "get away with" banned sex conduct and go "scot-free" for violating the bans, they are usually (consciously or unconsciously) guilty over their behavior and suffer direct pangs of conscience or indirect unpleasant psychophysical effects.

(b) Sometimes the banning of a sex act directly or indirectly *causes* dire consequences for its perpetrators. Thus banning fornication logically leads to banning birth control and venereal disease control—and these latter bans provide distinct penalties (e.g., illegitimate pregnancy, abortion, and syphilis) for many fornicators.

(c) When society bans a sex act for which many of its members still feel strong psychobiological urges, these members have the choice of (1) consciously favoring the sex act, and feeling unconsciously guilty and shameful about it, or (2) consciously disfavoring the act, and feeling unconsciously compelled to resort to it nevertheless. In either eventuality, the banned act is usually, in one degree or another, actually *performed*—and then regretted. Thus masturbation, in contemporary America,

is utilized by the great majority of us; but the negative propaganda that is subtly or frankly dispersed in connection with it helps us unconsciously to feel guilty though we consciously accept it, or consciously to feel guilty when we reject it in theory but are nevertheless driven to its practice. In either event, we perform it with pain, trouble, and qualms.

The foregoing behavioral sequelae of our contemporary sex prohibitions, and of the utterly conflicting and confused attitudes which we have acquired in relation to them, are, it will be noted, virtually all dismal and unfortunate. Are there, then, no advantages to prohibiting or discouraging certain modes of sex behavior?

Doubtless there are, since obviously our civilization seems to be better off for banning sex acts like assaultive rape than it would be if it encouraged this practice. It may also be argued—and, indeed, often, and at great length, has been—that societal prohibitions against sex activities like fornication, adultery, promiscuity, and prostitution have a distinctly salutary effect on civilized life.

Perhaps so. But the findings of this study offer no supportive evidence in this connection. What they do show—and that fairly conclusively—is that in contemporary America most of our official and legal sex bans are *not* very effective, *are* being continually and widely flouted in both theory and practice, and *are* accepted by our citizenry in an incredibly conflicting and confused manner. Under *these* conditions, the behavioral results, when viewed in terms of thoughts, feelings, and actions of the everyday common garden-variety American male and female, are truly dreadful and depressing. To say otherwise would be completely to contradict the main findings of this study.

WHAT MAY BE DONE ABOUT THE FACTS DISCOVERED?

The facts of this study seem clearly to point to one main moral; namely, that human sexuality cannot easily be downed and that even—perhaps especially—in a society like our own, which is officially and legally sexually repressive and inhibited, human psychological sex drives remain sufficiently high and

undownable, causing endless individual and societal conflicts, confusions, and contradictions.

Otherwise stated: whatever the intrinsic demands of human sexuality may or may not be, it seems clear, in this day and age, that when we attempt to push sex down here it tends to rise up there, and that all our attempts to outlaw, penalize, and denigrate various modes of sex behavior have resulted mainly in liberalizing reactions against conservative proscriptions; in pluralistic instead of monolithic sex views; in sex acts which directly contradict sex theories; in unconscious sex urges which effectively sabotage conscious motivations; in people's finding heightened interest and pleasure in many banned sex acts; in the growth and abetting of multitudinous forms of sexual and general neuroses; in the prevalence of widespread sexual hypocrisy; in the promotion of formidable amounts of sex antagonism; in the formation of numerous illogical and idiotic sex philosophies and rules; and in the production of enormous degrees of sexual and general pain, dissatisfaction, anxiety, and woe for literally millions of Americans.

The question, therefore, obviously arises: What should be done to alleviate or correct our current sexual embarrassments, inconsistencies, inequities, and chaos?

Since this purports to be a scientific study, moralistic *shoulds* and *musts* are probably out of place in it. The writer, partly because of his findings in the course of this research, and partly because of his own emotional prejudices and biases, has as pronounced views on these *shoulds* and *musts* as has anyone. Scientifically, however, these views may not be entirely relevant and should perhaps appear in a different context rather than in the present volume. (Since writing the first edition of this book, many of my personal sex views have appeared in *The American Sexual Tragedy* and *Sex Without Guilt*.)

Sticking, however, to the objective findings of this study, and avoiding (for the nonce) moralistic *shoulds* and *musts*, it may still be legitimately noted what Americans *may* do to resolve, to some extent, their contemporary disordered, deranged, and disheveled attitudes and acts relating to different modes of sex behavior.

In general, it would appear that we have the choice of: (1)

learning to tolerate our present contradictory, liberal-conservative sex views in a more democratically accepting manner; (2) continuing to change our sex attitudes so that they become more consistently liberal; or (3) returning to a distinctly conservative, rigorously monolithic state of sexual philosophy and activity, and ruthlessly uprooting all the sexual laxity, liberality, and lasciviousness which we have allowed to creep into our present-day mores.

The first alternative—that of our learning to tolerate both liberal and conservative sex viewpoints and allowing them to exist side by side in our society—is probably impractical for several reasons: (1) It leads, as we have been seeing throughout this book, to conscious and unconscious confusion, guilt, and grief on the part of both liberals and conservatives. (2) It cannot be tolerated by sexual arch-conservatives—such as the religious pressure groups—since it at least allows *some* individuals and groups to preach and to practice sexual liberalism. (3) Consequently, it will lead to a continual—and perhaps total—warfare, which will result, in all probability, in the victory of alternative 2 or alternative 3—consistent sexual liberalism or conservatism eventually becoming the order of the day.

The ultimate choice, then, seems to be between our going forward to be as consistently liberal in our sex views and acts as the limitations of human nature will allow—or in our going back to consistent, ultra-conservative sex attitudes and activities. Both these alternatives comprehend human risks and dangers, and involve the development of patterns of thinking, feeling, and living which are radically different from those most of us follow today. One of them, it may fairly safely be predicted, will ultimately prevail among those elements of humanity who somehow manage to survive our present troubled times.

Which do you suppose it will be?

ILLEGITIMACY

Clark E. Vincent

Strictly speaking, illegitimacy is not a form of sexual behavior, and in a sense one ought not to speak of it as a *sex* problem, as one can speak of prostitution, lesbianism, or even pornography. It is rather the result of sexual behavior, namely nonmarital (or occasionally extramarital) relations. Yet, there is no reason to doubt that only a very slight proportion of fornication results in pregnancy, and then by no means all such pregnancies result in illegitimate births (for there are two other major possibilities for resolution of the difficulty: marriage and abortion).

Despite birth control information that has now become widely disseminated, despite the greater amount of education and sophistication among the youth, illegitimacy is a widespread phenomenon. Approximately a quarter of a million children are born out of wedlock each year in the United States. On the one hand, some of these children (particularly those who are white) readily fill a gap in the adoption market, although the demand for such babies may decline with the further development of methods to reduce infertility. And on the other hand, illegitimacy constitutes a problem involving stigma on both mother and child, financial hardship, and difficulties in growing up in a mother-centered family.

Source: Reprinted with permission of The Macmillan Company from *Unmarried Mothers* by Clark E. Vincent. © The Free Press of Glencoe, Inc., 1961.

But illegitimacy involves still further problems in an understanding of the contemporary American sex mores. Our attitudes toward nonmarital sex relations are primarily permissive, particularly if they are not overly promiscuous and if they are not overtly flaunted before the society. But our attitudes toward the unwanted pregnancies resulting therefrom are extremely harsh. All of which seems to mean, for some people: Do it, but don't let us catch you doing it.

No man has studied this problem more thoroughly than Dr. Clark E. Vincent. His book, *Unmarried Mothers*, from which we reprint the opening and closing chapters, skillfully combines statistical data with individual biographical material. It analyzes census information on unwed mothers of the United States, and studies in depth a sample of 268 such women in San Francisco. Vincent challenges many of our prejudices, rejects the unscientific and common-sense assumptions that many have made, looks into the ideological distortions present in much of our research, and emerges with a work which, for its thoroughness, its freedom from evaluative judgments, and its objectivity, can serve as a model for a social-scientific approach to any aspect of human sexuality.



Value judgments are the formal causes of social problems, just as the law is the formal cause of crime . . . there can be no social problem without a value judgment . . . Social problems are not solved because people do not want to solve them.

—WILLARD WALLER¹

Scientific interest in a social problem emerges only when the moral norms by which the thing is judged evil are themselves subjected to analysis rather than taken for granted.

—KINGSLEY DAVIS²

THE ATTITUDES OF SOCIETY

In the United States during 1938–1958, the *estimated* annual number of illicit births increased from 87,900 to 208,700; the

¹ Willard Waller, "Social Problems and the Mores," *American Sociological Review*, I (Dec., 1936), 922, 925, 928.

² Kingsley Davis, "Illegitimacy and the Social Structure," *American Journal of Sociology*, XLV (Sept., 1939), 215.

illegitimacy ratio, or estimated number of illicit births per 1,000 live births, rose from 38.4 to 49.6; the *illegitimacy rate*, or estimated number of illicit births per 1,000 unmarried females of childbearing ages, increased from 7.0 to 21.0.³ Contrary to popular opinion, the illegitimacy rate increased least among the women aged between fifteen and nineteen (108 per cent), and most among the women aged between twenty-five and twenty-nine (453 per cent) during the twenty-year period of 1938 to 1957 (the 1958 rates for age groups were not available).⁴ Even if there had been no rate and percentage increases, however, the number of unwed mothers aged between fifteen and nineteen during the 1960's would be almost twice what it was during the 1950's, since almost twice as many girls were born between 1945 and 1954 as between 1935 and 1944.

Illegitimacy has never been a dull subject. Now, its current numerical—if not percentage—increase is evoking considerable concern and activity at grass-roots, regional, and national levels. It provides lively program topics for civic and community organizations, research projects for national foundations, embarrassing questions for church groups, additional expenditures for taxpayers, budget items for federal agencies, and anxious nights for parents.

The rapidly proliferating efforts to stem this increase will become quixotic and ineffectual, however, if motivated too much by W. H. Auden's emphasis upon the danger of being caught lecturing on navigation while the ship is going down, and guided too little by Morris Cohen's reminder that more lives have been saved at sea by the study of astronomy and navigation than by the construction and perfection of lifeboats.

Our susceptibility to Auden's warning is increased, perhaps, by the current emphasis upon case histories of the "girl next door," and by our growing awareness that the daughters saved may be our own. But the diminution of contemporary illegiti-

³ National Office of Vital Statistics, "Nativity Statistics," *Vital Statistics of the United States 1958* (Washington, D.C.: Government Printing Office, 1960), Section 3, Table 3-W, pp. 3-27; and National Office of Vital Statistics, "Illegitimate Births: United States, 1938-57," by Joseph Schacter and Mary McCarthy, *Vital Statistics—Special Reports*, Vol. 47, No. 8 (Sept. 30, 1960), Tables A and B, pp. 226-27.

⁴ "Illegitimate Births: United States, 1938-57," *ibid.*, p. 232.

macy will necessitate more basic knowledge and critical perspectives than most previous preventive efforts have manifested.

*A starting point and basic prerequisite for understanding illegitimacy is increased awareness and clarification of the contrasts and contradictions in the attitudes, rules, and social practices by which illicit sexual behavior is regulated and judged. (As used here, the terms "social practices," "rules," and "attitudes" are synonymous with Sumner's use of the term "mores" as meaning "the popular usages and traditions when they include a judgment that they are conducive to societal welfare, and when they exert a coercion on the individual to conform to them, although they are not coordinated by any authority."*⁵)

Robert Lynd notes that our society has no one set of harmonious and consensual attitudes and social practices concerning sexual or any other kind of behavior, in his observation that it is "precisely in this matter of trying to live by contrasting rules of the game that one of the most characteristic aspects of our American culture is to be seen."⁶ And this characteristic aspect of our society necessitates an examination of seemingly contradictory attitudes concerning illicit sexual behavior—a clarification of the latent as well as of the manifest functions of these attitudes.

The Mores and the Paucity of Research on Unmarried Fathers

The contrast in rules for judging illicit sexual behavior is perhaps most obvious, and thereby most frequently overlooked, in the case of the unmarried father. Although biologically he is half the cause of illegitimacy, the ratio of studies of the unmarried father to studies of the unwed mother is approximately one to twenty-five. This disproportionate ratio can be at least partially clarified within the context of several mores serving to define him as a less crucial social problem, and thus a less important research subject, than the unwed mother.

⁵ William Graham Sumner, *Folkways* (Boston: Ginn & Co., 1906), p. iii.

⁶ Robert S. Lynd, *Knowledge For What?* (Princeton, N.J.: Princeton University Press, 1940), p. 59.

1. The traditional double standard⁷ effects a harsher judgment of the female than of the male for sexual misbehavior. The male's pursuit of sexual favors during courtship is acceptable evidence of his masculinity; but the female's granting of such favors is more likely to be considered evidence of her lack of feminine skill in the age-old game of retaining her suitor without losing her virginity. Semantically, we have no equivalent of the concept of "the fallen woman" applicable to the male. With more specific reference to illegitimacy, this double standard was illustrated recently in several states' unsuccessful attempts to legislate sterilization of all unwed mothers who had had more than one illicit pregnancy—none of these attempts included provisions for sterilizing recidivist unwed fathers. This double standard is also evident after marriage: wives are censured more sharply than husbands for extramarital affairs; and wives are blamed more frequently than husbands for unwanted pregnancies occurring within marriage.

2. The "presumption of innocence until guilt is proven" provides far less protection for the unwed mother than for the unmarried father. Her guilt is made obvious by a protruding profile—evidence hard to conceal. He bears no outward signs, and his accessory role must be proved. But to provide such proof, when the state does not assume the initiative in establishing paternity, the unwed mother must disclose her identity and sexual misbehavior to a larger audience. Her reluctance to do this makes it fairly easy for her male accomplice to maintain his anonymity and his ostensible innocence, if he chooses.

3. The "principle of legitimacy,"⁸ or the traditional pattern of premarital chastity and marital fidelity, is maintained by censuring the unwed mother primarily. Since it is she whose evi-

⁷ See Ira L. Reiss, "The Double Standard in Premarital Sexual Intercourse," *Social Forces*, XXXIV (March, 1956), 224-30; and Clark E. Vincent, "Unmarried Fathers and the Mores: 'Sexual Exploiter' as an Ex Post Facto Label," *American Sociological Review*, XXV (Feb., 1960), 40-46.

⁸ See Bronislaw Malinowski, "Parenthood—The Basis of Social Structure," in V. F. Calverton and S. D. Schmalhausen (Eds.), *The New Generation* (New York: Macauley, 1930), pp. 130-46; Davis, *op. cit.*; and William J. Goode, "Illegitimacy in the Caribbean Social Structure," *American Sociological Review*, XXV (Feb., 1960), 21-30.

dence of sexual misbehavior overtly threatens the mores supporting legitimacy, it is she whose behavior is censured, as an object-lesson, to prevent these mores from "dying out in the conscience of the society."

4. The amount of public and research interest in a social problem is closely related to how great a financial burden that problem imposes upon taxpayers. Unwed fathers represent no obvious financial burden, while unwed mothers impose very tangible expenditures for maternity homes, medical care, and casework services.

5. It is easier, and requires far less time and money, to study *groups* of "captive" unwed mothers in maternity homes and social agencies than it would be to study *individual* unmarried fathers, who remain anonymous and at large in the general population.

Thus, the lack of research on unmarried fathers may be very inconsistent with the fact that they represent one-half the illicit-conception equation, but it is quite consistent with, and can be understood within the context of, other social practices and attitudes.

Contrasting Attitudes in Legal Statutes

It is less easy to disentangle the contrasts in rules, by which most of the thirty-three states whose statutes impose criminal sanctions for *voluntary* coition between unmarried adults⁹ also license and support a variety of agencies, hospitals, and maternity homes to care for unwed mothers—who present obvious evidence that they have violated the statutes on fornication. Not only are unwed mothers rarely prosecuted—the staff personnel, in maternity homes and social agencies, who aid the unwed mother and seek to cloak her identity from the public, are rarely, if ever, viewed as "accessories to the fact" of fornication.

⁹ Fowler V. Harper, *Problems of the Family* (Indianapolis: Bobbs-Merrill, 1952), Chap. II, "Premarital Relations," pp. 67-171. In some states, a single act of intercourse is sufficient grounds for a conviction; in other states, open and continuous cohabitation is required; in a few states, separate provisions cover both situations.

The failure to enforce statutes on fornication cannot be explained solely on the basis of public apathy, inasmuch as there is usually considerable opposition to any attempts to rescind these statutes.¹⁰ This lack of enforcement is consistent with the humanitarian values which discourage punishing females who are alone, need help, and have been deserted by a male. It is also consistent with traditional family values, which foster sympathy and understanding for any female who, though alone, unmarried, and faced with censure, completes rather than aborts her pregnancy, and so lends support to that aspect of traditional motherhood that places the welfare of the unborn child above the fears and solitariness of the mother.

We might expect the laws of different states to exhibit a wide variation in punishments for *voluntary* sexual relations between unmarried adults; the maximum sentence ranges from thirty days in the county jail, in one state, to three years in the state penitentiary, in other states.¹¹ But would we expect the legal statutes of different states to impose a more severe punishment for sexual unions *between animals in public view* than for sexual unions *between unmarried human adults in private*? A Delaware law stipulates a fifty-dollar fine for permitting a dog in heat to be at large; a Rhode Island law carries a maximum fine of ten dollars for voluntary fornication between human adults. A Missouri law imposes a thousand-dollar fine for permitting a mare to be served in public; the maximum fine, in *any* state, for voluntary coition between unmarried adults is five hundred dollars.¹²

The attitudes which, many years ago, influenced the passage of laws and statutes imposing higher fines for permitting animals to cohabit in public than for fornication between human adults (presumably in private) are consistent with current attitudes, which are more critical of illicit pregnancy than of illicit coition. The consistency is in the mores, which prescribe that the sexual

¹⁰ For a discussion of the nonenforcement of statutes concerning illicit sexual relations, see Morris Ploscowe, *Sex and the Law* (New York: Prentice-Hall, 1951), chap. V.

¹¹ Harper, *op. cit.*

¹² *Ibid.*; and Manfred S. Guttmacher, *Sex Offenses* (New York: W. W. Norton, 1951), chaps. I and II.

relationship—even between animals—should be a *private, covert* experience, and in the fact that the unwed mother's changing profile makes her illicit sexual union *public* knowledge.

Contrasts in Attitudes toward Illicit Coition and Illicit Pregnancy

The greatest contrasts—if not contradictions—in attitudes concerning illicit sexual behavior are evident in the social practices by which we *inadvertently encourage, if not implicitly condone, the cause* (illicit coition), and *explicitly censure and condemn the result* (illicit pregnancy). These attitudinal contrasts were stated pointedly by Albert Ellis, after he had surveyed “hundreds of writings and productions.” In these, he found both implicit and explicit expressions of permissive attitudes concerning pre- and extra-marital sexual relations, but “only two unequivocal defenses of unwed mothers.” “The same girl whose sex habits may be tolerantly viewed by her friends, associates and lovers while her stomach remains appropriately flattened may be in for the severest kind of censure once she begins to stock up on maternity dresses.”¹³

The contrasting feelings about premarital coition and premarital pregnancy are usually obscured, however, by the indirect manner in which social practices serve inadvertently as learning sources for permissive attitudes toward illicit sexual relations. In considering some of these social practices, we may note briefly two obstacles to understanding illegitimacy—the “bad-causes-bad” fallacy,¹⁴ and the middle-class bias in defining bad causal factors and bad behavior. These two impediments are illustrated in the earlier literature and research on the causes of crime. As long as middle-class definitions were used, an accusing finger could be pointed at such non-middle-class (“bad”) factors as poverty, little education, and minority group membership, factors believed to cause the non-middle-class crimes of violence (“bad”). But when Edwin Sutherland¹⁵ and others departed

¹³ Albert Ellis, *The Folklore of Sex* (New York: Boni, 1951), chap. IX.

¹⁴ Kingsley Davis, *op. cit.*

¹⁵ Edwin H. Sutherland, *White Collar Crime* (New York: Dryden Press, 1949).

from definitions that protected the middle classes, they could compile embarrassing statistics on the high incidence of embezzlement and white-collar crime among middle and upper socioeconomic groups.

To assume that only bad causes bad, and to define "bad" in such a way as to exclude middle-class behavior, obscure the relevance of a number of social practices (particularly those accepted as means to desired goals) for illegitimacy. Certain practices in education, child-rearing, and personnel ideology, reflecting what has been termed the "philosophy of fun morality," illustrate this relevance. (Of course, we are oversimplifying a very potent but diffuse philosophy; and we are not trying to prove that any specific social practice causes illegitimacy.)

In education, the philosophy of fun morality is reflected in the notion that a child will learn more and faster when he is "having fun," "enjoying life," "happy," and "popular." Implicitly or explicitly, the learning process is presumed to be facilitated when made enjoyable for the learner.¹⁶

The emergence of fun morality in child-rearing, particularly during the 1940's, has been described in considerable detail by Martha Wolfenstein.¹⁷ If the child enjoyed something, that something (even the type of food) was considered to be good for him. The distinction between what the child *needed* and what he *wanted* was made less and less frequently. As *wants* came to be regarded as *needs*, many homes became child-dominated. This permissive child-rearing era began to subside with maternal exhaustion, and the subsequent reassertion of parental knowledge, in the mid-1950's. By then, however, almost a generation of youngsters had been implanted with the idea, in varying degrees, of the fusion of needs and wants.

This inculcation, whether occurring through educational procedures at school or through child-rearing patterns at home, is currently flowering in adolescents who are predisposed to the be-

¹⁶ See A. E. Hamilton, *Psychology and the Great God Fun* (New York: Julian Press, 1955).

¹⁷ Martha Wolfenstein, "The Emergence of Fun Morality," *Journal of Social Issues*, VII (1951), 15-25; revised and reprinted in Margaret Mead and Martha Wolfenstein (Eds.), *Childhood in Contemporary Cultures* (Chicago: University of Chicago Press, 1955). All subsequent references are to the latter version.

lief that anything which is fun and wanted is good and needed. And they read, hear, and see progressively fewer denials that *sex is fun*.

In contrast to the earlier, covert treatment of sex as a source of evil (if not evil in itself), currently the notion that sex is fun openly permeates the thematic patterns of novels, films, and plays. It accompanies the advertising and selling of many products and services and finds its way into the marriage education textbooks of high school and college students.

The emergence and implications of the philosophy of fun morality in the personnel ideology of industry and business have been discussed by C. Wright Mills, William H. Whyte, Jr., Leo Lowenthal, and others.¹⁸ The loss of motivation for, and the decreased inherent creative rewards from, work (derived formerly, in part, from a sense of craftsmanship and the satisfaction of both starting and completing a given product) have necessitated an increasing emphasis on ways and means to make work fun and working conditions enjoyable. Thus, office parties, primary-type relations, and feelings of "one big happy family" in shop and office help maintain production quotas by keeping workers happy with their work relationships—if not with their work.

Within this context, Christmas parties at the office are sometimes anticipated with more enthusiasm and preparation than are those at home; and, after a few months of working together, employees frequently know more about each other's current problems than members of their respective families know. There is also the expense account, which may permit the young executive to live a luxurious and self-important life, away from home, that makes life at home and a vacation with his wife and children seem dull (and expensive) by comparison. The away-from-

¹⁸ See C. Wright Mills, *White Collar* (New York: Oxford University Press, 1951), pp. 233-38; David Riesman, "Permissiveness and Sex Roles," *Marriage and Family Living*, XXI (Aug., 1959), 211-17, and "Work and Leisure in the Post-Industrial World," in Eric Larrabee and Rolf Meyersohn (Eds.), *Mass Leisure* (New York: The Free Press of Glencoe, 1958); and William H. Whyte, Jr., "The Wives of Management," *Fortune*, XLIV (Oct., 1951), 86-88, and "The Corporation and the Wife," *ibid.*, (Nov., 1951), 109-11.

home luxury may include the services of "escort bureaus" provided at out-of-town conventions and sanctioned as promotional means to the "good" goal of future conventions and subsequent city revenue. And as this promotional spirit gives respectability to the female escorts of visiting business men, it also inadvertently lowers the barriers to heterosexual intimacy. For just as some doubted that anything good could come from Nazareth, so others doubt that anything bad can emerge from that which has respectable sponsorship.

And what relevance has all this to understanding illegitimacy? *When viewed separately*, as single strands, such social practices as the following may appear to have only enough relation to illegitimacy to attract the attention of "sanitary do-gooders": (a) to fuse needs and wants; (b) to employ fun and enjoyment as means to learning, child-rearing, and higher production goals; (c) to interpret the capacity for fun and enjoyment as evidence of psychological health;¹⁹ (d) to advertise products, increase circulation, and promote conventions on the basis of sex enticements; (e) to emphasize that sex is fun; (f) to replace the stigma of a *Scarlet Letter* with the therapeutic theme of a *Tea and Sympathy*; (g) to keep employees happy by fostering a sense of "belonging and togetherness" that incidentally minimizes (if not precludes) the participation of spouses in shop and office parties; and (h) to perceive fun and happiness as goals and criteria of success rather than as by-products of meaningful lives.²⁰

But when viewed collectively, such social practices are sources of learning permissive attitudes toward pre- and extra-marital sexual relationships. The fusion of needs and wants and the emphasis upon fun and enjoyment, for example, make it easier for the male who is unhappy in marriage to justify, at least to himself, finding his amusement outside his home. His selection

¹⁹ As Wolfenstein has noted, "Not having fun is not merely occasion for regret but involves a loss of self-esteem" (*op. cit.*, p. 174). Not to have fun is assumed to be evidence of unpopularity and of psychological disturbances.

²⁰ This assumption underlies most of the research measuring marital success, inasmuch as "happiness" is not only the presumed goal and purpose of marriage, but also the primary criterion for judging the success of the marriage.

of a fun partner is simplified and his risk of an initial rebuff is minimized when the emphasis on close-knit relationships in the occupational setting provides a socially sanctioned context for heterosexual familiarity, which may subsequently become heterosexual intimacy. A male-female pair of office employees can have coffee and lunch together much more frequently, and with less censure, than a pair of male-female neighbors. . . .

The implementation of fun morality as a means to learning, child-rearing, and production goals indirectly and incidentally serves as a source of permissive attitudes concerning illicit sexual relationships, making it possible for such attitudes to coexist unnoticed with censorious attitudes toward illicit pregnancies. This does not imply that the theme of fun morality, for example, or the emphasis on close interpersonal relationships in occupational settings, causes illegitimacy. It shows only how extremely interwoven and complex are the social practices and values that impinge directly or indirectly on the social problem of illegitimacy; it thus directs attention to the oversimplicity and limitations of the conventional, like-causes-like approaches to its solution.

If we consider fun morality, or instances of occupational propinquity between unwed mothers and their sexual partners, as demonstrating that illegitimacy can be an inadvertent by-product of a combination of means to conventional goals, we look outside the evil-causes-evil circle. This point of view, however, is not easily brought into focus; any one social practice reflects a variety of vested interests and conflicting values, and one man's means are frequently another man's goals.

Moreover, such a viewpoint is discouraged by those whose interests are threatened by scrutiny of the means used to increase advertising returns, production quotas, and box-office successes. To focus on such means is to risk being labeled a "busybody," a "do-gooder," and an "infringer on freedom of expression." Such labels—especially the last—soon distort the issue into a polemic discussion of "freedom vs. restriction of expression"—a discussion in which the questions, "Freedom for what?" and "Freedom for whom?" are underdeveloped.

In this connection, Willard Waller has suggested that, in studying the causes of social problems, rather than examining

the more powerful social institutions and mores, there is a tendency to "seize upon various harmless proposals—case work, psychiatry, social security, and other assorted brands of salvationism—and magnify their importance until they seem like things worth dying for."²¹

But the failure to examine the relevance of accepted social practices to illegitimacy is not caused only by the power of vested interest groups. The bad-causes-bad assumption may provide a protective barrier against our own individual fears, struggles, and temptations concerning illicit sexual behavior, and serve to reaffirm the belief that "it can't happen to me." To emphasize that "bad girls" are caused by poverty, ignorance, or minority group membership is to reaffirm that "good girls" result from material blessings, an education, and majority group membership. Illicit sexual behavior has an emotional impact upon most of us. This impact may partially explain why we are so quick to divide such behavior into rigid categories of black or white, rather than critically examining the nuances of gray reflected in the social practices indirectly encouraging illicit coition while explicitly discouraging illicit pregnancy.

Different Attitudes toward Various Groups of Unwed Mothers

Although given attitudes and social practices define the unwed mother as a more serious social problem and a more important research subject than the unwed father, not all unwed mothers are regarded as representing the same degree of social problem. The older, more independent unwed mothers, who travel to another state to be attended in private practice at no expense to taxpayers, are studied far less frequently as social problems than the unwed mothers in maternity homes and those dependent on agency and taxpayers' help.

Also, the white unwed mothers, whose illicit pregnancies provide the means by which childless couples can have families, are not considered so great a social problem as the Negro unwed mothers, whose children are not in demand for adoption and

²¹ Waller, *op. cit.*, pp. 931–32.

may need financial support. In this context, the goal of providing childless couples with adoptable infants is at odds with the goal of premarital chastity: to achieve the former may defeat the latter. For, when the demand for *white* adoptable infants exceeds the supply by an estimated ten-to-one ratio, there tends to be less censure of those particular unwed mothers supplying such infants.

Although this conflict of goals has been oversimplified here for purposes of illustration, it involves some interesting value dilemmas. For example, the publicity and criticisms formerly reserved for the black or gray markets in babies—usually white—are now focused upon the ADC (Aid to Dependent Children) Program, even though this program may enable some unwed mothers to avoid the baby market. Moreover, to enable the estimated three million married couples who are involuntarily childless to adopt physically healthy babies, the unwed mothers, representing the largest single source of adoptable infants,²² must have prenatal and nutritional care—the care which some critics view as subsidization, and thereby encouragement, of illegitimacy.²³ (The critics' notions and the popular assumptions about the proportion of all illegitimate children receiving ADC support are not very factual, however. "Of an estimated 2.5 million surviving children registered as illegitimate at birth from 1940 through 1957, 1 million were white and 1.5 million, nonwhite. In late 1958, fewer than 10 per cent of the white, and fewer than 16 per cent of nonwhite, children in this group were living in aid to dependent children families in which the father had not married the mother. . . . Possibly as many as 70 per cent of all white illegitimate children are given for adop-

²² See Citizens Committee on Adoption of Children in California, *Final Report*, 1953 (Los Angeles: Rosenberg and Columbia Foundations, 1953); and Michael Schapiro, *A Study of Adoption Practice* (2 vols.; New York: Child Welfare League of America, Inc., 1956), Vol. I.

²³ See Leonard Grass, "Are We Paying an Illegitimacy Bonus?" *Saturday Evening Post* (Jan. 30, 1960); Norman Lobsenz, "The Campaign against Helpless Children," *Redbook* (March, 1960). See also the bibliography of reports from various states regarding the ADC Program in relation to illegitimacy, in U.S. Bureau of Public Assistance, *Illegitimacy and Its Impact on the Aid to Dependent Children Program* (Washington, D.C.: Government Printing Office, 1960), pp. 61-63.

tion, but only between 3 and 5 per cent of the nonwhite illegitimate children are adopted. . . . Of the children who are not adopted, about 30 per cent of the white children and about 16 per cent of the nonwhite children are receiving aid to dependent children."²⁴)

Censure is strong and unwavering, however, in the case of unwed mothers whose babies do not serve a social function. Illicit births among Negroes rarely serve to complete the families of white, childless couples; and the demand by Negro childless couples for adoptable Negro children is not believed to exceed the supply.²⁵ In addition, Negro illegitimacy today does not fulfil the function, for either Negroes or whites, that it served within the earlier economic system of plantation life in the South. Frazier²⁶ has emphasized the fact that unwed motherhood among Negroes in the rural South must be understood within the context of Negro family life. In this, the female developed a greater sense of responsibility to her children and motherhood than to her husband and the institution of marriage. This was encouraged by economic practices which separated Negro husbands and wives in the slave market and placed a higher value on Negro females as reproducers (in or out of wedlock) of future plantation workers than as wives to their husbands. The degree to which this earlier encouragement of a subculture pattern of illegitimacy among Negroes was handed down through succeeding generations, and represents a normative pattern among Negro unwed mothers today, is difficult to ascertain.

Myrdal observed that, although the Negro community in the South had "the healthy social custom of attaching no stigma to the illegitimate child and of freely adopting illegitimate chil-

²⁴ U.S. Bureau of Public Assistance, *ibid.*, pp. 35-36.

²⁵ Contrary to this position, however, Jacob S. Siegel has noted that the high Negro birth rate obscures the fact that proportionately there are more childless married couples among Negroes than among whites. See "Natality, Mortality, and Growth Prospects of the Negro Population of the United States," *Journal of Negro Education*, XXII (Summer, 1953).

²⁶ E. Franklin Frazier, *The Negro Family in the United States* (Chicago: University of Chicago Press, 1939), chap. VI, "Unfettered Motherhood," pp. 108-24.

dren and orphans into established families,"²⁷ this attitude did not exclude moral standards: "fast women," fly-by-night affairs, and sexual promiscuity by someone who had been living with one person for a given period of time, were all condemned. Myrdal's statement about the lack of stigma attached to the illegitimate child seems questionable; but whatever stigma did exist tended to be minimized, since Negro children were economically valuable to the plantation owners, and, while being reared, made their mothers' positions more secure.

These functions of Negro illegitimacy have all but disappeared. As Negro unwed mothers of low socioeconomic status have become economic liabilities rather than assets, they have also become the primary targets for the "social problems" approach to illegitimacy.

The selection of only certain groups of unwed mothers for censure and consideration as social problems is also manifested by the emphasis that conventional descriptions place upon unwed mothers who are immature, poor, uneducated, and psychologically disturbed. This emphasis is consistent with two assumptions implicit in the philosophy of fun morality: one should not enjoy more than one can afford; and one should not allow one's own fun to detract from the fun of others. On the basis of such operational rules, it is plausible that only females who were very young, poor, uneducated, or psychologically disturbed would be innocent, ignorant, or confused enough to let their (sexual) fun (a) exact such a high price from them as an illicit pregnancy; (b) interfere with others' fun by imposing financial burdens on taxpayers; (c) weaken the traditional sex mores of society; (d) deprive the child-to-be of the legal safeguards of marriage; and (e) fail to serve any social function, like providing an *adoptable* infant for childless couples.

The selectivity of conventional descriptions and censorious attitudes concerning unwed mothers is also consistent with the evil-causes-evil assumption. This assumption provides middle-class parents with ready ammunition in admonishing their

²⁷ Gunnar Myrdal, *An American Dilemma* (New York: Harper & Bros., 1944), pp. 177-78; 932-35.

daughters that such (bad) factors as poverty, ignorance, and psychological instability cause (bad) illegitimacy. "Only poor, ignorant, and mentally ill girls do become pregnant out of wedlock" is the obverse of "nice girls don't."

The use of such a deterrent approach by at least some parents was demonstrated a few years ago, when the *San Francisco Chronicle* ran a feature article adapted from my earlier research report on the middle- and upper-social class backgrounds of unwed mothers attended in physicians' private practice. Several distraught mothers telephoned in response to this article. As one mother said: "I've been able to keep my teen-age daughters in line for a long time by showing them what kind of girls make these mistakes. How do you expect me to keep them from it when you say nice girls do it too?"

This deterrent approach, however, may have a latent function or unintended result for middle-class daughters, influencing them so much that they assume that an illicit pregnancy cannot happen to them, but only to females from the other side of the tracks. This appeared during my individual interview and counseling sessions with over one hundred unwed mothers. A few of the young teen-age ones from upper-middle income families expressed considerable disillusionment concerning their parents' teaching that only poor, ignorant, and sick girls became pregnant before marriage. Most indicated that they knew about contraceptives and the elementary facts of reproduction, but did nothing to prevent conception. "It just didn't occur to me that I would get pregnant, so I didn't use anything." "I don't understand, it just doesn't happen to other girls in my neighborhood." "My parents are furious! They say this sort of thing doesn't happen in nice families."

Naïve and infrequent as these and similar attitudes may be, they are cited to show that what some parents may regard as a "good" means to the desired goal of premarital chastity for their daughters may inadvertently contribute to an out-of-wedlock pregnancy.

A necessary alternative to the bad-causes-bad premise is the principle that any social practice, attitude, or means used to achieve a desired goal will have multiple results—some of which

may be undesirable. This principle is obvious, e.g., when the industrialization that serves as a means to a higher standard of living, medical research, and lower infant mortality rates may also create urban slum areas, industrial diseases and accidents, and problems of care for the aged. But such a principle is less easily recognized in the emotionally charged area of sexual behavior.

Contrasting Attitudes Reflected in Research

On the basis of elementary research procedures, we might expect investigators of illegitimacy to ask, "Which and how many females have premarital sexual intercourse?" and expect investigators of the incidence of premarital intercourse to ask, "Which and how many females having premarital sexual relations become pregnant?" The public fails to consider the relevance to illegitimacy of social practices which may inadvertently foster permissive attitudes toward illicit coition. Similarly, most researchers (including the author) tend to compartmentalize these two sexual phenomena. Illegitimacy is seldom studied in conjunction with the incidence of premarital coition, and vice versa.

The findings on the incidence of premarital sexual intercourse range from 2 per cent for Kinsey's subsample of 3,303 very young, college-level females, to 68 per cent for Terman's subsample of sixty older, college-level females.²⁸ Ehrmann's sum-

²⁸ Winston Ehrmann, *Premarital Dating Behavior* (New York: Henry Holt, 1959), p. 34; and Lewis M. Terman *et al.*, *Psychological Factors in Marital Happiness* (New York: McGraw-Hill, 1938), p. 321. We note, in connection with our discussion of implicit values in the area of the family, that Terman reported higher incident rates of premarital sexual intercourse than Kinsey did for females of comparables ages. Terman reported a steady increase in premarital coition (14 per cent for 104 females born before 1890; 26 per cent, for 277 born 1890-99; 49 per cent for 336 born 1900-09; and 68 per cent for sixty women born after 1909), and predicted that premarital chastity would become passé among females born in this country after 1955; but Kinsey indicated that the incidence of premarital intercourse had remained fairly stable during the past two or three decades. Family textbooks quote sparingly from Kinsey's data, and usually accompany the quotes with criticisms of Kinsey's sampling procedures; but they quote copiously from Terman's data (except the above), which were derived

mary²⁹ of findings from nineteen different studies and/or subsamples within given studies notes incident rates of less than 15 per cent in nine studies, from 20 to 27 per cent in six studies, and from 35 to 47 per cent in four studies. Although the available findings show considerable variation (caused by differences in the education, age, socioeconomic level, marital status, degree of anonymity, and sample source of the respondents), they suggest the degree to which our understanding of illegitimacy is impeded when research compartmentalizes illicit coition and illicit pregnancy, and thereby studies only the small "caught"³⁰ proportion of all females exposed to the biological cause of unwed motherhood.

This separation of research efforts is due in part to the following: (a) administrative regulations and parental objections, which may make it impossible to question high-school and college females about premarital pregnancies; (b) the researcher's worry that detailed questioning may exact too high an emotional price from unwed mothers, who are usually studied while pregnant; and (c) the researcher's belief that respondent cooperation diminishes when too many intimate areas of life are probed.

But the compartmentalization is also due to the researcher's tendency to accept society's dualistic attitudes about illicit coition and illicit pregnancy. This tendency reflects the nexus between scientific inquiry and social mores in general, and the

through sampling procedures considerably inferior to most current standards of sampling methodology. This is not a criticism of Terman—his study was a pioneer effort, made twenty-five years ago, in an area about which it is difficult to obtain data—but an indication that implicit values have been superimposed by those family textbook writers who quote copiously those findings from Burgess and Cottrell (1939) and Terman (1938) that reflect middle-class values, but criticize Kinsey's sampling procedure when quoting those of his findings that threaten traditional family mores.

²⁹ Ehrmann, *op. cit.*, chap. I in general, and Table 1:7, p. 31, in particular.

³⁰ This is, however, an oversimplification of the research problem; and it does not take into consideration the insightful contributions of those investigators who note that some unwed mothers "subconsciously or consciously will to become pregnant out of wedlock" as one way of resolving, or at least acting-out, psychological disturbances. See works by authors listed in note 34 below, particularly Leontine Young, *Out of Wedlock* (New York: McGraw-Hill, 1954), pp. 22-28.

interrelatedness of social problems research and middle-class values in particular. This nexus is probably most apparent in studies of the family, an important social institution protected by traditional mores and patterned after middle-class values. Thus, any behavior threatening the family is considered a social problem that is to be eliminated; and premarital pregnancies are viewed as a more overt and serious threat to traditional family life than covert, premarital sexual relationships.

In addition to compartmentalizing unwed mothers and non-virgins, research in illegitimacy tends to focus upon only certain groups of unwed mothers; and this reflects acceptance of society's differential attitudes toward various such groups. Both these tendencies illustrate the minimum implementation of Willard Waller's emphasis on value judgments as the formal causes of social problems, and Kingsley Davis' reminder that scientific inquiry concerning social problems commences only when the norms and moral values by which a given behavior is judged evil are critically examined rather than being accepted as the framework for research questions.

The selective focus on certain groups of unwed mothers has been accompanied by a circular reinforcement of *causal theories*, *selective samples*, and *descriptive findings* that can be indicated in an abridged review of the literature. (Of course, the review's brevity minimizes the historical overlap and maximizes the "fashion changes" of different theories and descriptions; and the applicability of given theories and descriptions to the samples studied is not negated by this attempt to illustrate the points under discussion.)

Prior to 1930, the theories pertaining to moral and inborn sources of behavior, and the emphasis on immorality, bad companions, and mental deficiency as causes of illegitimacy, were supported with descriptions of unwed mothers found in "rescue homes" and other types of charity institutions.³¹

³¹ In "Selected Bibliography," Clark E. Vincent, *Unmarried Mothers* (New York: Free Press of Glencoe, 1961), pp. 291-302, see works by Bingham (1923), Guibord and Parker (1922), Kammerer (1918), Lowe (1927), McClure (1931), McClure and Goldberg (1929), Mangold (1921), and Schumacher (1927).

During the 1930's, the interest in "ecological" or environmental sources of behavior, and the concomitant emphasis on broken homes, poverty, and "disorganized neighborhoods" as causes of illegitimacy, were supported by descriptions of unwed mothers reported in domestic court files, police records, welfare agencies, and "homes for wayward girls."³²

In the late 1930's and early 1940's, the interest in the concept of "culture," and the use of anthropological methods in community studies, were accompanied by the explanation of illegitimacy as an "accepted way of life" among some subcultures—an explanation derived primarily from descriptions of Negro unwed mothers in the South.³³

In the 1940's and early 1950's, the predominance of psychological and psychiatric theories of behavior, and the emphasis on emotional disturbance as a cause of illegitimacy, were concomitant with descriptions of unwed mothers, in maternity homes, welfare agencies, and out-patient clinics, who were noticed and studied by psychiatric social workers, clinical psychologists, and psychotherapists.³⁴

During the middle and late 1950's, there has been a renewed interest in the sickness and saneness of the "society-as-patient," and a focus on white-collar crime, organization men, lonely crowds, payola adults, and delinquent youth among the middle classes. These have been accompanied by descriptions of college-educated, middle-class unwed mothers attended in physicians' private practice,³⁵ and by observations that, in general, the

³² *Ibid.*, works by Nottingham (1937), Puttee and Colby (1937), Reed (1934), and *Unmarried Mothers in the Municipal Court of Philadelphia* (1933).

³³ *Ibid.*, works by Frazier (1937), Hertz and Little (1944), Jenkins (1958), Johnson (1934, 1941), Knapp (1946), G. Myrdal (1944), and Powdermaker (1939).

³⁴ *Ibid.*, works by Block (1945), Cattell (1954), Clothier (1943, 1955), Deutsch (1945), Donnell and Glick (1952), Hutchinson (1949), Kasanin and Handschin (1941), May (1950), Powell (1949), and Young (1945, 1954).

³⁵ *Ibid.*, works by Schaffler (1955), and Vincent (1954, 1959, 1960), and discussion by Rose Bernstein, "Are We Still Stereotyping the Unmarried Mother?" *Social Work*, V (July, 1960), 22-28.

intelligence³⁶ and socioeconomic status³⁷ of unwed mothers approximate those of females in the general population.

The above abridgment does grave injustice to the studies cited, but it is intended only to demonstrate that our understanding of illegitimacy is limited by the degree to which the particular unwed mothers and causal factors to be studied are predetermined by the noncritical acceptance of the normative criteria that have defined given behavior and given factors as "bad." Certainly, it is not surprising that earlier studies show that a sizable proportion of the unwed mothers in rescue homes and charity institutions were poor, had little education, and came from broken homes and substandard neighborhoods—especially when these factors were implied prerequisites for admission to and help from such institutions. Nor is it surprising that most of the unwed mothers being helped and studied by psychotherapists and psychiatrically oriented social workers are characterized by emotional disturbances and unresolved parent-child conflicts: these problems presumably constitute one reason that they came to the attention of these particular professional people. And we would expect unwed mothers who could afford to travel incognito and be attended during pregnancy by physicians in private practice to have come from middle-income backgrounds.

The data reported in any given study may represent accurate and perceptive descriptions of the particular unwed mothers involved. However, in the absence of control groups and representative samples, such data cannot be interpreted as explaining why these particular females become unwed mothers—the majority of all females who can also be described accurately as poor, uneducated, emotionally disturbed, or from middle-class backgrounds do not become unwed mothers. Thus, much—if not most—of the existing data about unwed mothers may tell us less about factors contributing to illegitimacy than about the clientele of given charity institutions, social agencies, out-patient clinics, and physicians in private practice.

³⁶ *Ibid.*, work by Pearson and Amacher (1956).

³⁷ *Ibid.*, works by Anderson *et al.* (1957), Edlin (1954), Gebhard *et al.* (1958), Schmidberg (1951), and Young (1954).

Changing and Utilitarian Aspects of Attitudes

The recent interest in middle-class illegitimacy may be due to an actual increase in illicit births among the middle classes; it may reflect the current tendency, in social-problems research, to include members of the middle classes when measuring and defining asocial behavior;³⁸ and it may be indicative of an increase in per capita income and education nullifying much of the socioeconomic difference between unwed mothers of today and those of twenty years ago. It may also mean that middle-class unwed mothers, currently attended in private maternity homes and physicians' private practice, have always existed in sizable numbers, but used to be excluded from earlier studies by the sampling methods employed.

The present tendency to be less protective than formerly of the middle classes when studying unwed mothers may also be interpreted as part of a gross trend toward more tolerant attitudes concerning illegitimacy. Such a trend may be inferred from efforts to accord illegitimate children equal legal and social rights with other children,³⁹ the increasing number of states not recording illegitimacy status on birth records,⁴⁰ the emergence of 168 maternity homes under private auspices to care for unwed mothers,⁴¹ and the development of adoption agencies specifically

³⁸ For a discussion of this trend, see F. Ivan Nye, *Family Relationships and Delinquent Behavior* (New York: John Wiley & Sons, 1958), chap. III.

³⁹ For a summary of the rights of illegitimate children to inherit from fathers in the fifty states, as of January 1960, see U.S. Bureau of Public Assistance, *op. cit.*, Appendix A, pp. 67-71.

⁴⁰ In 1938 four states did not indicate illegitimacy status on birth records, and in 1958 fourteen states did not. For discussions of early attempts to alter birth certificate forms to protect illegitimate children, see "Birth Certificates," *Survey*, LXXXIII (Dec., 1947), 349-50; Halbert L. Dunn, "What Becomes of Illegitimate Children?" *Hygeia*, XXII (Oct., 1944), 742-43; H. A. L. Fisher, "Unmarried Mother and Her Child," *Contemporary Review*, CLVI (Oct., 1939), 485-89; A. K. Hanna, "Changing Care of Children Born Out of Wedlock," *Annals of the American Academy of Political and Social Science*, CCXII (Nov., 1940), 159-67; and "Moppets on the Market: The Problem of Unregulated Adoptions," *Yale Law Journal*, LIX (March, 1950), 715-36.

⁴¹ See *Maternity Homes Directory, 1960*, compiled and published by the National Association on Service to Unmarried Parents (New York: NASUP, 1960).

for minority groups.⁴² This apparent trend toward more tolerance has a selective focus, as indicated, for example, by 25 per cent of the 168 private maternity homes that exclude Negro unwed mothers,⁴³ and by the efforts in several states to legislate tubal ligations for females having more than one illicit pregnancy.⁴⁴ The apparent trend toward more liberal attitudes regarding illegitimacy may also be a function of the present demand for adoptable infants. A reversal of this trend could follow (a) a significant decrease in such a demand, (b) an increasing concern about the population explosion, and (c) an increased awareness of one of the prices of more tolerant attitudes—a weakening of the traditional sexual patterns of premarital chastity and marital fidelity.

Moreover, an ostensible change in attitudes may be only a substitution of terms. The late Robert Lindner believed that, despite the dissemination of contraceptive information, the more liberal use of four-letter words, and the popularity of films, books, and courses in sex education, ours is still basically a society which represses sex.⁴⁵ He emphasized that we have actually applied new terms to old attitudes—e.g., the sexual deviant is now “sick” or “maladjusted,” rather than “morally depraved” or “mentally deficient.” (And, although Lindner argued for a more understanding attitude, he too used a new term to express an old attitude when he labeled sexual deviancy as “negative rebellion” and then proceeded to censure “negative rebellion.”)

Terms are changed more readily than attitudes, a fact that is indicative of the strength of traditional sexual mores. But these mores support and are supported by the bad-causes-bad premise, which tends to permeate the new terms as readily as it did the old. This tendency is obscured, however, when the old and new terms are abstracted from context and their differences interpreted as “progress”—in this case, more compas-

⁴² Siegel, *op. cit.*

⁴³ *Maternity Homes Directory*, 1960, *op. cit.*

⁴⁴ See U.S. Bureau of Public Assistance, *op. cit.*, chap. VI.

⁴⁵ Robert M. Lindner, *Must You Conform?* (New York: Rinehart, 1956), pp. 31–32.

sionate understanding of unwed mothers. When considered within their respective historical and normative contexts, such labels as "affluent satiety," "identity diffusion," and "moral softness" may be as indicative of censure (badness) today as "broken homes," "disorganized neighborhoods," "mental deficiency," and "moral depravity" were twenty-five years ago.

Attitudes, and changes in social policy, concerning illicit sexual behavior must be examined within their particular historical and social settings, as illustrated by the press publicity given the illegitimate children sired by U. S. troops in Japan. Between 1948 and 1953, estimates of the number of such children ranged from 1,000 to 60,000 in the U. S. press, and from 5,000 to 200,000 in the Japanese press.⁴⁶ However, a survey conducted by the Japanese Ministry of Welfare, published in 1954, indicated that, as of February 1, 1953, there were 3,490 such children; the biological fathers had been definitely identified in 2,689 of these cases, and had admitted paternity in only 1,708 cases.⁴⁷

The highly exaggerated estimates and severe criticisms in the U. S. and Japanese presses reflected attitudes which ostensibly were extremely censorious of illegitimacy in general and of unmarried fathers in particular. However, we interpret them as having been primarily a means enabling the Japanese people covertly to express their growing resentment of American occupation troops and policies; and a means enabling the American people covertly to express their solicitous concern, if not guilt, about the use and consequences of the atomic bomb. Support of this interpretation can be inferred from two sources. The press

⁴⁶ See "Babies They Left behind Them," *Life*, XXV (Aug. 23, 1948), 41 ff.; Darrell Berrigan, "Japan's Occupation Babies," *Saturday Evening Post*, CCXX (June, 1948), 24-25; "Another Report on G. I. Babies," *Christian Century*, LXX (Jan. 21, 1953), 68-69; Peter Kalischer, "Madam Butterfly's Children," *Colliers*, CXXX (Sept. 20, 1952), 15-18; "Let's Get the Facts Straight," *Christian Century*, LXIX (Dec. 31, 1952), 1516 ff.; and "Memo from Tokyo," *U.S. News and World Report*, XXXIV (June 26, 1953), 76.

⁴⁷ See Lloyd B. Graham, "Those G.I.'s in Japan," *Christian Century*, LXXI (March 17, 1954), 330-32; and Japan Welfare Ministry, *The Social Welfare Statistics Annual Report of Japan, 1952* (Tokyo: Division of Health and Welfare Statistics, 1954), p. 263.

publicity in both countries was associated more closely with the overall relationships between the U. S. and Japan than with factual information on the incidence of illegitimacy attributable to U. S. troops; and it was far more critical of the 3,490 illegitimate children sired by U. S. servicemen in Japan *over a period of several years* than of the approximately 20,000 indigenous illicit births and one million abortions in Japan *each year* during the middle 1950's.⁴⁸

Of course, nations waging war spend little time counting and writing about illegitimate children, and such children may attract less attention when infants than when they are several years old. But these reasons alone do not account for the selectivity and fluctuations, between 1945 and 1955, in the amount and tone of press publicity devoted to this problem of illegitimacy resulting from U. S. troops in Japan, Germany and England.⁴⁹

We may note some additional illustrations of the need to consider attitudes and social policy about illicit sexual behavior within the larger social context. In the U.S.S.R., for example, the elimination of illegitimacy by fiat in the Family Code of 1918, recognizing no legal or social distinction between a child born in and out of wedlock, was consistent with other familial and social changes following the 1917 Revolution. The Family Code of 1926 as amended each decade thereafter to provide financial gratuities and honorific titles for unwed as well as

⁴⁸ See Japan Welfare Ministry, *Vital Statistics of Japan, 1955* (Tokyo: Division of Health and Welfare Statistics, 1956), I, 205; Japan Welfare Ministry, *The Health Statistics Annual Report of Japan, 1955* (Tokyo: Division of Health and Welfare Statistics, 1956), XXX, Table 13, 122-23; Japan Welfare Ministry, Institute of Population Problems, *Statistical Material on the Recent Population Situation* (Tokyo: Ministry of Health and Welfare, 1957); and Irene B. Taeuber, *The Population of Japan* (Princeton, N.J.: Princeton University Press, 1958).

⁴⁹ See Agatha H. Bowley, "Unmarried Mother and Her Child," *Fortnightly*, CLXVII (June, 1950), 385-92; Manfred George, "Strangers to Their Own," *Commonweal*, LVIII (June 5, 1953), 219-21; Herman Ebeling's reply to Manfred George in *Colliers*, LVIII (Aug. 7, 1953), 443-44; Vernon W. Stone, "German Baby Crop Left by Negro G.I.'s," *Survey*, LXXXV (Nov., 1949), 579-83; and "Unsolved Problem of War: 400,000 Babies Left Behind," *U.S. News and World Report*, XXXIX (Sept. 23, 1955), 53-54.

married mothers and to give the state responsibility for rearing all children of unwed and married mothers unable to do so was consistent with Russia's population goals and efforts to replace an estimated fifteen to twenty million people killed in World War II.⁵⁰ In such countries as Denmark, Finland, and Sweden, the minimum censure of premarital coition and pregnancy (approximately one-fifth of all couples married during 1940-1960 experienced first births within the first seven months of marriage)⁵¹ may be viewed as consistent with such societal goals as maintaining the birth rate while keeping in check the public dissatisfaction over housing shortages; it may be viewed also as consistent with some young couples' use of premarital pregnancy as a means to obtaining housing. In Massachusetts, between 1620 and 1839, the stern—if not un-Christian—attitudes reflected by 1,244 cases of fornication exposed and tried openly before Puritan congregations were consistent with the ideal of premarital chastity, and with its reinforcement through emphasizing the evilness of sex and "making examples" of those who deviated from the ideal.⁵²

Such examples illustrate what Mannheim termed "relationship," which "signifies merely that all of the elements of meaning in a given situation have reference to one another and derive

⁵⁰ See Lewis A. Coser, "Some Aspects of Soviet Family Policy," *American Journal of Sociology*, LVI (1951), 424-37; Mark G. Field, "Social Services for the Family in the Soviet Union," *Marriage and Family Living*, XVII (Aug., 1955), 244-49; Kent Geiger, "Deprivation and Solidarity in the Soviet Urban Family," *American Sociological Review*, XX (Feb., 1955), 57-68; Kent Geiger and Alex Inkeles, "The Family in the U.S.S.R.," *Marriage and Family Living*, XVI (Nov., 1954), 397-404; James H. Meisel and Edward S. Kozera (Eds.), *Materials for the Study of the Soviet System* (Ann Arbor, Mich.: George Wahr, 1953); and Rudolph Schlesinger (Ed.), *Changing Attitudes in Soviet Russia: The Family in the U.S.S.R.* (London: Routledge & Kegan Paul, 1949).

⁵¹ See Rollin Chambliss, "Contributions of the Vital Statistics of Finland to the Study of Factors that Induce Marriage," *American Sociological Review*, XXII (Feb., 1957), 38-48; Harold T. Christensen, "Cultural Relativism and Premarital Sex Norms," *American Sociological Review*, XXV (Feb., 1960), 31-39; and Sydney H. Croog, "Premarital Pregnancies in Scandinavia and Finland," *American Journal of Sociology*, LVII (Jan., 1952), 358-65.

⁵² Emil Oberholzer, Jr., *Delinquent Saints* (New York: Columbia University Press, 1956), Table V, p. 255.

their significance from this reciprocal interrelationship in a given frame of thought."⁵³ *This relationism, and not so-called relativism, has been the focus of this section's attempt to explicate and clarify some of the social sources and functions of differential attitudes toward illicit coition, illicit pregnancies, and various groups of unwed mothers.*

The attitudes, social practices, and goals by which illicit sexual behavior is regulated and judged are not changed simply because of increased awareness of their sources, contradictions, and inadvertent results, or because they are inferred to have relevance and implications for illegitimacy. They embody the contrast in rules, the hierarchical arrangement of values, by which we live. In this sense, social problems are not solved because we do not want to solve them. To solve them may necessitate changing attitudes, social practices, and goals that we do not want changed.

As a *prerequisite to understanding* illegitimacy, however, increased awareness of contrasting attitudes and their functions can serve at least to minimize self-deception. An increased clear intellectual concept of the manner in which the mores select only certain illicit sexual behavior and particular unwed mothers to define and count as social problems becomes a desideratum of high priority. Without such awareness and clarity, we must "pay for the greater empiricism of modern social science with the unconscious and uncritical subordination of intellectual endeavor to the social and political forces of our time."⁵⁴

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RELEVANCE OF THIS STUDY

In this final section, we will discuss some implications of this study. These reflect projections, interpretations, and impressions, derived from the total study, related to (1) theory and research in illegitimacy; (2) the prevention of illegitimacy; and (3) the individuals born out of wedlock.

⁵³ Karl Mannheim, *Ideology and Utopia* (Harvest paperback ed.; New York: Harcourt, Brace & Co., 1957), p. 86.

⁵⁴ Reinhard Bendix, *Social Science and the Distrust of Reason* (Berkeley: University of California Press, 1951), p. 41.

Implications for Theory and Research

A theory of deviant sexual behavior is implicit throughout this work: that represented in Sutherland's concept of "differential association,"⁵⁵ modified by others to mean "differential identification"⁵⁶ with, and "differential access" to, deviant groups and traditional values.⁵⁷ Briefly, it is that illicit sexual behavior is *learned* through identification and interaction with other persons within intimate personal groups in which communication and structured social practices provide definitions, more favorable than unfavorable, of illicit coition. These favorable definitions may have a "positive" derivation, e.g., as the means to cherished goals; and/or a "negative" derivation, e.g., as the rationale for behavior to which guilt is attached. Illicit sexual behavior can be regarded as an expression of a variety of needs and values that are found in society in general. However, it cannot be considered as caused by such needs and values, since licit sexual behavior also expresses them.

This study has pointed out that the sources of favorable definitions of illicit coition are not only those individuals or groups who favor and engage in such behavior (although this kind of limitation may be true of the sources of favorable definitions of some forms of deviant or delinquent behavior). Rather, favorable definitions of illicit sexual intercourse derive from a number of social practices and ideas which may be supported and promulgated as much by individuals who do not engage in illicit sexual intercourse as by those who do. As noted earlier, these definitions may be accidental by-products of the commercialization of sex to promote box-office, magazine, and newspaper sales; of the publication of research data on sexual behavior; of the emphasis on primary relationships in applying personnel

⁵⁵ Edwin H. Sutherland, *Principles of Criminology* (5th ed., rev. by Donald R. Cressey; New York: Lippincott, 1955).

⁵⁶ Daniel Glaser, "Criminality Theories and Behavioral Images," *American Journal of Sociology*, LXI (1956), 433-45.

⁵⁷ For a bibliography and summary of some modifications and criticisms of Sutherland's theory of differential association, see Marshall B. Clinard, "Criminological Research," in Robert K. Merton *et al.* (Eds.), *Sociology Today* (New York: Basic Books, 1959), pp. 509-36.

ideology for the achievement of production quotas; and of the philosophy of fun morality in conventional areas like education and child-rearing.

The failure to examine these multiple, indirect sources of favorable definitions of illicit coition deflects attention from the contradiction inherent in the simultaneous *encouragement of cause* (illicit coition) and *censure of result* (illicit pregnancy). This contradiction reflects the interrelations of social mores, definitions of social problems, and scientific inquiry into social problems. It demonstrates the necessity of formulating theoretical and methodological frameworks for research in illegitimacy that are not subordinate to the values, goals, and definitions of social problems of the members of any one socio-economic stratum or professional group; and the need to examine the mores predetermining what behavior, by which individuals, represents a social problem to whom. When these mores are not explicitly stated, and examined, research in illegitimacy tends to be dominated by the like-causes-like fallacy, and to focus selectively on only those social practices which have been defined as "bad" by the same value framework that has defined illegitimacy as "undesirable."

This kind of research procedure obscures the obvious dual potential, which any act, behavior pattern, and social practice has, for "good" and "bad" results. The lover's kiss that brings erotic pleasure may also result in a miserable cold. The same industrialization that decreases infant mortality rates may also increase deaths from lung ailments by polluting the air with smog. The illicit coition that means happiness for the childless couple seeking an adoptable infant may bring shame and disrepute to the unwed mother who provides the child. The illicit pregnancy that precipitates the suicide of one unmarried woman may effect the increased psychological health and self-identity of another one. As Albert K. Cohen has stated, "That which we deplore and that which we cherish are not only part of the same seamless web; they are actually woven of the same fibers."⁵⁸

Our study has also shown that *research in illegitimacy must acquire comparative data from females whose sexual behaviors*

⁵⁸ Albert K. Cohen, "The Study of Social Disorganization and Deviant Behavior," *ibid.*, p. 474.

reflect progressive degrees of deviation from traditional sex mores. Samuel Stouffer has noted that “. . . to think of a social norm as a point, or at least as a very narrow band on either side of a point . . . probably is quite unrealistic,” as to most of our social behavior. And “it may be precisely the ranges of permissible behavior which most need examination . . . it may be the very existence of some flexibility or social slippage—but not too much—which makes behavior in groups possible.”⁵⁹

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The interpretations and inferences made in this study also imply that we can expect *an increase in the number and ratio of unwed mothers among teen-age females during the 1960's*. The numerical increase is extrapolated from the high birth rate between 1945 and 1957, with its consequent considerable increase in the total number of teen-age females alive during the next decade. The teen-age unwed mothers of the 1960's will be among them. An increase in the proportion of all teen-age females to become unwed mothers can be anticipated as a cumulative result of some of the social practices discussed above—for example, the use of sex and sex enticements as acceptable means to given goals; and the rearing of a generation of children on a permissive, fun-morality philosophy equating wants and needs. We hope that those who write about, and conduct surveys of, unwed mothers during the next decade will not inflate or distort the significance of the increase in teen-age unwed mothers by forgetting that the proportion of teen-age unmarried females among all unmarried females will be greater than it is at present.

Relevance for the Prevention of Illegitimacy

This study has indicated at least two major areas of sociological importance for the prevention of illegitimacy. Both are based on the assumption that illegitimacy will continue to be regarded as a social problem, to be eliminated or at least reduced in incidence.

⁵⁹ Samuel A. Stouffer, “An Analysis of Conflicting Social Norms,” *American Sociological Review*, XIV (Dec., 1949), 717.

(a) We must *examine critically the various "acceptable" social practices and means used to achieve sanctioned individual, group, and societal goals that are also, indirectly, learning sources for favorable definitions of illicit coition, thus inadvertently weakening traditional sex mores.*

(b) *The concerted efforts to understand, aid, support, and rehabilitate those whose illicit sexual behavior undermines the normative supports for legitimate family life must be balanced by equal, if not greater, efforts to emphasize and provide positive sanctions for those whose licit sexual behavior supports legitimate marriage and family life.*

. . . The lack of emphasis on positive sanctions for those supporting the legitimate family system is probably most apparent in county, state, and federal budgets. In one sense, these reflect greater rewards for those who undermine than for those who support legitimate or normative family life. Aid to "multi-problem families," and the rehabilitation of deviant individuals, are and will continue to be primary considerations in a society that cherishes humanitarianism—and rightly so. However, when research, education, and the promulgation of legitimate and normative family life are allocated less money than is given for the care, treatment, and rehabilitation of individuals purportedly coming mostly from "family failures"—there are certain latent functions or incidental results. This is not to say that less should be spent in helping such individuals, or that the primary consideration is pecuniary. Rather, its object is to point out the contradiction of paying minimum attention to the strengthening of normative family life—at a time when the breakdown of such family life is regarded as a major factor in the mental illness, illegitimacy, delinquency, and crime that are necessitating ever-increasing expenditure for care, treatment, rehabilitation, and research.

Legitimate family life is sustained partly by laws, but mainly by the deep group sentiments of which laws are the most overt and concise expression. The mores are maintained by periodic social reaffirmations of their value. The reaffirmations usually take the forms of punishing or stigmatizing those who violate, and rewarding those who comply with and support, the mores. In these cases, the primary function of punishment or stigma is

to prevent the law broken by the offender, or the mores violated by him, from fading in the conscience of society. Marriage remains a strong value in a society that sufficiently deprives those who bear illicit children of status, while providing significant positive sanctions and rewards to those whose behavior supports legitimate family life. Thus, the shame that unwed mothers are supposed to feel is the obverse of the pride that married mothers are supposed to feel; together, they form a normative support of marriage.

The most vexing complex aspects of trying to decrease the incidence of illegitimacy are results of the contradiction between (a) providing deterrents and punishments that will discourage behavior that undermines legitimate family life, and (b) attempting to facilitate the rehabilitation of the unwed mother, and the development of the illegitimate child, into good and useful citizens. To the degree that the unwed mother is given more care and concern than the married mother, and to the degree that the illegitimate child is given more protection than the legitimate child, normative supports of marriage are weakened. To the extent that social welfare and maternity-home standards are put into practice, unwed mothers are relieved of much of the emotional and financial stress once associated with their condition—and they also usually receive more closely supervised prenatal care, and more counseling services and medical aid, than married mothers of comparable socioeconomic status generally receive during pregnancy and childbirth. Thus, while the delinquent is usually deprived of some rights—at least temporarily—the unwed mother is usually guaranteed a few rights that the married mother may or may not have.

The problem is additionally complicated by the fact that unwed mothers are the largest single source of adoptable infants for the estimated three million involuntarily childless couples in the United States.⁶⁰ Thus, illegitimacy—the same phenomenon that undermines the normative family system—enables the childless couple to establish a family with children.

The efforts to safeguard the rights of children in adoption

⁶⁰ Ronald Freedman, Pascal K. Whelpton, and Arthur A. Campbell, *Family Planning, Sterility, and Population Growth* (New York: McGraw-Hill, 1959), chap. II.

procedures also have certain latent potentials for undermining the normative family system—particularly when the standards for good adoption procedures prescribe, in effect, that illegitimate children, when adopted, have a more certain “right” to a good home than do legitimate children. Married parents, for example, have the presumptive right to bring up their children without supervision, unless their incapacity is proved in court—and the burden of proof rests on the court. On the other hand, the effort to place illegitimate children in suitable homes makes the task of proving their adequacy devolve upon the adopting parents; and, at least theoretically, illegitimate children are given more protection than those born legitimately. Moreover, the state does not have the right to investigate the physical, emotional, and financial capacities of a given married couple and then decide whether or not they may conceive a child of their own. A couple may try to salvage a faltering marriage by having a child; but they cannot legally utilize an adopted child for this. To the degree that criteria for adoptive parents are applied in practice, illegitimate children are raised in families considerably above the average.

This fundamental contradiction . . . demonstrates the indirect way that normative, legitimate family life can be inadvertently weakened by giving greater protection to the rights of illegitimate children than to those of legitimate children to have a good home and a stable family.

The like-causes-like fallacy also tends to preserve the implicit assumption that the kind of family life which produces “good citizens” will and does occur “*naturally*” if people do “what’s right.” This assumption does an ill service to marital partners, who, in a rapidly changing, highly urbanized-industrialized society, tend to select each other within the context of a superficially similar middle-class culture. This context blurs many of the basic, covert, and perhaps still unrecognized, individual differences—they are discovered later, and become a basis of marital strife. In addition, marital partners are confronted with a proliferation of changing and contradictory expectations in their roles of husband, wife, father, mother, breadwinner, homemaker-career woman, neighbor, and community member. Few,

if any, life tasks necessitate as much continuous understanding, maturity, and judgment as building and developing a marriage and family that will produce high-quality future citizens, and simultaneously enable the parents each to realize his (or her) respective potential contributions to society during perhaps half a century.

The sociological implications of this study can be summarized as follows: If the prevention of illegitimacy is to be undertaken seriously and effectively, crucial desiderata are (a) awareness and explication of the multiple inadvertent consequences of social practices and means used to achieve "desirable" goals; (b) critical assessment of these as sources of lenient, if not favorable, attitudes toward illicit sexual behavior; and (c) concerted emphasis on strengthening legitimate and normative family life at least equal to, if not greater than, the emphasis given to the results of the breakdown of such family life.

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Relevance for Illegitimate Children

Another—and, to some, the most important—facet of the present study is concerned with those who were, are, and will be born without the legal safeguards of marriage. If we estimate that 4 per cent of live births are illegitimate, then approximately seven million people living in the United States today were born out of wedlock. In thirty-six states, illegitimacy is still recorded on birth certificates; and the current trend is to tell children that they were adopted—these two facts imply that a substantial proportion of these seven million individuals either know or wonder about their illegitimacy.

We can only conjecture about the anxiety and sense of inadequacy these individuals feel. These result from the popular acceptance of the notions that the illegitimate child was conceived in a relationship based primarily on force, moral depravity, and exploitation, and that his or her natural mother was a socially, morally, psychologically, and mentally inferior woman.

The data do not support these stereotypes. The unwed mothers from the combined private-practice, maternity-home,

and county hospital samples in Alameda County were fairly representative, socioeconomically, of all females of equivalent age, race, and marital status in that county. The majority of these unwed mothers reported either a love relationship or a close friendship with their sexual mates; and the socioeconomic distribution of their sexual mates seemed quite typical of the distribution of males in general. The personality profiles of the unwed mothers ranged from very positive to very negative; but the majority approximated the norm for females of similar age, and showed little evidence of subnormal mentality and/or emotional instability.

However, any attempt to make our descriptions of unmarried parents more accurate, and to emphasize their highly varied social, personality, and motivational characteristics, would have diverse and unintentional results. The self-confidence and dignity of an individual born out of wedlock may be enhanced when he realizes that the earlier, extremely derogatory descriptions of unwed mothers were based primarily on limited, if not biased, samples, and that studies based on more representative samples do not always confirm them. Such studies may also decrease the anxiety of adopting parents who obtained an illegitimate child, through independent adoption procedures, in a state where little investigation was attempted on their child's natural parents.⁶¹

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This study may also inadvertently become a source of favorable attitudes toward illicit coition. To demonstrate that the social, familial, and personality characteristics of unwed mothers approximate the same characteristics in the general population of females of the same race and age, is to weaken the power of a long-standing supposed deterrent to illegitimacy—i.e., the fear of being identified with those who, accurately or inaccurately, are considered “morally depraved,” “abnormal,” or “socially inferior.”

⁶¹ At this point, the author calls attention to the fact that “this study may increase the anxiety and sense of inadequacy of some individuals born out of wedlock,” particularly of those who learn of data presented elsewhere in Vincent's book, and not reproduced in the present volume.—Eds.

The number and diversity of this study's implications illustrate how published research data may be, and are, used in many ways and for many purposes. Scientific inquiry—like many other tools for achieving given goals—has latent as well as realized functions, inadvertent as well as intended results. This dual and uncontrollable quality of scientific inquiry is sometimes used as evidence that data and research on illicit sexual behavior should be suppressed and discouraged. However, acceding to such an argument would mean surrendering control of the search for an understanding of illegitimacy—allowing the inquiry to be guided by criteria prescribed by those whose thoughts, decisions, and behavior are based primarily on what others are thinking, deciding, and doing. It is to negate the dignity of individuals, and their capacity to think, decide, and act on the bases of positive identity of self, a sense of individual accountability, and the self-certainty of inner convictions.

PROSTITUTION

Edwin M. Lemert

In 1951, Edwin M. Lemert published *Social Pathology*, and in doing so ushered in a new, important, and controversial school that has influenced a generation of sociologists, particularly those concerned with crime and deviance. Recently, in discussing his earlier book, the author described one aspect of it: that he had proposed “the concept of secondary deviation to call attention to the importance of the societal reaction in the etiology of deviance, the forms it takes, and its stabilization in deviant social roles of behavior systems.”

Essentially, Lemert was proposing what came to be known as the “labeling school”—that sociologists focus their attention less on the behavior of deviants, and more on the behavior of those who label them deviant; less on the acts performed by those outside the pale that bring them into ever-greater conflict with society, and more on the process (particularly the process of social control) by which people react to the consequences of having been labeled deviant by others.

Much of the sociology of crime, deviance, and social problems today reflects the influence of Lemert: one should mention, among others, the work of Howard S. Becker, Erving Goffman, Kai Erikson, and John Kitsuse. Labeling theory or labeling approach, although far from finding unanimous acceptance (even in this volume, Polsky makes some critical remarks about it), must

Source: Edwin M. Lemert, *Social Pathology* (New York: McGraw-Hill Book Company, 1951). Copyright © 1951 by McGraw-Hill, Inc. Used by permission of McGraw-Hill Book Company.

be reckoned with if one is to understand current thinking on deviance.

Lemert applies his approach to many areas of behavior socially defined as pathological: among them is prostitution. From *Social Pathology*, we here reproduce most of the chapter dealing with that theme. Omitted are a few tables and statistics, and some introductory remarks on sexual deviance. And while today one might modify the opening statement about prostitutes being primarily a "one-sex, female group" (when Lemert wrote, it was probably no understatement that there was "a small number of homosexual male prostitutes in our society"), the basic theme needs no revision. For it remains a brilliant application to an area of sexual behavior of Lemert's own thesis of the labeling process, societal reaction, and secondary deviance.



THE DIFFERENTIATION OF PROSTITUTES

Prostitutes in the aggregate are primarily a one-sex, female group. However, it should not be overlooked that male prostitutes have existed in other cultures at other times, and furthermore that there is a small number of homosexual male prostitutes in our society today, plus a few men alleged to serve women in houses of assignation. Female prostitutes of necessity are young, since youth and physical attractiveness are the chief assets through which they obtain and hold their customers. Research carried on by the League of Nations based upon samples from 26 European and 2 American nations has disclosed that 73.8 per cent of prostitutes were below the age of 31. The modal age fell between 21 and 25 years in nearly all of the samples despite the fact that the samples were far from homogeneous. . . .¹

The racial and nativity characteristics of American prostitutes have undergone pronounced changes in the past several decades. Apparently at one time large numbers of prostitutes in some of our cities were foreign-born. Old data for New York City in the

¹ *Prostitutes: Their Early Lives* (Geneva: League of Nations Advisory Committee on Social Questions, 1938), Part 1, p. 12.

mid-nineteenth century record 1,238 out of its 2,000 prostitutes at the time as having been foreign-born.² The sample from the United States and Canada in the League of Nations' study to which we have referred showed a disproportionate number of Indian women, Negro women, and those of foreign parentage among the prostitutes. While other studies tend to confirm the disproportions of racial minorities among prostitutes, they refute the idea that the foreign-born are overrepresented among prostitutes. For example, a survey of sexually delinquent girls found that only 7.8 per cent of the total were of foreign birth.³ Still other evidence from New York penal institutions demonstrated that the number of the foreign-born inmates was smaller than was expected, and that of the foreign-born delinquents fewer were sex offenders. Also, within the sex-offender category the percentage of foreign-born prisoners who had been prostitutes fell below those of the white and Negro native-born women.⁴ In Los Angeles in 1947 only 4.9 per cent of the women arrested for prostitution and similar violations were foreign-born. Only 6 out of 276 "B girls" were foreign-born. However, 44.1 per cent of all women arrested for vice were Negro, and approximately 12 per cent were Mexican.⁵ Both figures are out of keeping with the relative sizes of these minority groups in the local community, that for Negroes far more so than for Mexicans. While prostitutes of foreign birth may have once existed out of proportion to their population numbers, it is clear that this is no longer true except perhaps in special ethnic situations. The aging of the immigrant population and restrictive quotas in effect since 1920 have greatly reduced the probability that any large number of foreign-born women will be prostitutes. The apparently high rate of prostitution among Negroes is a special phenomenon connected with their recent urbanization. It is also associated with the social facts of mobility.

² William L. Sanger, *The History of Prostitution* (New York: Harper & Bros., 1927, rev. ed.), p. 460.

³ Mabel A. Elliott, *Correctional Education and the Delinquent Girl* (Harrisburg, Penn.: Commonwealth of Pennsylvania, 1929), pp. 23-24.

⁴ Mabel R. Fernald et al., *A Study of Women Delinquents in New York State* (New York: Century Co., 1920), pp. 388-89.

⁵ *Report of Los Angeles Police Department, 1945*, pp. 126, 128, 135.

Prostitutes in the aggregate display a characteristic of high mobility, a function of their role, which more or less requires that they move from one city to another. The weight of logic and evidence also favors the idea that they are drawn from a class of women who for one reason or another have become detached from their home communities. In a study of sex offenders in San Antonio, Texas, it was brought out that only 11 out of 50 in the group were residents of the community where they were arrested; 15 had come to San Antonio from elsewhere within the state, and 24 were residents of other states.⁶ Although we do not have conclusive evidence at hand to clinch the point, there is room to believe that prostitutes have been made up largely of rural migrants to urban areas, or perhaps even more, of migrants from small towns. That migration and mobility are the significant differentiae of prostitutes rather than specific racial or ethnic background receives support from the history of groups predominating among New York City prostitutes. In the middle of the nineteenth century women from the British Isles figured quite large in the prostitute population, these in turn giving way at the end of the century to women from Eastern Europe. From 1920 on, large numbers of Negro migrants from the Southern states swelled the ranks of New York harlotry. In other words, to generalize, a historical sequence obtained in which the most recent migratory population contributed most heavily to the numbers of prostitutes.⁷ The demographic qualities of migrant groups which are conducive to prostitution will be touched upon in discussing the patrons of prostitutes.

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In terminating this discussion of the differentiating characteristics of prostitutes, it must be said that much of what is imputed as their differentiae may prove to be in final analysis a

⁶ L. Waggoner, "Girls and Women Apprehended by Police in San Antonio, Texas, for Prostitution and Allied Offenses," *Journal of Social Hygiene*, XXVIII (October, 1942), p. 390.

⁷ Willoughby C. Waterman, *Prostitution and Its Repression in New York City (1900-1931)* (New York: Columbia University Press, 1932), pp. 129 f.

function of the societal reaction. Most if not all studies of prostitutes rely for cases upon those who have been arrested or upon cases in social welfare agencies. Many of the more "successful" prostitutes and those who have protection from arrest obviously seldom or never appear in statistical compilations.⁸ Until we have studies of these prostitutes with low social visibility, the possibility that we may be dealing with a distorted picture of this sociopathic group will always be present.

THE PATRONS OF PROSTITUTES

The fact that patrons of prostitutes have not been held equally guilty of immoral conduct and thus treated as deviants means that little effort has been made to study them. However, we can set down with reasonable certainty some facts about them. On the whole, patrons of prostitutes tend to be older, middle-aged men who are single, divorced, or separated. These men generally occupy a low socioeconomic position and have limited amounts of formal education.⁹ Within the socioeconomic strata from which they come, the customers of prostitutes are more often identified with mobile occupations; migratory casual workers, salesmen who travel, soldiers, sailors, and truck drivers are the classes of employees in which we expect to find prostitute-frequenting men.

Certain types of deviants are more or less compelled to make use of prostitutes for sexual satisfactions because of the rejections they receive from the other women in their communities. Gross ugliness, physical handicaps, lack of social skills necessary to get to know sexually accessible women, and aberrant sexual drives themselves all tend to disqualify men for other heterosexual opportunities and leave them the sole choice of prostitutes for their outlets. It often happens that members of ethnic minorities must turn to prostitutes for sexual gratification because of

⁸ John Landesco, *Illinois Crime Survey* (Chicago: Illinois Association for Criminal Justice, 1929), p. 1156.

⁹ Alfred C. Kinsey, Wardell B. Pomeroy, and Clyde E. Martin, *Sexual Behavior in the Human Male* (Philadelphia: W. B. Saunders, 1948), chap. XX.

the unbalanced, very high sex ratios in their own populations. For example, the sex ratio of the Chinese in some American communities in the past ran as high as 10 to 1. Filipinos, Japanese, and other Asiatic immigrants in the early days, and even in the more recent past, to some degree have had comparably high sex ratios.

In addition to the classes of men who provide more regular patronage for prostitutes, there must be included the dissatisfied husband, the wealthy playboy (in the old days known as the "sporting man"), the sexually curious adolescent, and criminals of many sorts. The aggregate differentiation of prostitutes must be viewed at least in part as an adaptation to the qualities of the customer population. Likewise, the modal tendencies in the organization and behavior systems of prostitution must be interpreted in the light of the sexual requirements of the patrons as a class. Thus, for instance, the swift consummation of coitus by the prostitute and her lack of inclination for accessory sex play may be class-determined phenomena as well as being the consequences of the impersonal and pecuniary nature of her relationship with her customers. Variations in the patterns of prostitution can be related to the variability in the sociocultural characteristics of the clientele. We shall pay more detailed attention to this in our subsequent discussion of prostitution among minority groups.

THE CONTEXTS OF PROSTITUTION

The meaning of the act of prostitution for the girl who participates is far from being constant, but on the other hand is not so diversified as to prevent classification. The prostituting behavior may be associated in several general ways with the central or preferred role of the female principals. A substantial amount of disapproved sexual activity, including prostitution, can be laid to unique personal needs which underly the sex indulgence. A girl with a strong sense of inferiority may have a compulsive need to be sexually promiscuous, and some such girls may eventually find an adjustment as prostitutes. Urgent need to rebel against authority may be expressed by a woman through flagrant

violations of the community's sexual taboos. Case histories of psychotic women often bring to light interludes of loitering, soliciting, and prostitution in the picture of their symptoms.

A far greater proportion of sexual aberrancy is situational, i.e., a product of the numerous stresses, strains, and conflicts in our culture which surround the sex act and which lead to segmental integration of normal and sociopathic sex behavior. In fact, a strong case may be made that our culture normally disposes women to utilize sex for many purposes outside of the marriage relationship. It provides a widespread impetus to quasi-prostitution as well as informal and formal commercialization of the sex act. As one writer has cogently and realistically put it, there are elements of prostitution in the behavior of most women in our culture.¹⁰ Being in an inferior position from the standpoint of power and control over material rewards in our culture, it is not unnatural that women should resort to sex as a means of redressing the status differential. This is perceived in the gamut of reactions from the salesgirl who "charms" a male customer into purchasing goods, through the sale of war bonds with kisses by actresses, to the sexual submission of a secretary to her boss in order to hold her job.

Our laissez-faire economy and its integration through a price system allows the relatively free operation of supply and demand whether it be commerce in grain futures or sex service. The persistent demand for prostitution has been created by many cultural factors; generally in our culture there is a ubiquitous and strong sexual stimulation in the guise of women's dress, advertising, news, literature, art, and the motion pictures. At the same time, as a consequence of our traditional puritanical taboos, there is comparatively little opportunity to indulge in sex intercourse outside of marriage. The postponement of marriage beyond biological maturity in response to our high standard of living feeds the demand for sex outside marriage. Likewise the large number of men in occupations rendering them highly mobile and less likely to marry reinforces the demand for bartered sex. The disorganization of family life in our culture con-

¹⁰ Kingsley Davis, "The Sociology of Prostitution," *American Sociological Review*, II (October, 1937), pp. 744-55.

tinually supports the need for prostitution, through divorce and unsolved marital tensions. The statement has been made that our traditional Euro-American culture prevents the integrated expression of love feelings in the male in marriage because of the contrary expectations of what the sex act should be for the husband and wife.¹¹ The presence of a fair number of married men among customers of prostitutes would seem to corroborate this conclusion. Closely related to the contradictory definitions of the sex act within marriage are those pervading premarital courtship and sex relations wherever they occur. Many men enter into sex intercourse with a strong predatory urge which converts the act into one of honorific conquest and makes fulfillment a symbol of prowess in competition. The frustration and sense of being used, left in women subjected to rough love affairs of this sort, unquestionably provoke a counter-tendency on the part of many of them to structure the sex act in terms of tangible gain.

The press of situational factors making for prostitution falls more heavily upon some women than upon others. It has already been indicated that prostitutes tend to come from families with low socioeconomic status. Their general education and their occupational resources may have been more restricted than is true of women in higher social classes. Nevertheless, they tend to develop the same standards of material aspiration as other women, through a common exposure to mass advertising and other sources of commercial propaganda. Within this general situational impasse and frustration, there are those girls who are more affected than others. For example, girls who come from crowded homes and areas where they have witnessed early in life gross sexual behavior by parents and others may find it much easier to use the prostitute's alternative to reach the cultural-induced goals.

Prostitution may be implicit in occupational situations and roles. Many lower class women find employment in occupations where their superiors and other have preconceptions that low status and sexual laxity go together. Many female pursuits, those

¹¹ Howard Becker and Reuben Hill, *Marriage and the Family* (Boston: D. C. Heath and Co., 1942), p. 161.

of waitresses, domestic servants, show girls, manicurists, masseuses, models, and stenographers, are occupational analogues of prostitution. It is not fortuitous that many prostitutes have been waitresses, taking the next logical step from an occupation in which the female worker is dependent for her livelihood upon masculine largess in the form of tips. In recapitulation, the wonder is not that so many women become prostitutes but rather that so many do not.¹²

A well-defined instance of the way in which even professional prostitution rests upon a recurrent situational basis can be noted in the presence of a sizable number of female drug addicts and chronic alcoholics among prostitutes. Long held to be examples of demoralized prostitutes, in reality these women have resorted to prostitution as a means of securing the money necessary to purchase drugs or liquor. In these cases the prostitute's role is clearly a subordinate one, and were these women supplied with drugs or liquor from some other source, it can be assumed that their prostitution would cease.

SYSTEMATIC PROSTITUTION

Prostitution is a venerable behavior system with antecedents reaching far back into historic times. Prostitutes were known among the early Hebrews, and their profession flourished among the ancient Greeks and the Romans. While it often has been practiced simply and on an informal basis, the tendency has been for it to be organized, particularly in more recent times. There are three well-defined patterns of organized prostitution distinguishable in present-day society: that carried on in parlor houses, that operated on a call-house basis, and finally, operation through tenuous connections with nominally respectable business enterprise.

The parlor house presents the most spectacular organization of prostitution. This may be conducted by a female entrepreneur, a madam working on her own, or it may be an integral unit in some sort of vice combine or "syndicate." Houses of this

¹² Davis, *op. cit.*

sort are usually in segregated areas, in red-light districts in the so-called "disorganized areas" of the city or on its outskirts. In the past, some parlor houses have been sumptuously decorated and furnished, the most famous of which was run by the Everleigh sisters in Chicago, Illinois, between 1900 and 1911. More often the houses have garish furnishings with an inevitable juke-box to provide a cheap musical setting. In days past, houses retained large numbers of girls, but present-day houses have fewer, often no more than three or four.

In the past, efforts were made to secure girls consisting of a wide variety of physical types, of different races and nationalities, in order to satisfy the exotic tastes of customers. Trading on these known tastes, girls often masqueraded as French or Spanish in order to increase their patronage. There is less of this today, but some effort is made to meet the demand for variety by a rapid change of the house inmates. A house is usually organized with a madam in charge who maintains order and discipline in the house and keeps financial accounts. There is a standard division of the fees collected by the girls, with deductions for the house, for linen, medical examinations, legal protection, and miscellaneous items. In better houses there may be rules governing such things as stealing from customers, protection of their identity, and dating customers outside. Better houses have been known to place great emphasis upon the wardrobe of the girls and to make efforts at instructing them in etiquette and decorum. Others, probably the majority, make little pretense at respectability.

Relationships between girls in houses are highly competitive, with status determined by the amount of money earned and the number of customers. Understandings of a monopolistic nature sometimes grow up between the girls to prevent the taking of one another's steady customers. Generally ingroup morale and solidarity is missing in the house, except in relation to raids or arrests by legal authorities. Solidarity is precluded by the keen competition, the social and cultural heterogeneity of the girls, and their rapid turnover. This means that the house organization is implemented by external controls, such as fines and threats of expulsion. The difficulty of working alone in a com-

munity with segregation may make this latter threat a powerful control. The girls in the protected parlor house can, and sometimes do, report the independent operator, or "chippie," to the police.

The prostitute's skills are not monopolizable; they do call for a learning period but they can be acquired by almost any woman in a month or two under the tutelage of the other house workers. The girls become specialized as to the type of sex act they will engage in; some are known as "one-way" girls, while others will practice perversions, and still others double in obscene "shows" or dances. The girls not only acquire the art of "pleasing" their customers so that they will return but also become fairly adept at handling unruly or drunken customers. Superficial methods of detecting venereal disease are part of the repertoire of the prostitute's skills.

The morality of the professional prostitute generally overlaps that of the community area and social class from whence she comes in all respects save her commercialism of sexual intercourse and sexual promiscuity. While professional prostitutes often live in the same area with criminals, and may even be in contact with them, they are not given to serious criminal behavior.¹³ Certain forms of petty larceny, such as "rolling" drunken customers, apparently fall into the category of permissive norms, "if you can get away with it." On the other hand, among house madams this is likely to be a negative compulsive because of the risk of police action it incurs. For the same reason, the prostitute working alone in hotels may disapprove of robbing customers. Taking drugs tends to be a permissive rather than a compulsive for prostitutes. Prostitutes are just as likely to censure drunkenness as other persons, particularly in a parlor house.

Compared with criminal groups, prostitutes develop only a rudimentary argot, estimated to contain at best no more than fifty words, many of which are secondhand criminal terms.¹⁴ The speech of prostitutes shares many attributes of that of shop and

¹³ *Prostitutes: Their Early Lives*, p. 59.

¹⁴ David Maurer, "Prostitutes and Criminal Argots," *American Journal of Sociology*, XLIV (January, 1939), pp. 546-50.

factory girls, being cheap and tawdry and well larded with trite slang from popular songs and pulp magazines. However, the prostitute can make claim to a facile and pungent mastery of profanity, which is freely applied when the occasion demands. The prostitute lacks an argot mainly because secret communication with others is not necessary for her trade. Also, the same factors making for low group morale among prostitutes militate against the growth of a special language.

The institution of the call house has been a response to recent urban trends and the changed societal reaction to segregated prostitution. The call house gives greater concealment to the prostitute and more anonymity to the customer. It reduces the visibility of prostitution and eliminates the troublesome necessity of having to maintain the more elaborate organization of the parlor house, which in many cities must move at short intervals in order to survive. It further permits the utilization of part-time or occasional prostitutes as well as professionals, together with profit-making from clandestine sex relations not ordinarily considered prostitution. One modern arrangement makes use of respectable female clerks or shopgirls and others who wish to supplement their earnings. The madam keeps a list of their names and telephones them to go on "dates" with out-of-town men or other men in search of a good time. Control is retained over these contacts by the ever-present threat to turn the girl over to the police if she perchance tries to exploit the contact without paying the madam's price.

Concealment required for successful prostitution in a community where a policy of repression is in force is also made possible by working behind front organizations. On the surface these are legitimate business or professional enterprises but in reality are functioning vice organizations. Cheap hotels, rooming houses, tenements, night clubs, massage parlors, bars, auto courts, and occasionally a chiropractor's office come under this classification. Prostitutes often live in a cheap hotel to which they repair with the men they pick up in the course of an evening, with the ready collusion of the proprietor. The proprietor or desk clerk obtains his share of the proceeds from charging the girls for occupancy of the room, or may take a fixed amount for

each "trick." The control over the girls may be vested in a vice ring which places the girls in various hotels, shifting them from one to another as the need arises and reaching appropriate understandings with the proprietor, desk clerk, and house detective.

Some prostitutes carry on as independent functionaries by tacit understandings with landlords and proprietors. They sometimes set themselves up in hotels, flats, or even in apartments in better residential areas and rely upon go-betweens such as bellhops, taxi drivers, and others to drum up customers for them. Recently in some cities where police aggressively enforce the laws against prostitution, there has been less reliance upon these intermediaries, especially bellhops. In one area familiar to the writer, girls made contacts in a drugstore at a busy intersection where they discreetly passed out cards tokening their wares to likely prospects. The druggist and clerks were fully apprised of the traffic, but since the girls were inconspicuous and because they made generous purchases they were not molested. The clients of the girls made their ways alone to the address on the card after the girls had departed, so it was the most casual and superficially innocent type of solicitation. Although independent operation by the prostitute is fraught with many hazards, above all if the girl is exposed as a prostitute, the trend in the patterning of prostitution seems to be in this direction.¹⁵ This would suggest in some respects greater individualization and professionalization which makes business reciprocity the bond between prostitutes and accessories, rather than fear, intimidation, or indentured servitude associated with the house pattern of organization.

There are some ecological features of prostitution to be noted; first of all, while prostitution has long been thought of as one of the more scarlet sins of the "wicked city," more recent evidence is to the effect that flagrant prostitution is less characteristic of metropolitan centers than it is of smaller cities and towns.¹⁶ The regions in which prostitution flourishes, at least in more open

¹⁵ W. I. Thomas, *The Unadjusted Girl* (Boston: Little, Brown and Co., 1925), p. 150.

¹⁶ Paul M. Kinsie, "The Prostitution Racket Today," *Journal of Social Hygiene*, XXVII (October, 1941), p. 333.

form, are the South Atlantic, East South Central, West South Central, Mountain, and Pacific states. The New England and Middle Atlantic states in the recent past seem to have had the fewest vice resorts, with the East and West North Central states occupying an intermediate position.¹⁷ All of these data merge to give weight to the idea that open prostitution waxes more in newly industrialized areas into which urban influences are extending and that older urban areas either have less prostitution or that they have considerably transmuted the forms prostitution takes. However, specific local conditions are often more outstanding in the spatial pattern than the regional distribution. Thus prostitution thrives in communities or areas with high sex ratios, such as mining and lumbering communities. Towns near army camps and naval bases attract prostitutes more than others, as do seaport towns and border communities, and as do political capitals, including the capital of the United States.

Within urban communities large enough to show ecological patterning, the areas of prostitution tend to be the location of deteriorated housing, high mobility, homeless men, and first-generation immigrant settlement. Spotted here and there in the settlement areas of immigrants are nationality groups among whom no prostitution can be found, at least not within the neighborhoods where they live. In Chicago the Italian area and the first-generation Jewish settlement several decades ago seemed to be free of prostitution, in the findings of one survey.¹⁸ In years before the second decade of this century prostitution in the United States was pretty well confined to police-designated areas, but following the reform movements at this time it apparently became decentralized and scattered, not randomly into all areas, however. It tended to invade neighborhoods of declining housing.¹⁹ Commercialized vice now tends to be distributed according to mobility, transportation arteries, and the anonymous qualities of the area. While it has long been held

¹⁷ *Ibid.*

¹⁸ Walter Reckless, "Indices of Commercialized Vice Areas," *Journal of Applied Sociology* (January-February, 1926), pp. 249-58.

¹⁹ Walter Reckless, *Vice in Chicago* (Chicago: University of Chicago Press, 1933), p. 140.

that strict repression of prostitution tends to scatter it throughout urban areas, in Los Angeles the recent drive against organized commercialized vice has driven prostitution into the deteriorated areas in the center of the city, with practically no vice found in outlying communities.²⁰ Efforts to accurately determine the spatial distribution of prostitution within urban communities is complicated by the differential visibility of the behavior, which may be quite high in one area and almost undetectable in others.

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SOCIAL VISIBILITY OF PROSTITUTION

In ancient cultures and in cultures of recent times, including our own in the nineteenth century, prostitutes have been a class set apart, with special locale and formally demarcated status symbolized in dress, manner, and speech. In Japan, special beautified quarters of its cities were designated as sites for prostitution. In Tokyo this quarter was one of the show places of the city. Japanese courtesans often were prominently displayed in cages on the streets; in genteel establishments they had their names and emoluments advertised on the equivalent of a marquee at the entrance. Special costumes and hairdresses often have been symbols of the prostitute; for example, in ancient Rome prostitutes usually dyed their hair red or yellow. In some cultures these appurtenances were guarded and perpetuated by sumptuary laws. In the nineteenth and very early twentieth centuries in the United States when prostitutes were quartered in red-light districts, they could be told apart from the respectable middle-class women of the community by their flamboyant clothes, abbreviated dresses, bobbed hair, rouged faces and lips, their use of tobacco, liquor, and profanity and general bold mien in public. In other words, the social cleavage between the "good" and "bad" women was not only sharp but could be quickly determined by cultural insignia. Today much of the behavior and morality of the prostitute has made its way upward and has

²⁰ *Undercover Survey* (American Association of Social Hygiene, 1947).

been appropriated by the middle-class woman in her revolt against her traditional role. The external differentiae of the prostitute have vanished, so that to separate her from the society matron, the debutante, or college girl in a hotel lobby is an almost impossible task.

In addition to all this, the freer circulation of women throughout the community, bringing them into casual public contacts with men, makes soliciting far less conspicuous than it once was. Furthermore, urban prostitutes have learned ways and means of deliberately reducing their visibility. Detection of prostitution among Negroes is an especially frustrating job, being made extraordinarily difficult by their crowded housing conditions, the general instability of the marital alliances in the class from which they come, and a collective unwillingness of Negroes to give information to investigators. A partial measure of the ratio between visible and invisible prostitution is brought to light by the comparative success of various vice investigators in Harlem in New York City. In a three-month period one Negro investigator who knew the section reported a total number of sex violations which exceeded the combined reports of four white investigators, even though he worked fewer days per week.²¹

THE SOCIETAL REACTION

Perhaps no other form of sociopathic behavior, unless it be drug addiction, has accumulated about it such a fund of myths and folklore as prostitution. The folklore of prostitution largely concerns the manner in which women become prostitutes, the type of life they lead, and the inevitable culmination of their lives in demoralization, disease, and early death. This viable mythology has a long-time foundation in ancient Hebraic attitudes toward sex, given Catholic sanction in the writings of the early Christian Fathers, and revived and refurbished in the so-called "Protestant ethic" born with emergent capitalism in the sixteenth century. In general, sex has long been regarded in our culture and its antecedents as sinful, dirty, and debilitating. Woman,

²¹ Waterman, *op. cit.*, p. 127.

as the purveyor of sex, has been held to be mysterious, unclean, a temptress, and spokesman of the devil himself.

The most consistent and systematized stereotyped ideas about prostitution arose and gained widespread acceptance about the first decade of the present century. While clearly an extension of archaic sex attitudes, their immediate and special expression was a phenomenon of the change in attitudes toward prostitution associated with the larger processes of urbanization. About this time the white-slave myth began to make its appearance in newspaper and magazine stories, moral tracts, exposés, and "penny-dreadful" novels. It even crept into the writings of more careful students and is more than palely reflected in the research conducted by the League of Nations and the propaganda circulated by the American Association of Social Hygiene. In brief, the white-slave myth explains prostitution as the consequence of the machinations of a special class of procurers who obtain innocent, unsophisticated girls, under age or of foreign extraction, by false pretense, drugs, and coercion. These girls are purportedly lured or seduced by the procurers and then held captive in houses of prostitution, beaten and intimidated by cruel madams or pimps, and shunted from one city—even country—to another in what was called the "traffic in young girls." The tenor of the folklore is best communicated by General Booth's plea, "For God's Sake Do Something!" in connection with what was designated as the "greatest crime in history."²²

The prostitute was the more-than-willing collaborator in the fabrication of the white-slave myth by reformers, churchmen, and others. The inevitable curiosity of the reformers and customers as to how she entered her profession came to be met with a stereotyped story calculated to inspire sympathy and discount her own responsibility.²³ It was easy and even profitable for her to take a page from the white-slave myth and tell the sad story of how she was betrayed by a man in her teens and thus embarked upon her life of shame. Sometimes she even increased her earnings by stereotyped memoirs.

²² Ernest A. Bell, *Fighting the Traffic in Young Girls* (Chicago: Charles C. Thompson Co., 1910).

²³ *Prostitutes: Their Early Lives*, p. 10.

Actually there is only the most fragmentary evidence adducible that any considerable number of girls have been forced into prostitution against their wills. A small number of instances of something like white slavery have been recorded; but, on the whole, force and deceit are not now, and probably never have been, important in obtaining a supply of prostitutes. Men and women engaged in so-called "white-slave" traffic are rarely organized, and gangs of panderers and clearinghouses for prostitutes have been uncovered very infrequently. The average case concerns one man and one woman or two men and two women.²⁴ The strict enforcement of the laws which govern contributing to the delinquency of minors has generated a careful respect for them among sexual entrepreneurs, and they take no chances of violating them. The appetite that men are alleged to have for sexual intercourse with virgins can usually be satisfied by young professional prostitutes with a flare for dramatic pretense.²⁵

The fallacies of the white-slave myth in no way interfered with its function in the societal reaction. It became one of the dynamic rationales for the aggressive reform movements sweeping urban politics in the first part of the twentieth century. Recently the public has grown more sophisticated about white slavery, despite the occasional lurid story that is still written on the subject. In its place has come a group of fallacies about the supposed extent of venereal-disease infection which can be blamed upon prostitution. The viable aggressions against prostitution and prostitutes and the necessity for their repressive control are increasingly rationalized on the grounds of public-health protection and the battle against venereal disease.

THE TOLERANCE FOR PROSTITUTION

Prostitution has not always been condemned nor is it uniformly tabooed in various cultures where it has appeared. The early

²⁴ Walter Reckless, *Criminal Behavior* (New York: McGraw-Hill Book Co., 1940), p. 137; J. Edgar Hoover, "Organized Predatory Crimes: V. White Slave Traffic," *Journal of Criminal Law and Criminology*, XXIV (July-August, 1933), p. 480.

²⁵ Anon., *Madeleine* (New York: Harper & Bros., 1919), chap. X.

Hebrews, according to facts known, did not disapprove of prostitution strongly, except where it involved a non-Jew. In the Near East, prostitution once served as a compulsory religious rite in which all women were expected to indulge at least once in their lifetimes. In Greece in early times, prostitution was a state monopoly and waxed vigorously, especially in the maritime regions. In pre-Christian Rome, while the prostitute had an attenuated social status, prostitution never became the object of strong repressive action. In later times the passage of certain laws further degraded prostitutes. However, these laws appeared to be designs to strengthen the class structure by preventing women of certain social classes from becoming prostitutes rather than being aimed at prostitution itself. Under the early Christian influences regulation of prostitution became more stringent, and strong antipathies grew toward those who traded in prostitution as distinct from the prostitutes. Nevertheless, in the writing of the so-called Christian Fathers, Saint Augustine and Saint Jerome, prostitution is not uniformly proscribed; Saint Augustine, for example, expressed the belief that prostitution was a necessary outlet for the "capricious lusts of society."²⁶ In medieval Europe we find the church through its councils formalizing the status of prostitutes, prescribing dress and place of residence, and even deriving revenue from the *lupanars*, as the medieval houses in which prostitution was carried on were known. The advent of epidemic syphilis in an acute form at the end of the fifteenth century, working together with the Protestant Reformation, did much to alter attitudes toward sex and prostitution. The Protestants, reacting to the degeneracy of the Catholic clergy and laity, and being sternly dedicated to the religious virtues of hard work and commerce, provided a new rationale for the old Hebraic sex concepts. To them sex was a disruptive factor in the orderly pursuit of business and capital accumulation, and from this conviction there developed the puritanical strictures upon sexual thought and practice which have pervaded middle-class morality of the past. Oddly enough, and this point has frequently been ignored, the sex compulsives

²⁶ Sanger, *op. cit.*, p. 91.

of the puritanical middle class have centered around the disapproval of overt and indiscreet sex behavior rather than the fact of sex indulgence outside of marriage or prostitution per se. This is borne out by the fact that many states and communities have had no laws against prostitution itself but, rather, have legislated against such things as disorderly conduct, vagrancy, soliciting, and pandering in conjunction with sex indulgence and prostitution.

The policies of repression of prostitution have been followed most consistently in the Protestant countries of the world, with toleration and formal segregation being more common in Catholic countries. This is not necessarily caused directly by the Catholic influence in these countries, since there is a good possibility that those cultures generally more receptive to the institutions of commercialized sex may also have been more congenial to the diffusion and perpetuation of Catholicism. In the United States the Puritan influences have been strongest in New England and those areas of other states first settled by New Englanders and to some extent in localities settled by the Dutch and otherworldly religious sects.

A partial indication of the variety and distribution of formal reactions to prostitution may be seen [by a study] of aspects of prostitution covered by state laws.²⁷

It will be noted that the earliest, most complete legislation on prostitution is to be found in the New England, Middle Atlantic, part of the East North Central states, and isolated states in other areas. The greatest changes have come about in states of the "New South" and certain border states between the South and the North.

Apart from these more formal variations in the societal reaction to prostitution, the vicissitudes of local policing and administration of the laws account for even greater variation in the tolerance for prostitution. The discrepancies between local community attitudes toward prostitution are far more impressive than regional or state differences. Communities within a few miles of one another often have diametrically opposed reactions to

²⁷ "Social Hygiene Laws in Action," *Journal of Social Hygiene*, LXXXII (November, 1946), p. 360.

prostitution. Furthermore, in the same community bewildering shifts occur in policing and enforcement of the laws regulating sex behavior, so that there is a significant temporal inconsistency in the tolerance quotient. The variability in the tolerance quotient must be explained by reference to the large number of factors affecting it: the number and visibility of prostitutes, the dimensions of the venereal-disease problem, generalized sex norms—in particular as they permit a greater latitude in noncommercialized sex indulgence—sex ratios of the population, the number and organization of the police, the policies of judges, the degree of extraneous tensions in the community created by rapid growth or war, and the institutionalized power struggles being waged within the community.

The peculiar qualities of the general sex standards in a given locality have much to do with the collective sex-outlet patterns. It may not be correct to say that prostitution protects the family and chaste females in the community, nevertheless the tolerance for other sexual outlets does seem to condition a community's tolerance for prostitution. In 1858 Stockholm, Sweden, had a very high rate of illegitimacy generally assignable to the sexual laxity of domestic servants and shopgirls. During this same year an attempt to set up two houses of prostitution was frustrated, not by police action, but by a mob which actually destroyed the dwellings in question.²⁸ Soviet Russia's success in repressing prostitution may well be a consequence of the great sex freedom which seems to be tolerated there. In certain smaller cities of western Michigan, prostitution, insofar as can be determined, has been effectively repressed save for that carried on by a few Negro women and one-night transient prostitutes. While the police of these communities are responsible to some degree for this success, it is also true that the culture patterns of large numbers of first- and second-generation Dutch immigrants making up the local population are involved. These settlers carry in their mores a tolerance for premarital sex relations, and at the same time they seem to show a reciprocal intolerance for prostitution at all class levels.

²⁸ Sanger, *op. cit.*, p. 280.

THE POWER STRUGGLE IN THE TOLERANCE
FOR PROSTITUTION

In the early histories of many communities in the United States at a time when the frontier influences were strong, sex ratios high, and police organization wanting or weak, prostitution in close alliance with crime and gambling was carried on with little restraint or concealment.²⁹ Later, as more balanced population pyramids materialized along with stable family life and better police organization, prostitutes found themselves more or less segregated socially and spatially. Their behavior at this period developed more pronounced institutional form. Then in 1910 came a wave of reform movements with heavy clerical support which culminated in the unstable pattern of accommodation between vice organization and other groups in the community, which holds even today in many areas. The activation of church federations and civic committees with strong church representation to goad the police and courts into the repression of vice is an intriguing phase of our history, which unfortunately has been too little studied. Two reasons suggest themselves in explanation of the clerical interest and zealous participation in these social movements. One is that the great influx of immigrants of Catholic faith so enlarged the Catholic Church as to call out efforts of the Protestant churches to strengthen their own organization by dramatizing the threat made by vice groups to community institutions. The other possibility is that the general decline in the functions of the church led it to seek out new activities and justifications for its existence in the civic sphere.

The aggressive tactics of anti-vice committees tended to place the police in direct opposition to them, chiefly because the police were being attacked as a group and also because they were as often as not directly profiting from vice organization. It was also true that the police, being in direct contact with vice conditions, were aware of the almost insuperable difficulties in the way of permanently repressing prostitution, and consequently

²⁹ Herbert Asbury, *Chicago* (London: Robert Hale, 1940), chap. IV.

they often found the ideas and programs of the reformers naïve. Nevertheless the police could not ignore the storm of public opinion whipped up by the fanatical reform groups in many communities. They were compelled to shut down vice resorts and make wholesale arrests. It was shown that police action could, and did at least temporarily, repress prostitution. But the federated form of organization of the vice committees and their organization for specific objectives meant that they could only be an ephemeral force in law enforcement. In one study of 105 movements for vice reform, only a dozen were found to have resulted in permanent organizations. The outstanding exception in these civic movements developed in New York City, where a civic group of this sort functioned for thirty years.³⁰ The common result of movements for vice reform has been a cyclic pattern, with alternating epochs of repression and relaxation of control, the duration of the repressive phase being dependent upon the demand of an insistent organized public opinion.³¹

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The militancy of vice-reform groups has often worked against their own best interests. Some recognition of the shortcomings of their aggressive campaigns is seen in a growing tendency to work in cooperation with police departments rather than leading attacks upon them through the newspapers. The impetus to reform has been increasingly leavened by an appreciation that in order to eliminate prostitution drastic alterations in some of our salient institutional patterns will be necessary. Some notion of how great the changes will have to be may be drawn from a cursory examination of the number of groups who directly or indirectly benefit from prostitution.

EXPLOITATION OF PROSTITUTES

In the past the prostitute has been exploited and preyed upon from all sides. While there is less exploitation of vice today, still it supports or adds to the income of many persons and groups

³⁰ Waterman, *op. cit.*, p. 99.

³¹ Howard B. Wollston, *Prostitution in the United States* (New York: Appleton-Century-Crofts, 1925), p. 217; see also Reckless, *Vice in Chicago*.

besides the direct participants. The madam in the house usually takes anywhere from one-third to one-half of the prostitute's earnings. If she works on her own, the cab driver or the bellhop has to be paid. The disreputable medical examiner and the abortionist take a portion of the prostitute's income, as do the attorneys who obtain her release when she is arrested. Apart from the attorney's fees, money has to go to the "fixer" who sees to it that she escapes prosecution or conviction. This might be a prosecutor, judge, or county chairman. The bail bondsman levies his toll, and often the policeman on the beat is not loath to practice crude extortion on the prostitute either in trade or money. However, there is far less of this than there once was. Customers are not above cheating the prostitute, and some take pleasure in inflicting physical cruelties upon her. If the woman is a drug addict and has turned to prostitution in order to earn sufficient money to purchase her costly opiates, she may be subject to the unscrupulous manipulations of the peddler from whom she obtains the drugs. Of course, not all these relationships are intrinsically exploitative; in many cases tangible services are rendered by those dealing with the prostitute. However, owing to her extralegal status and her lack of organization at the rank-and-file level, the temptation to mulct from the girl as much as possible is always present.

Real-estate owners and managers are able to earn far more on the investments and properties by renting to prostitutes or vice-resort operators than to other tenants. Better class hotels, along with the cheaper ones, owe part of their revenue to the prostitute, as well as taxicab companies, laundries, amusement parks, vacation resorts, and contraceptive manufacturers and distributors. The sale of liquor has always been intimately connected with prostitution, brought out by the large number of contacts between prostitutes and customers made in taverns and bars. The famous Raines law in New York, passed to ensure that liquor served on Sundays would be confined to hotels, actually produced a number of prostitution agencies by necessitating a minimum number of rooms in hotels, whose costs were met by their use for assignation purposes.³² In other words, prostitution

³² Woolston, *op. cit.*, p. 141.

has been, and remains, integrated into many functions or organizations which are sanctioned enterprises in the community and important in our economy.

POLICE AND JUDICIARY CONTROL OF PROSTITUTION

Three alternative policies may be the choice of police in their control of prostitution: (1) complete repression, (2) formal and open segregation, and (3) nominal repression accompanied by tacit segregation and regulation. Formal and open segregation of prostitution has rarely been a popular idea and rarely adopted, although a house of prostitution for students was advocated by Thomas Jefferson as one of his specifications for the University of Virginia. During the Civil War, Nashville, Tennessee, experimented with formal regulation—as did St. Louis, Missouri, from 1870 to 1874,³³ but these are exceptions.

Repression is the rule in some areas, but the most commonly encountered arrangement is that of informal regulation. Police periodically arrest prostitutes and charge them with a variety of municipal violations so that they are held pending a medical examination. If found diseased, the prostitute is given an indeterminate sentence or its equivalent and held until sufficiently treated to become noninfectious. If the girl is free of disease, her case may be dismissed or she may be given a "floater" so that she must leave town in order to escape a jail term. There are variations of this procedure in different areas, but the same effect is usually achieved.

Previously the arrest of prostitutes was the function of the neighborhood patrolman, but the scandals which were aired over the exploitation of prostitutes by corrupt officers along with the disappearance of the "beat" policeman has altered this completely. Most municipal police and sheriff departments now have special vice squads or details organized on a citywide basis and specially trained in vice detection. Making arrests and obtaining evidence which will stand up in court is not always an easy thing to do in vice cases. The central problem is how to

³³ Harry Elmer Barnes, *Society in Transition* (New York: Prentice-Hall, 1939), p. 777.

have the officer solicited and have an exchange of money without his being compelled to commit an illegal act himself. Detectives soon become known by the prostitutes and lose their value for provocative purposes. Furthermore, objections have arisen from the community over the "entrapment" of girls by unfair methods. More modern police techniques utilize powdered money, motion pictures, and dictaphones to gather evidence. However, here, as with crime, as soon as new methods are contrived by police, the prostitutes devise ways of evading them. The morale of vice squads is not always the highest; police on such duty are also often less efficient than those in other departments. Reasons for this are the lack of real public support, lack of belief of the officers in the laws they are enforcing, and the unpleasant job of arresting women who are more often than not the scapegoat of the community's unsolved culture conflicts. Perhaps an even greater cause for the cynicism and boredom of the police with their task of vice control is the treatment by the courts of those whom they arrest. For the most part no serious effort is made by courts to work in any realistic way toward the abatement of prostitution.

In the lower courts cases of commercialized vice have been handled in the most perfunctory manner by judges with no special aptitude or training for their jobs. It has been the custom to hand down convictions simply upon the arresting officer's statement, so that the judicial process becomes in effect a taxation process, which has been symbolized in some communities by special days, "ladies' days," on which vice cases are tried. Efforts at severity in the municipal courts lead the girls and men to ask for jury trials, which mean delays and far less possibility of conviction. Where special morals courts have been instituted, judges have generally been more stringent in holding vice operators responsible, but the girls soon learn to ask for a jury trial and thus avoid the more severe penalties in these courts.

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Abatement proceedings against property owners permitting the use of property for immoral purposes could only be instituted through equity proceedings in days past. Statutory pro-

visions changed this in some states, but in others no laws of this nature have been passed, or if they have been the teeth have been drawn. Ordinances requiring owners to post name plates upon tenements showing the uses to which they are being put have in some instances been successfully challenged in the courts. The familiar legal sanction of no government regulation without "due process of law" has been invoked by criminal and unethical property owners as well as business corporations operating in legitimate spheres. Property owners, whatever their relation to vice organizations, are likely to make common front when legislative and judicial threats to their constitutional protections are made.

REFORM AGENCIES

In New York from 1920 to 1929, 1,743 of the 15,650 women convicted for commercialized vice were sent to reformatories, something over 11 per cent.³⁴ The imprisonment of prostitutes or their incarceration in reformatories seldom has the avowed effect of reform rehabilitation. The staffs of women's prisons and reformatories contain large numbers of political appointees and many who have sought the employment as a retreat from social and economic failure. Among them not a few unbalanced persons are found. The situation in the institutions is highly conducive to manipulation of the female prisoners by the matrons to work out tensions and conflicts of their own. The symbolic environment sharpens the cleavages existing in outside society between the "good" and the "bad" girls, as a consequence of which many girls redefine their sex misbehavior in the prostitute's terms. Lack of segregation, bringing hardened professional prostitutes into contact with the individual or situational offender, has the same effect. Even under ideal conditions, women in institutions are very difficult to supervise and discipline, let alone rehabilitate, so that the bulk of the energies of the institution staffs often goes for the simple maintenance of order.

³⁴ Waterman, *op. cit.*, p. 75.

Assistance of a social-welfare kind is made available to prostitutes through a wide variety of private organizations predominately sponsored by religious or quasi-religious groups. Offers of social-work assistance were extended to 366 out of 600 convicted prostitutes studied by the League of Nations Advisory Committee. Presumably such offers also come to prostitutes who are not in the toils of the law. These offers are quite often refused; in a group of convicted British prostitutes one-third chose to ignore the proffered welfare service.³⁵ The fervent religious atmosphere of homes for prostitutes or sexually delinquent girls often adds to the cynicism of the prostitute, and the accent upon spiritual salvation diverts attention and energy from tangible material rehabilitation. The suspicion is a strong one that many girls cooperate with religious and welfare organizations mainly when they are destitute. Professional prostitutes tend to look upon reformers as a nuisance. On the other hand, the old-time madams became adept in handling vice crusaders who assailed the parlor house intent upon moral rescue. This was often done with extreme care so that unnecessary antagonisms would not be built up in the community. Many a reformer has come away from such encounters with his banners limp.

INDIVIDUATION OF THE PROSTITUTE

Prostitution is a further step and formal elaboration of generalized premarital or extramarital sex experiences. The paths leading to the commercialization of sex are numerous and diverse. Generalizations as to why women engage in primary sex deviation become so broad as to be practically without value. It has already been pointed out that formal religious compulsives produced a universal participation in prostitution in one Near Eastern culture area. In some provinces in India, there have been families in which succeeding generations of women upon reaching adolescence have assumed the role of prostitute as a result of long-standing tradition. In Western industrialized cultures poverty has been monotonously called a "cause" of

³⁵ *Prostitutes: Their Early Lives*, pp. 59 ff.

prostitution; however, studies show that candidates for the profession, in the past at least, have come from poor, but not extremely poor, families. Crowded housing and the witnessing of sexual behavior of parents or others in early life have also been played up as contributory factors in the development of the prostitute. Lack of occupational skills or defects and illness which make employment impossible have held prominent places in lists of factors predisposing girls to become prostitutes. Differential association with other prostitutes and the cajolery of procurers have been stressed by many writers as precipitating or determining influences in prostitution.

Primary sex deviation, by definition, must be individual or situational; most of it in our culture is situational, although admittedly there is interaction of the two. Previous reference has been made to the general situational impulsions to prostitutional sex behavior in our culture. Other situational pressures can be uncovered in the culture, to which sexual delinquency and prostitution are more implicit responses. Here all the various factors inventoried in the above paragraph can be recalled. Why some girls confronted with these situations turn to sex deviation and others do not must be explained by reference to more subtle cultural and individual differentiations. The girl with a normal material standard of living and limited by lack of work skills and attitudes, assuming no introjected deterrents of special strength, may find the prostitute's role one among a very few acceptable alternatives. On the contrary, the girl with low material aspirations may be sexually loose, yet never commercialize her aberrant sex acts. This is seen in some of the female migrants from Appalachian Mountain communities who come to cities in southern Michigan. They remain sexually promiscuous but do not always follow the expected course to prostitution. A still other possibility is the girl with higher-than-average desires for clothes, good times, and money. She may find an occupational role of secretary or shop clerk, in which financial returns are several cuts above those of the waitress or domestic servant. But her situation may be as frustrating as that of either the waitress or the housemaid, and as a result she may elect the prostitute's role.

Girls of lower economic status living in areas of deteriorated housing may more frequently have premarital sex experiences, but such indulgence is nowise confined to this class. Girls of middle- and upper-class residential areas meet situations conducive to sexual deviations as well, although they are less well known. At least one-fourth of college girls have had premarital sex experiences. Girls placed in special schools and more carefully guarded may not so often have sex relations prior to marriage, but in a certain percentage of cases the debutante of the old New England family is likely to have had her "fling" in a summer-colony romance or on a trip to Europe before marriage. The obvious conclusion from these facts is that premarital sex experiences in themselves are not logical antecedents to prostitution, for many of them remain at the symbolic level of "romances," premature enjoyment of the marital bed, "good times," or youthful peccadilloes, with corresponding self and role definitions. The search for the interactive factor from which professional prostitution culminates leads to an examination and comparison of the symbolic environments in which primary sex deviation takes place.

SYMBOLIZING SEX DEVIATION AS PROSTITUTION

The symbolic environment may compel verbalization and structuring of sex experiences in terms of clearly delineated roles, or it may have the opposite effect of inhibition and dissociation of the intellectual aspects of the actions. For example, in days when immigrants were arriving in large numbers in this country, some of the young, unmarried alien females, when set down into slum environments of the cities, eventually were involved in sexual misconduct. In some of the ethnic groups, such as the Italian, a rigid dichotomy was culturally drawn between "good" girls and "bad" girls. Parents customarily refused to forgive a single misstep, even assuming that if a girl stayed away from home overnight she was guilty of illicit sex behavior. The behavior consequently was unequivocally reflected in the parental reaction as that of the "bad" girl or the folk equivalent of the prostitute. A hypothesis for testing is that girls in certain broader

spatial-cultural contexts more quickly and precisely have their sex reactions defined in this way. Families with fewer resources, neighbors, teachers, and social workers in certain areas where prostitutes and sex delinquents already exist are more likely to interpret sex behavior of girls and women as delinquency and prostitution. The formal agencies of the courts and welfare organizations more quickly extend their jurisdiction and legal definitions to embrace these cases than those of females in other areas.

In other spatial-cultural contexts, which for want of better terminology may be called "middle class," the parental and societal reaction is a strain toward concealment of the sexual errancy of female members of the family and a tendency toward minimization and rationalization of the behavior. The beliefs are verbalized that the girl is "really good" and that her present trouble is a temporary slip which fortunately will not happen again. These families through their superior economic and other resources are in a position to interrupt potential sequences in sex delinquency. Consequently, even if the girl arrives at some definition of her behavior as being immoral, subsequent translation of the definition into overt behavior of the symbolically projected role does not follow. This can be done in various ways, but usually it is accomplished by some manipulation of the environment, sending the girl on a trip, or to live elsewhere, or placing her in a different school.

The critical situations in which girls define their roles as prostitutes are reciprocals of different types of societal reactions, some dramatic, some prosaic. Those with more dramatic qualities include arrest and conviction on a formal charge of commercialized vice, infection with a venereal disease and segregated treatment in a hospital or clinic along with loose women and professional prostitutes, role-defining interpretations received from contacts with prostitutes and procurers, and contacts with profane, drunken men. In other instances a girl more or less comes to a conclusion on her own that she is a prostitute, growing out of a long series of quasi-prostituting sex experiences, the implications of which become inescapable. A waitress who has been taken on dates by customers of the restaurant where she

works and given entertainment or gifts in return for sexual favors may suddenly perceive the bargaining features of the relationships and decide to formalize them through a prostitute's role in order to improve what frequently is a bad bargain from her point of view. The new role materializes from the sexual exploitation implicit in her former role. Retrospective insight is sometimes verbalized thus: "I suddenly realized I had been giving thousands of dollars worth of it away for free." Once a girl has entered into definite commercialization of the sex act, she becomes subject in varying degrees to the exploitative culture already described. It is here that the functional value of the prostitute's role is perceived and secondary deviation appears in crystallized form. The sex act is bereft of ambiguous feelings; male-female relationships undergo a rigid structuring to prevent the energy-exhausting interaction of an informal date or courtship event and the frustration following brief "love" affairs. The girl becomes "hardened" in manner and speech and betrays the cues of professionalization.

THE PROFESSIONAL PROSTITUTE

The symbolic indicators of professional status in the prostitute at one time were easily detected in her dress and postural attributes, but today in many communities the need for concealment and subterfuge has changed this. The residual professional symbols of her role are manifested in her speech and sexual technique. Conspicuous among the symbolic cues are familiarity with the limited argot of the profession, verbal parodies of romantic love, use of diminutives to designate the sexual parts, concealment of origins, adoption of fanciful and sometimes exotic first names with no surname, self-dramatization in synthetic autobiographies, very rapid and gross provocations to sexual consummation, and sudden lapses into profanity where anxieties over exploitation or possible betrayal to police are brought to the surface.

The time lapse between first sex experiences of girls who later become prostitutes and the age of entry into the trade is short. The age of primary sex contacts falls somewhere between 14 and

18, in all probability not too different from the age at which most girls who indulge in premarital relations first know the physical meaning of sex. The age of entry into prostitution varies from 17 to 24, with a peak around 20 or 21 years. Evidence from one study showed that 40 per cent of the women in three different Western Hemisphere countries assumed their roles as harlots less than 2 years after initial sex experiences, 40 per cent did so within 2 to 8 years, and for 20 per cent it was more than 8 years.³⁶ Some distributions of prostitutes by age of entry into the calling tend to be bimodal, with a fair number turning to prostitution after age 25. The most plausible interpretation of this is that the women who become prostitutes at older ages are situational deviants—drug addicts who turn to the trade to finance their costly habit. Specific information as to how long prostitutes actively pursue their trade is absent. However, it can be interpolated from the general age composition of prostitutes and the age composition of girls at the time of entry into the calling. The largest numbers of prostitutes are somewhere between 21 and 25 years of age, dropping off gradually until 35 years of age is reached, beyond which few cases are found. Since the peak age of entrance into prostitution is 20 or 21 years, this suggests a short average professional life of 5 to 6 years, with, however, an average potential life of 12 years.

What happens to prostitutes on the termination of their professional life has never been the subject for careful study. In ancient Rome the prostitute could retire to a midwife's role, amplified by concoction and sale of love potions and probably the performance of abortions. Stories have been told of prostitutes who marry successfully and take over the role of housewife, but nothing is known as to how many manage to do so. While still in the profession, as her physical attractiveness begins to fade, the prostitute drifts from better to poorer professional roles, from callgirl to a low-priced house inmate, and in some cases to cheap bars as B girls, or to being occupants of cribs. When the time comes that her earnings and acceptance are no longer favorable in comparison to other work, she probably turns

³⁶ *Ibid.*, p. 45.

to other employment, sometimes doing what she did before. Although there is no way of demonstrating this, our impression is that the aging prostitute once again becomes a waitress, domestic servant, store clerk, cheap entertainer, or charwoman. Occasionally the associations built up during her career as a harlot may lead her into work not done previously. A few may become madams of houses of prostitution, or otherwise retain an entrepreneurial relationship to her old trade. A few follow petty criminal pursuits. . . .

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SEX AND MARITAL PARTICIPATION

Examination of the marital condition of prostitutes reveals that a very large percentage of them are divorced, separated, or single. . . . Only 34.1 per cent of women apprehended on commercialized-vice charges in Los Angeles in 1948 were married at the time. However . . . this is probably a misleading figure because many prostitutes claim that their pimps are husbands, when in actuality they are not. Nevertheless, it is true that marriage need not deter women from becoming prostitutes. One body of data has disclosed that 22.4 per cent of a group of harlots were carrying on their occupation with the knowledge and even encouragement of their husbands.³⁷ Despite this fact, we are convinced that, on the whole, women who elect prostitution as a way of life are less marriageable than other women. . . .

The more professionalized the prostitute, the lower are the probabilities of her marrying. One house madam of the old days tells how she refused to hire inexperienced girls and widows for her parlor house because they were more apt to leave in order to marry.³⁸ Professional prostitutes are less inclined to marry and have limited chances to do so. The reasons why men do not marry known prostitutes are fairly obvious. The status of the husband of the ex-prostitute is far from enviable in a community where his wife's former life is known. The status of the husband of a practicing prostitute is low, comparable to if not actually

³⁷ Woolston, *op. cit.*, p. 50.

³⁸ *Madeleine*, p. 141.

that of a pimp in the eyes of others. Furthermore, the whole idea of marriage and prostitution clashes with the concept of romantic love and the idea of sexual monopoly in our culture.

In the case of the so-called "high-class" prostitute there may be a greater probability of marriage. The sexual deviation of these women is less visible, and they are not apt to have a police record. They are probably less promiscuous, and their contacts with men are not so crudely commercialized, being more in the nature of all-night dates. They are often functioning in something like a mistress role for several men at one time. It can be assumed as a fair possibility that such relationships are more frequently the antecedents of marriage than the purely mercenary sex acts of the self-symbolized prostitute.

The incompatibilities between motherhood and the courtesan's life are even more fundamental and inescapable than in the case of marriage alone. The conflicts do not appear very often because prostitutes are more sterile than other women. Venereal disease or its aftereffects make them less apt to conceive and more apt to abort spontaneously after conception. Many of the prostitutes who do become pregnant—usually earlier in their careers—obtain induced abortions. Without having the facts to prove it, we suspect that the death rate of the offspring of prostitutes is exceptionally high. Once in a while a prostitute tries to care for her child by maintaining a servant, but the extreme difficulty of providing it with care usually results in the child's being placed with relatives, in a boarding home, or in a charitable institution.

It strikes an odd note to speak of the love life of the prostitute, but nonetheless it calls for comment. With most customers sexual intercourse is rapid, mechanical, and singularly empty of affection. Many prostitutes eventually become incapable of reaching an orgasm in the sex act. This is given substantiation by an ingenious piece of interviewing done by a female graduate student who passed herself off as an ex-prostitute to the inmates of a house of prostitution in a small Middle Western town. All of those questioned on the subject claimed without exception that they had lost the capacity for a climax in the sex act.

The prostitute soon learns that whenever she compromises the formality of her sexual relations the possibility of exploita-

tion by the customer arises. Hence to the extent that this hazard is recognized, she is cut off from him as a source of affection. Likewise, the prostitute typically has abandoned the family as a means of sexual and affectional gratification. Both facts do much to explain the close, dependent ties of the prostitute with her pimp and her occasional homosexuality. At one time pimps served to protect their girls or "stables" in disorderly houses. Today the pimp still provides tangible services through seeing that she is cared for when she is ill or through fixing arrests and supplying bail when it is needed. But above all other things the pimp showers the prostitute with gifts, special attentions, and tender affection that she gets nowhere else. His price is high, for he frequently takes most or all of her earnings. However, she is willing to pay in return for the security he gives her. Many white prostitutes, perhaps an increasing number, prefer Negro to white pimps for the reason that they can more easily dominate the relationship. Also, they need give them less of their earnings or none at all, and they receive all-around better treatment at their hands.

RELIGIOUS AND OTHER FORMS OF PARTICIPATION

Nineteenth-century New York prostitutes, according to the pioneer study we have cited before, while trained in formal religion, did not attend church for the most part.³⁹ In one or two autobiographies, mention is made of a superstition against attending church, but the writer has been unable to verify its existence through interviews with a group of jailed prostitutes. Indeed, one writer has insisted that prostitutes maintain their religion intact to the same extent that other women do. Devout Catholic girls refuse to work on Good Friday, and Jewish girls if they have been religious previously will honor their sacred days as well.⁴⁰ If there is any difference in the effects of prostitution upon religious participation, it will probably make itself felt with girls of Protestant faith. While the present-day American Catholic Church does not sanction prostitution, at the same

³⁹ Sanger, *op. cit.*, p. 547.

⁴⁰ Ben L. Reitman, *The Second Oldest Profession: A Study of the Prostitutes' Business Manager* (New York: Vanguard Press, 1931), p. 170.

time it does not bar the prostitute from participation in church ritual. It is doubtful whether formal acceptance of a known prostitute in church membership will be found in many Protestant churches. Negro churches are sometimes an exception to this. The relatively high economic status of the Negro prostitute considerably mitigates the disapproval of her behavior in the Negro community, and the church reflects this. Her ability to make large financial contributions to the struggling Negro churches gains her entree there, even though the minister may repeatedly inveigh in his sermons against the vice she represents.

The high mobility of the prostitute lessens the probability of her taking enough interest in political affairs to vote or be a party worker. However, in Japan at one time, prostitutes were supposed to have been represented by a pressure group in the Diet, and quite recently prostitutes in Mexico City were reported to have a politically active union. The pimp may be an energetic political worker, along with madams and others who take large profits from organized vice. On occasion, when an election or some administrative decision has been in doubt, prostitutes in houses have been urged or compelled to vote or have been mobilized for political purposes, as in the case of the famous invasion of prostitutes from the Chicago levee into residential districts when their houses were closed in 1912.⁴¹

Recreational interests of the prostitute are colored by those of the class from which she comes. Shopping, seeing motion pictures, and reading are common leisure-time occupations. Visiting night clubs with her pimp, casual drinking, witnessing prize fights and similar athletic events, with attendance at horse races, may take up part of her spare time. The professional prostitute is very sensitive about her physical appearance, from whence comes the notion of her being an extremely vain creature. This explains her compulsive shopping habits and much time spent fixing her hair, applying cosmetics, and making clothes. The prostitute likes to give the impression of financial success by "putting on a show," preferably where her finery can be publicly paraded to the best advantage. Two older and rather faded

⁴¹ Asbury, *op. cit.*, p. 301.

professionals once interviewed by the author told of Sunday morning horseback rides at a riding academy frequented by wealthy members of the upper classes.

ADJUSTMENT AND MALADJUSTMENT

The folk notion, buttressed and reinforced by careless and dubious research studies, is that the prostitute generally is either feeble-minded, psychopathic, or demoralized. A popular conviction is to the effect that no "normal" woman could lead such a life. The public stereotype unquestionably has been based upon mid-nineteenth-century experiences, when in our large cities generalized social pathology and personal demoralization were much more conspicuous among prostitutes. The studies coming to the conclusion that the prostitute is a sociopsychological deviant have limited value because they rest upon cases which have come in contact with the welfare or law-enforcement agencies. The more intelligent, shrewder, and enterprising prostitutes often live out their professional lives without ever being the subject of psychiatric examinations. An additional reason for the limited value of extant psychiatric observations upon the mental characteristics of prostitutes is the tendency for examiners to regard the socially disapproved traits—functionally necessary in their professions—as symptoms of mental instability. Her professional mobility becomes "psychopathic" wanderlust, her deliberate refusal to take jobs is noted down as abnormal laziness, or her blasé indifference to police and reformers is mistaken for schizophrenia or "oligophrenia," as one writer has somewhere elaborately termed it.

A markedly high percentage of women arrested or otherwise treated as prostitutes are addicted to drugs or alcohol. When studied, 14 per cent of a group of British prostitutes showed a record of numerous arrests for drunkenness, and one-fourth of an American sample took drugs and a third of them drank regularly.⁴² Yet many, if not most, of these cases are not symbolically oriented to the prostitute's role but, instead, are primarily em-

⁴² *Prostitutes: Their Early Lives*, p. 26.

playing vice to implement their roles as drug addicts or they are alcoholic women whose associations more or less inevitably conduce to vice as incidents of drinking. If a girl is going to earn much money in a house or on her own and avoid arrest or venereal disease, she cannot afford to drink heavily. While taking drugs does not necessarily interfere with professional prostitution, indications point to a decline in the association between the two. This probably is an incident of the increasing individualization of the prostitute.⁴³

A common attitude projected upon the prostitute is that she is conscience-stricken and ashamed of her profession. This may be true in the first sex experiences of the prostitute-initiate, but once having participated in the overt act of prostitution, dissociation and rationalization soon allay any moral conflicts which might bother her. . . .

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Prostitutes are inclined to counter moral condemnation with such statements as, "I prefer to sell it rather than give it away," implying that what they do sexually is not so different from what all women do in one way or another. There is just enough truth in such assertions to make them congenial rationalizations.

Although group morale among prostitutes is almost nonexistent, their personal morale may be quite high. Some of the indexes of high morale in the individual prostitute are personal cleanliness (two baths per day and purchase of new underclothing every week in some houses), pride in physical beauty, precautions against venereal disease, insistence upon an honest bargain and adherence to it, and profane defiance of the police. Some prostitutes the author has talked to carry insurance policies, and a few own property and automobiles.

Adherence to their deviant morality may be stricter with prostitutes than is true for other women. An artist friend of the author, who was in need of a life model for his classes, once canvassed a large number of houses of prostitution in Gallup, New Mexico, offering regular model rates to the inmates to pose

⁴³ *Prevention of Prostitution* (Geneva: League of Nations Advisory Committee on Social Questions, 1943), Vol. IV, No. 2, p. 24.

in the nude. But not a single girl took up the offer. Their uniform answer was that "they were prostitutes" and that they would not undress in front of a group of students. Even when prostitutes deteriorate physically and present shabby, sorry pictures to the objective observer, they still show drive and enterprise. One case known to the author was a sixty-year-old woman who injected paraffin into her cheeks, donned heavy make-up, and by soliciting intoxicated men on dark streets managed to earn a living for herself. When the suggestion was made that she apply for relief, she contemptuously scorned the idea. If a prostitute is reasonably protected from arrest or imprisonment, if her strength and physical attractions are not sapped by illness which prevents her from working, and if she can solve the problem of affection, there is nothing to seriously interfere with symbolic integration of her personality. If she is beautiful or masters cosmetic arts enough to attract well-dressed, prosperous men and earn generous fees, she has attained goals motivating most other women in our culture. The societal self-definition is not so differentiated or so negatively evaluated as to be modally repugnant. The fact that men of all social classes persistently seek her out gives her a sense of social worth despite the formal rejections she may receive from them in other capacities.

The conflicts and anxieties of the prostitute center around her affectional relations rather than the moral implications of her life. A disorganizing sense of isolation will grow in the absence of some deeper and meaningful love relationship, although this may be minimized by a selective process which draws to prostitution women who are emotionally more self-sufficient than others. The prostitute-pimp bond gives her the needed affection, but it must be remembered that no centripetal legal forces maintain it. Its instability can be a source of anxiety. There have been the cases in which prostitutes commit suicide over a pimp,⁴⁴ and the author is familiar with several homicides involving the murder of pimps by prostitutes. There is scant knowledge of the amount of mental disease among prostitutes which can be related to their role. Figures from one institution-

⁴⁴ Reitman, *op. cit.*, p. 23.

alized group of cases put the percentage of commitments to mental hospitals at between 3 and 4.⁴⁵ However, because these girls were already imprisoned, not too much importance can be assigned to the figures. Also, the incidence of syphilis may have been much higher in the group, which produced organic lesions of the nervous system, not directly attributable to the prostitute's role.

MARGINALITY

Marginal prostitution probably is less likely to occur today in our culture than in the nineteenth century, chiefly because of the blurring which has come about in the societal definitions of female sex roles. Categorical distinctions between prostitutes and others remain in the law but informally they have become soft around the edges; and, consequently, introjected conflicts and ambivalences of the "good girl"- "bad girl" variety are less often reflected or validated in the objective social participation of the errant female.

Marginality in the prostitute, when it does show itself, is apt to appear if and when she marries—particularly into a middle-class status. In one case of a high-priced prostitute whose history became known to the author, the woman became a psychiatric case after her marriage chiefly as the consequence of fears that former patrons would inadvertently or deliberately expose her past life. Certainly continuing prostitution after marriage will create high stresses in the prostitute who tries to conceal it from husband and friends.

Perhaps the contemporary "B girl" or "gold digger" comes closer to representing marginal prostitution. Such women, who maintain the pretense of sexual availability without sexual consummation in order to gain money, are beyond question much more isolated than the prostitute and at least several cuts below her in public estimation. Prostitutes as well as respectable community members reject this type of women. The men who are duped by such women complain loudly, the press editorializes in cartoons against "clip joints," and police treat such girls very roughly.

⁴⁵ Fernald *et al.*, *op. cit.*, p. 160.

AGE AND PROSTITUTION

A special concluding comment needs to be made concerning age and prostitution. The aging process in the prostitute tends to be accelerated by irregular habits. She often does not eat properly or sleep at fixed times. The necessity to travel interrupts her physical regimes. Association with rowdy men may cause her to drink more than is good for her. Venereal infection and the aftereffects of abortions tend to produce menstrual disorders and speed physical deterioration. As her looks and energy fail, her earnings and sexual prestige suffer. Somewhere a critical age point is reached, and conflicts between her former and present self-conceptions may disrupt her behavior. More intelligent and enterprising prostitutes probably turn to other occupations at this time—some socially acceptable. Others move downward into lower levels of prostitution to which they may or may not adjust, depending upon their prior aspirations and the rigidity of their self-definitions.

MALE HOMOSEXUALITY

The Wolfenden Committee

Few areas of deviant behavior are so anxiety-provoking as homosexuality. Although said to be widespread to the extent that the Kinsey group found one out of six white American males more inclined to sexual activity with their own than the other sex, nevertheless it is publicly acknowledged by almost none of these people, and is stigmatized with strength reinforced by ridicule, ostracism, discrimination, and occasionally official punitive action.

Most homosexuals probably never come into conflict with the law, but that they do violate the law, and quite frequently, cannot be gainsaid. And some, most likely the well-placed and the wealthy, become victims of blackmail when their interests are revealed to criminals; while others are subject to petty and not-so-petty police shakedowns. That the homosexual is often the victim of homicide, assault, robbery, and other crimes is known to criminologists; that much of this crime against the homosexual is encouraged and protected by society's strong condemnation of his extralegal proclivities has become increasingly apparent in recent years.

In the United States, the American Law Institute has proposed a Model Penal Code, in which legally permissible sexual behavior

Source: Sir John Wolfenden *et al.*, *Report of the Departmental Committee on Homosexual Offences and Prostitution* (London: Her Majesty's Stationery Office, 1956).

is based on the concept of "consenting adults": i.e., no act shall be subject to punishment if it is committed in private, between consenting adults, without a prostitutive transaction. In the state of Illinois, a code somewhat along such lines has been adopted; in fact, even solicitation of an adult of one's own sex, on a street or in a public park (although not for money), is no longer subject to prosecution. Call it what you will: the pickup, cruising, or importuning for the purpose of committing lewd, lascivious, and unnatural acts; it may be immoral, sinful, abnormal—all questionable and debatable terms—but no longer criminal.

How much of a change this will make in the life of the homosexual is again a matter of study and conjecture, and perhaps one will turn, not to Illinois, but to England, to determine the matter. For some insist that the major problem of the homosexual is the handling and management of stigma, and that the illegality of his activity is a whipping boy on which he can blame his frustrations and identify his persecutors. Others, however, believe that there is more of an interactive process between the law and social attitudes, and that the modification of one leads to an adaptation of the other.

The Fourth of July, 1967, may have been Independence Day for British homosexuals, for on that day the House of Commons voted to approve the bill to reform British law on homosexuality. The proposal for that reform was derived primarily from a committee which in 1956 had come forward with a controversial report. The committee, headed by Sir John Wolfenden, had investigated homosexuality and prostitution, and its section on the former is given below. Its report was endorsed by the Church of England, the Roman Catholic Church, and by intellectuals of liberal and labor persuasion alike.



HOMOSEXUALITY

We are concerned, in this part of our enquiry, with homosexual offences. Any lengthy or detailed study of the nature or origins of homosexuality would, in our view, have fallen outside our terms of reference, even if we had felt ourselves qualified to

embark upon it. Nevertheless, since we are concerned also with the treatment of those who have been convicted of homosexual offences we have found it necessary to acquaint ourselves with at least the elements of the subject in general, and the following paragraphs set out some of the points and problems which have been raised in our discussions. We owe much to the evidence of our medical witnesses and, in the interpretation and assessment of that evidence, to our own medical colleagues, to whom the nonmedical members of the Committee are greatly indebted.

It is important to make a clear distinction between "homosexual offences" and "homosexuality." For the latter, we are content to rely on the dictionary definition that homosexuality is a sexual propensity for persons of one's own sex. Homosexuality, then, is a state or condition, and as such does not, and cannot, come within the purview of the criminal law.

This definition of homosexuality involves the adoption of some criteria for its recognition. As in other psychological fields, an inference that the propensity exists may be derived from either subjective or objective data, that is, either from what is felt or from what is done by the persons concerned. Either method may lead to fallacious results. In the first place, introspection is neither exhaustive nor infallible; an individual may quite genuinely not be aware of either the existence or the strength of his motivations and propensities, and there is a natural reluctance to acknowledge, even to oneself, a preference which is socially condemned, or to admit to acts that are illegal and liable to a heavy penalty. Rationalisation and self-deception can be carried to great lengths, and in certain circumstances lying is also to be expected. Secondly, some of those whose main sexual propensity is for persons of the opposite sex indulge, for a variety of reasons, in homosexual acts. It is known, for example, that some men who are placed in special circumstances that prohibit contact with the opposite sex (for instance, in prisoner-of-war camps or prisons) indulge in homosexual acts, though they revert to heterosexual behavior when opportunity affords; and it is clear from our evidence that some men who are not predominantly homosexual lend themselves to homosexual practices for financial or other gain. Conversely, many

homosexual persons have heterosexual intercourse with or without homosexual fantasies. Furthermore, a homosexual tendency may not be manifested exclusively, or even at all, in sexual fields of behaviour, as we explain below.

There is the further problem of how widely the description "homosexual" should be applied. According to the psychoanalytic school, a homosexual component (sometimes conscious, often not) exists in everybody; and if this is correct homosexuality in this sense is universal. Without going so far as to accept this view *in toto*, it is possible to realise that the issue of latent homosexuality, which we discuss more fully below, is relevant to any assessment of the frequency of occurrence of the condition of homosexuality. However, for the purposes of the main body of our report, and in connection with our recommendations, we are strictly speaking concerned only with those who, for whatever reason, commit homosexual offences.

In spite of difficulties such as those we have mentioned in the preceding paragraphs, there is a general measure of agreement on two propositions: (i) that there exists in certain persons a homosexual propensity which varies quantitatively in different individuals and can also vary quantitatively in the same individual at different epochs of life; (ii) that this propensity can affect behaviour in a variety of ways, some of which are not obviously sexual; although exactly how much and in what ways may be matters for disagreement and dispute.

The first of these propositions means that homosexuality as a propensity is not an "all or none" condition, and this view has been abundantly confirmed by the evidence submitted to us. All gradations can exist from apparently exclusive homosexuality without any conscious capacity for arousal by heterosexual stimuli to apparently exclusive heterosexuality, though in the latter case there may be transient and minor homosexual inclinations, for instance in adolescence. According to the psychoanalytic school, all individuals pass through a homosexual phase. Be this as it may, we would agree that a transient homosexual phase in development is very common and should usually cause neither surprise nor concern.

It is interesting that the late Dr. Kinsey, in his study entitled

Sexual Behaviour in the Human Male, formulated this homosexual-heterosexual continuum on a 7-point scale, with a rating of 6 for sexual arousal and activity with other males only, 3 for arousals and acts equally with either sex, 0 for exclusive heterosexuality, and intermediate ratings accordingly. The recognition of the existence of this continuum is, in our opinion, important for two reasons. First, it leads to the conclusion that homosexuals cannot reasonably be regarded as quite separate from the rest of mankind. Secondly, as will be discussed later, it has some relevance in connection with claims made for the success of various forms of treatment.

As regards the second proposition, we have already pointed out that a distinction should be drawn between the condition of homosexuality (which relates to the direction of sexual preference) and the acts or behaviour resulting from this preference. It is possible to draw a further distinction between behaviour which is overtly sexual and behaviour, not overtly sexual, from which a latent homosexuality can be inferred.

It must not be thought that the existence of the homosexual propensity necessarily leads to homosexual behaviour of an overtly sexual kind. Even where it does, this behaviour does not necessarily amount to a homosexual offence; for instance, solitary masturbation with homosexual fantasies is probably the most common homosexual act. Many persons, though they are aware of the existence within themselves of the propensity, and though they may be conscious of sexual arousal in the presence of homosexual stimuli, successfully control their urges towards overtly homosexual acts with others, either because of their ethical standards or from fear of social or penal consequences, so that their homosexual condition never manifests itself in overtly sexual behaviour. There are others who, though aware of the existence within themselves of the propensity, are helped by a happy family life, a satisfying vocation, or a well-balanced social life to live happily without any urge to indulge in homosexual acts. Our evidence suggests however that complete continence in the homosexual is relatively uncommon—as, indeed, it is in the heterosexual—and that even where the individual is by disposition continent, self-control may break down tempo-

rarily under the influence of factors like alcohol, emotional distress or mental or physical disorder or disease.

Moreover, it is clear that homosexuals differ one from another in the extent to which they are aware of the existence within themselves of the propensity. Some are, indeed, quite unaware of it, and where this is so the homosexuality is technically described as latent, its existence being inferred from the individual's behaviour in spheres not obviously sexual. Although there is room for dispute as to the extent and variety of behaviour of this kind which may legitimately be included in the making of this inference, there is general agreement that the existence of a latent homosexuality is an inference validly to be drawn in certain cases. Sometimes, for example, a doctor can infer a homosexual component which accounts for the condition of a patient who has consulted him because of some symptom, discomfort or difficulty, though the patient himself is completely unaware of the existence within himself of any homosexual inclinations. There are other cases in which the existence of a latent homosexuality may be inferred from an individual's outlook or judgment; for instance, a persistent and indignant pre-occupation with the subject of homosexuality has been taken to suggest in some cases the existence of repressed homosexuality. Thirdly, among those who work with notable success in occupations which call for service to others, there are some in whom a latent homosexuality provides the motivation for activities of the greatest value to society. Examples of this are to be found among teachers, clergy, nurses and those who are interested in youth movements and the care of the aged.

We believe that there would be a wide measure of agreement on the general account of homosexuality and its manifestations that we have given above. On the other hand, the general position which we have tried to summarise permits the drawing of many different inferences, not all of them in our opinion justified. Especially is this so in connection with the concept of "disease." There is a tendency, noticeably increasing in strength over recent years, to label homosexuality as a "disease" or "illness." This may be no more than a particular manifestation of a general tendency discernible in modern society by which, as

one leading sociologist puts it, "the concept of illness expands continually at the expense of the concept of moral failure."¹ There are two important practical consequences which are often thought to follow from regarding homosexuality as an illness. The first is that those in whom the condition exists are sick persons and should therefore be regarded as medical problems and consequently as primarily a medical responsibility. The second is that sickness implies irresponsibility, or at least diminished responsibility. Hence it becomes important in this connection to examine the criteria of "disease," and also to examine the claim that these consequences follow.

We are informed that there is no legal definition of "disease" or "disease of the mind"; that there is no precise medical definition of disease which covers all its varieties; that health and ill-health are relative terms which merge into each other, the "abnormal" being often a matter of degree or of what is accepted as the permissible range of normal variation; and that doctors are often called upon to deal not only with recognisable diseases, but also with problems of attitude and with anomalies of character and instinct.

The traditional view seems to be that for a condition to be recognised as a disease, three criteria must be satisfied, namely (i) the presence of abnormal symptoms, which are caused by (ii) a demonstrable pathological condition, in turn caused by (iii) some factor called "the cause," each link in this causal chain being understood as something necessarily antecedent to the next. An example would be the invasion of the body by diphtheria bacilli, leading to pathological changes, leading to the symptoms of diphtheria.

While we have found this traditional view a convenient basis for our consideration of the question whether or not homosexuality is a disease, it must be recognised that the three criteria, as formulated above, are oversimplified, and that each needs some modification. Moreover, there are conditions now recognised as diseases though they do not satisfy all three criteria. Our evidence suggests, however, that homosexuality does not satisfy any of them unless the terms in which they are defined

¹ Barbara Wootton, "Sickness or Sin," *The Twentieth Century* (May, 1956).

are expanded beyond what could reasonably be regarded as legitimate.

In relation, first, to the presence of abnormal symptoms, it is nowadays recognised that many people behave in an unusual, extraordinary or socially unacceptable way, but it seems to us that it would be rash to assume that unorthodox or aberrant behaviour is necessarily symptomatic of disease if it is the only symptom that can be demonstrated. To make this assumption would be to underestimate the very wide range of "normal" human behaviour, and abundant evidence is available that what is socially acceptable or ethically permissible has varied and still varies considerably in different cultures. From the medical standpoint, the existence of significant abnormality can seldom be diagnosed from the mere exhibition of unusual behaviour, be this criminal or not, the diagnosis depending on the presence of associated symptoms. Further, a particular form of behaviour, taken by itself, can seem to be within the range of the normal but may nevertheless be symptomatic of abnormality, the abnormality consisting in (i) the intensity and duration of the symptoms, (ii) their combination together, and (iii) the circumstances in which they arise. Certain mental diseases, for example, can be diagnosed by the mere association of symptoms to form a recognised psychiatric syndrome, an example of this being schizophrenia, which has no known or generally accepted physical pathology. On the criterion of symptoms, however, homosexuality cannot legitimately be regarded as a disease, because in many cases it is the only symptom and is compatible with full mental health in other respects. In some cases, associated psychiatric abnormalities do occur, and it seems to us that if, as has been suggested, they occur with greater frequency in the homosexual, this may be because they are products of the strain and conflict brought about by the homosexual condition and not because they are causal factors. It has been suggested to us that associated psychiatric abnormalities are less prominent, or even absent, in countries where the homosexual is regarded with more tolerance.

As regards the second criterion, namely, the presence of a demonstrable pathological condition, some, though not all, cases of mental illness are accompanied by a demonstrable physical

pathology. We have heard no convincing evidence that this has yet been demonstrated in relation to homosexuality. Biochemical and endocrine studies so far carried out in this field have, it appears, proved negative, and investigations of body build and the like have also so far proved inconclusive. We are aware that studies carried out on sets of twins suggest that certain genes lay down a potentiality which will lead to homosexuality in the person who possesses them, but even if this were established (and the results of these studies have not commanded universal acceptance), a genetic predisposition would not necessarily amount to a pathological condition, since it may be no more than a natural biological variation comparable with variations in stature, hair pigmentation, handedness and so on.

In the absence of a physical pathology, psychopathological theories have been constructed to explain the symptoms of various forms of abnormal behaviour or mental illness. These theories range from rather primitive formulations like a repressed complex or a mental "abscess" to elaborate systems. They are theoretical constructions to explain observed facts, not the facts themselves, and similar theories have been constructed to explain "normal" behaviour. These theoretical constructions differ from school to school. The alleged psychopathological causes adduced for homosexuality have, however, also been found to occur in others besides the homosexual.

As regards the third criterion, that is, the "cause," there is never a single cause for normal behaviour, abnormal behaviour or mental illness. The causes are always multiple. Even the invasion of the body by diphtheria bacilli does not of itself lead to the disease of diphtheria, as is shown by the existence of "carriers" of live diphtheria bacilli. To speak, as some do, of some single factor such as seduction in youth as the "cause" of homosexuality is unrealistic unless other factors are taken into account. Besides genetic predisposition, a number of such factors have been suggested, for instance, unbalanced family relationships, faulty sex education, or lack of opportunity for heterosexual contacts in youth. In the present state of our knowledge, none of these can be held to bear a specific causal relationship to any recognised psychopathology or physical pathology; and

to assert a direct and specific causal relationship between these factors and the homosexual condition is to ignore the fact that they have all, including seduction, been observed to occur in persons who become entirely heterosexual in their disposition.

Besides the notion of homosexuality as a disease, there have been alternative hypotheses offered by others of our expert witnesses. Some have preferred to regard it as a state of arrested development. Some, particularly among the biologists, regard it as simply a natural deviation. Others, again, regard it as a universal potentiality which can develop in response to a variety of factors.

We do not consider ourselves qualified to pronounce on controversial and scientific problems of this kind, but we feel bound to say that the evidence put before us has not established to our satisfaction the proposition that homosexuality is a disease. Medical witnesses have, however, stressed the point, and it is an important one, that in some cases homosexual offences do occur as symptoms in the course of recognised mental or physical illness, for example, senile dementia. We have the impression, too, that those whose homosexual offences stem from some mental illness or defect behave in a way which increases their chances of being caught.

Even if it could be established that homosexuality were a disease, it is clear that many individuals, however their state is reached, present social rather than medical problems and must be dealt with by social, including penological, methods. This is especially relevant when the claim that homosexuality is an illness is taken to imply that its treatment should be a medical responsibility. Much more important than the academic question whether homosexuality is a disease is the practical question whether a doctor should carry out any part or all of the treatment. Psychiatrists deal regularly with problems of personality which are not regarded as diseases, and conversely the treatment of cases of recognised psychiatric illness may not be strictly medical but may best be carried out by nonmedical supervision or environmental change. Examples would be certain cases of senile dementia or chronic schizophrenia which can best be managed at home. In fact, the treatment of behaviour disorders,

even when medically supervised, is rarely confined to psychotherapy or to treatment of a strictly medical kind. This is not to deny that expert advice should be sought in very many homosexual cases. We shall have something more to say on these matters in connection with the treatment of offenders.

The claim that homosexuality is an illness carries the further implication that the sufferer cannot help it and therefore carries a diminished responsibility for his actions. Even if it were accepted that homosexuality could properly be described as a "disease," we should not accept this corollary. There are no *prima facie* grounds for supposing that because a particular person's sexual propensity happens to lie in the direction of persons of his or her own sex it is any less controllable than that of those whose propensity is for persons of the opposite sex. We are informed that patients in mental hospitals, with few exceptions, show clearly by their behaviour that they can and do exercise a high degree of responsibility and self-control; for example, only a small minority need to be kept in locked wards. The existence of varying degrees of self-control is a matter of daily experience—the extent to which coughing can be controlled is an example—and the capacity for self-control can vary with the personality structure or with temporary physical or emotional conditions. The question which is important for us here is whether the individual suffers from a condition which causes diminished responsibility. This is a different question from the question whether he was responsible in the past for the causes or origins of his present condition. This is an interesting enquiry and may be of relevance in other connections; but our concern is with the behaviour which flows from the individual's present condition and with the extent to which he is responsible for that behaviour, whatever may have been the causes of the condition from which it springs. Just as expert opinion can give valuable assistance in deciding on the appropriate ways of dealing with a convicted person, so can it help in assessing the additional factors that may affect his present responsibility.

Some psychiatrists have made the point that homosexual behaviour in some cases may be "compulsive," that is, irresistible, but there seems to be no good reason to suppose that at least

in the majority of cases homosexual acts are any more or any less resistible than heterosexual acts, and other evidence would be required to sustain such a view in any individual case. Even if immunity from penal sanctions on such grounds were claimed or granted, nevertheless preventive measures would have to be taken for the sake of society at large, in much the same way as it is necessary to withhold a driving license from a person who is subject to epileptic fits. This is particularly true of the offender who is a very bad risk for recurrence, but is not certifiable either as insane or as a mental defective.

When questions of treatment or disposal of offenders are being considered, the assessment of prognosis is very important, and expert advice may need to be sought on such questions as whether the factors that in view of the doctors lead to diminished control, that is, diminished "responsibility," are capable of modification, or what environmental changes should be advocated or ordered to reduce the chances of a recurrence. Thus it is just as reasonable for a doctor to recommend that a paedophile should give up schoolmastering as it would be to recommend to another patient never to return to a hot climate.

Some writers on the subject, and some of our witnesses, have drawn a distinction between the "invert" and the "pervert." We have not found this distinction very useful. It suggests that it is possible to distinguish between two men who commit the same offence, the one as the result of his constitution, the other from a perverse and deliberate choice, with the further suggestion that the former is in some sense less culpable than the latter. To make this distinction as a matter of definition seems to prejudge a very difficult question.

Similarly, we have avoided the use of the terms "natural" and "unnatural" in relation to sexual behaviour, for they depend for their force upon certain explicit theological or philosophical interpretations, and without these interpretations their use imports an approving or a condemnatory note into a discussion where dispassionate thought and statement should not be hindered by adherence to particular preconceptions.

Homosexuality is not, in spite of widely held belief to the contrary, peculiar to members of particular professions or social

classes; nor, as is sometimes supposed, is it peculiar to the *intelligentsia*. Our evidence shows that it exists among all callings and at all levels of society; and that among homosexuals will be found not only those possessing a high degree of intelligence, but also the dullest oafs.

Some homosexuals, it is true, choose to follow occupations which afford opportunities for contact with those of their own sex, and it is not unnatural that those who feel themselves to be "misfits" in society should gravitate towards occupations offering an atmosphere of tolerance or understanding, with the result that some occupations may appear to attract more homosexuals than do others. Again, the arrest of a prominent national or local figure has greater news value than the arrest of (say) a labourer for a similar offence, and in consequence the Press naturally finds room for a report of the one where it might not find room for a report of the other. Factors such as these may well account to some extent for the prevalent misconceptions.

THE EXTENT OF THE PROBLEM

Our consideration of the problems we have had to face would have been made much easier if it had been possible to arrive at some reasonably firm estimate of the prevalence either of the condition of homosexuality or of the commission of homosexual acts. So far as we have been able to discover, there is no precise information about the number of men in Great Britain who either have a homosexual disposition or engage in homosexual behaviour.

No enquiries have been made in this country comparable to those which the late Dr. Kinsey conducted in the United States of America. Dr. Kinsey concluded that in the United States, 4 per cent of adult white males are exclusively homosexual throughout their lives after the onset of adolescence. He also found evidence to suggest that 10 per cent of the white male population are more or less exclusively homosexual for at least three years between the ages of sixteen and sixty-five, and that 37 per cent of the total male population have at least some overt homosexual experience, to the point of orgasm, between ado-

lescence and old age. Dr. Kinsey's findings have aroused opposition and scepticism. But it was noteworthy that some of our medical witnesses expressed the view that something very like these figures would be established in this country if similar enquiries were made. The majority, while stating quite frankly that they did not really know, indicated that their impression was that his figures would be on the high side for Great Britain.

A recent enquiry in Sweden suggested that 1 per cent of all men were exclusively homosexual and 4 per cent had both homosexual and heterosexual impulses, and we were interested to learn from official sources in Sweden that other information available seemed to indicate that these figures were too low. But here again, there is no evidence that similar enquiries in this country would yield similar results.

Such statistical information as we have been able to obtain about incidence in this country has been extracted almost entirely from criminal and medical records. It is obvious that only a minority of homosexuals, or, for that matter, of those who indulge in homosexual acts, fall into the hands of the police, and it is likely also that only a minority of such persons find their way to the doctor's consulting room. But it is impossible to determine what proportion of the persons concerned these minorities represent; still less, on this evidence, what proportion of the total population falls within the description "homosexual." These figures, therefore, cannot be relied on as an indication of the extent of homosexuality or homosexual behaviour among the community as a whole. The only figures relating to the systematic examination of anything like a "normal" sample in this country were provided by one of our witnesses, a psychologist, who had examined 100 male undergraduates and found that 30 of them had had homosexual trends and fantasies at some time in their lives and that five of these still retained them at the age of twenty-plus. Our witness, while certainly not prepared to say that none of the five would outgrow their condition, felt that such a change was unlikely. This sample is, however, neither sufficiently large nor sufficiently representative of the population as a whole to enable any valid conclusions to be drawn.

It is tempting to construct hypotheses, on the basis of one or other of the sets of figures we have mentioned, about the prevalence of homosexuality or homosexual behaviour. But it is very dangerous to do so because, as we have said earlier, there can be no guarantee either that the individuals selected for study have told the whole truth or that when they have tried to do so their introspection has been accurate or complete. Moreover, the capacity for self-expression varies considerably as between one individual and another; dull and inarticulate persons are often unable to give more than the crudest account of their psychosexual reactions, and an accurate assessment of propensities or of the significance of behaviour is correspondingly difficult. Quantitative estimates based on subjective evidence of this sort are therefore in themselves liable to a considerable degree of error; and when applied to the population as a whole the final result may be dangerously misleading.

It is widely believed that the prevalence of homosexuality in this country has greatly increased during the past fifty years and that homosexual behaviour is much more frequent than used to be the case. It is certainly true that the whole subject of homosexuality is much more freely discussed to-day than it was formerly; but this is not in itself evidence that homosexuality is to-day more prevalent, or homosexual behaviour more widespread, than it was when mention of it was less common. Sexual matters in general are more openly talked about to-day than they were in the days of our parents and grandparents; and it is not surprising that homosexuality should take its place, among other sexual topics, in this wider range of permissible subjects of conversation. Public interest in the subject has undoubtedly increased, with the consequences that court cases are more frequently reported and that responsible papers and magazines give considerable space to its discussion. In general literature, too, there is a growing number of works dealing incidentally or entirely with the subject. All this has no doubt led to a much greater public awareness of the phenomenon and its manifestations. But it does not necessarily follow that the behaviour which is so discussed is more widespread than it was before.

It is certainly true also . . . that the number of homosexual offences known to the police has increased considerably. It does not, however, necessarily follow . . . that there has been an increase either in homosexuality or in homosexual behaviour; still less can these figures be regarded as an infallible measure of any increase which may have occurred during that period. Unlike some offences (*e.g.*, housebreaking) which, by their nature, tend to be reported to the police as they occur, many sexual offences, particularly those taking place between consenting parties, become "known to the police" only when they are detected by the police or happen to be reported to them. Any figures relating to homosexual offences known to the police will therefore be conditioned to a large extent both by the efficiency of the police methods of detecting and recording, and by the intensity of police activity. These factors vary from time to time and from place to place.

Clearly, the more efficient the police methods of detection, the higher the proportion of offences detected. It was to be expected that the more intensive training given to police officers in recent years, particularly in methods of detection, would result in the discovery of a higher proportion of offences; but this does not necessarily indicate that more offences have occurred. We understand, too, that efforts have been made in recent years to improve the methods by which offences known to the police are recorded, and these may have been reflected in higher figures without any necessary implication of a higher number of offences. Lastly, the extent to which the police follow up suspicions of homosexual behaviour varies considerably as between one police force and another according to the outlook of the senior officers; and sometimes even within a given police force the intensity of action varies from time to time along with the ups and downs of public indignation aroused, or public annoyance caused, by the behaviour of the offenders.

In brief, therefore, it would be dangerous to argue from the police statistics alone either that there was an overall increase or that homosexual behaviour was most prevalent in those areas where the number of cases recorded as known to the police was the highest.

Some of us have a definite impression, derived from what we have observed or read, and by inference from the tenor of evidence submitted to us, that there has been an increase in the amount of homosexual behaviour. Others of us prefer, in the absence of conclusive evidence, not to commit themselves to expressing even a general impression.

Those who have the impression of a growth in homosexual practices find it supported by at least three wider considerations. First, in the general loosening of former moral standards, it would not be surprising to find that leniency towards sexual irregularities in general included also an increased tolerance of homosexual behaviour and that greater tolerance had encouraged the practice. Secondly, the conditions of war time, with broken families and prolonged separation of the sexes, may well have occasioned homosexual behaviour which in some cases has been carried over into peace time. Thirdly, it is likely that the emotional insecurity, community instability and weakening of the family, inherent in the social changes of our civilisation, have been factors contributing to an increase in homosexual behaviour.

Most of us think it improbable that the increase in the number of offences recorded as known to the police can be explained entirely by greater police activity, though we all think it very unlikely that homosexual behaviour has increased proportionately to the dramatic rise in the number of offences recorded as known to the police.

Our medical evidence seems to show three things: first, that in general practice male homosexuals form a very small fraction of the doctor's patients; secondly, that in psychiatric practice male homosexuality is a primary problem in a very small proportion of the cases seen; and thirdly, that only a very small percentage of homosexuals consult doctors about their condition. It is almost impossible to compare the incidence of homosexual behaviour with the incidence of other forms of sexual irregularity, most of which are outside the purview of the criminal law and are therefore not recorded in criminal statistics; our impression is that of the total amount of irregular sexual conduct,

homosexual behaviour provides only a very small proportion. It cannot, however, be ignored. The male population of Great Britain over the age of fifteen numbers nearly eighteen million, and even if the Swedish figures quoted above, which are the lowest figures relating to incidence that have come to our notice, are at all applicable to this country, the incidence of homosexuality and homosexual behaviour must be large enough to present a serious problem.

Our conclusion is that homosexual behaviour is practised by a small minority of the population, and should be seen in proper perspective, neither ignored nor given a disproportionate amount of public attention. Especially are we concerned that the principles we have enunciated above on the function of the law should apply to those involved in homosexual behaviour no more and no less than to other persons.

THE PRESENT LAW AND PRACTICE

General Review

It is against the foregoing background that we have reviewed the existing provisions of the law in relation to homosexual behaviour between male persons. We have found that with the great majority of these provisions we are in complete agreement. We believe that it is part of the function of the law to safeguard those who need protection by reason of their youth or some mental defect, and we do not wish to see any change in the law that would weaken this protection. Men who commit offences against such persons should be treated as criminal offenders. Whatever may be the causes of their disposition or the proper treatment for it, the law must assume that the responsibility for the overt acts remains theirs, except where there are circumstances which it accepts as exempting [them] from accountability. Offences of this kind are particularly reprehensible when the men who commit them are in positions of special responsibility or trust. We have been made aware that where a man is involved in an offence with a boy or youth the invitation to the commis-

sion of the act sometimes comes from him rather than from the man. But we believe that even when this is so that fact does not serve to exculpate the man.

It is also part of the function of the law to preserve public order and decency. We therefore hold that when homosexual behaviour between males takes place in public it should continue to be dealt with by the criminal law. Not all the elements in the apprehension of offenders, or in their trial, seem to us to be satisfactory, and on these points we comment later. But so far as the law itself is concerned we should not wish to see any major change in relation to this type of offence.

Besides the two categories of offence we have just mentioned, namely, offences committed by adults with juveniles and offences committed in public places, there is a third class of offence to which we have had to give long and careful consideration. It is that of homosexual acts committed between adults in private.

In England and Wales, during the three years ended March 1956, 480 men aged twenty-one or over were convicted of offences committed in private with consenting partners also aged twenty-one or over. Of these, however, 121 were also convicted of, or admitted, offences in public places (parks, open spaces, lavatories, etc.), and 59 were also convicted of, or admitted, offences with partners under twenty-one. In Scotland, during the same period, 9 men over twenty-one were convicted of offences committed in private with consenting adult partners. Of these, one also admitted offences in public places and one admitted offences with a partner under twenty-one. Thus 307 men (300 in England and Wales and 7 in Scotland), guilty as far as is known only of offences committed in private with consenting adult partners, were convicted by the courts during this period. . . .

We have indicated above our opinion as to the province of the law and its sanctions, and how far it properly applies to the sexual behaviour of the individual citizen.² On the basis of the considerations there advanced we have reached the conclusion that legislation which covers acts in the third category we have

² The material in the original report, referred to in this sentence, is not included in the present reprint.—Eds.

mentioned goes beyond the proper sphere of the law's concern. We do not think that it is proper for the law to concern itself with what a man does in private unless it can be shown to be so contrary to the public good that the law ought to intervene in its function as the guardian of that public good.

In considering whether homosexual acts between consenting adults in private should cease to be criminal offences we have examined the more serious arguments in favour of retaining them as such. We now set out these arguments and our reasons for disagreement with them. In favour of retaining the present law, it has been contended that homosexual behaviour between adult males, in private no less than in public, is contrary to the public good on the grounds that:

- (i) it menaces the health of society;
- (ii) it has damaging effects on family life;
- (iii) a man who indulges in these practices with another man may turn his attention to boys.

As regards the first of these arguments, it is held that conduct of this kind is a cause of the demoralisation and decay of civilisations, and that therefore, unless we wish to see our nation degenerate and decay, such conduct must be stopped, by every possible means. We have found no evidence to support this view, and we cannot feel it right to frame the laws which should govern this country in the present age by reference to hypothetical explanations of the history of other peoples in ages distant in time and different in circumstances from our own. Insofar as the basis of this argument can be precisely formulated, it is often no more than the expression of revulsion against what is regarded as unnatural, sinful or disgusting. Many people feel this revulsion, for one or more of these reasons. But moral conviction or instinctive feeling, however strong, is not a valid basis for overriding the individual's privacy and for bringing within the ambit of the criminal law private sexual behaviour of this kind. It is held also that if such men are employed in certain professions or certain branches of the public service their private habits may render them liable to threats of blackmail or to other pressures which may make them "bad security risks." If

this is true, it is true also of some other categories of person: for example, drunkards, gamblers and those who become involved in compromising situations of a heterosexual kind; and while it may be a valid ground for excluding from certain forms of employment men who indulge in homosexual behaviour, it does not, in our view, constitute a sufficient reason for making their private sexual behaviour an offence in itself.

The second contention, that homosexual behaviour between males has a damaging effect on family life, may well be true. Indeed, we have had evidence that it often is; cases in which homosexual behaviour on the part of the husband has broken up a marriage are by no means rare, and there are also cases in which a man in whom the homosexual component is relatively weak nevertheless derives such satisfaction from homosexual outlets that he does not enter upon a marriage which might have been successfully and happily consummated. We deplore this damage to what we regard as the basic unit of society; but cases are also frequently encountered in which a marriage has been broken up by homosexual behaviour on the part of the wife, and no doubt some women, too, derive sufficient satisfaction from homosexual outlets to prevent their marrying. We have had no reasons shown to us which would lead us to believe that homosexual behaviour between males inflicts any greater damage on family life than adultery, fornication or lesbian behaviour. These practices are all reprehensible from the point of view of harm to the family, but it is difficult to see why on this ground male homosexual behaviour alone among them should be a criminal offence. This argument is not to be taken as saying that society should condone or approve male homosexual behaviour. But where adultery, fornication and lesbian behaviour are not criminal offences there seems to us to be no valid ground, on the basis of damage to the family, for so regarding homosexual behaviour between men. Moreover, it has to be recognised that the mere existence of the condition of homosexuality in one of the partners can result in an unsatisfactory marriage, so that for a homosexual to marry simply for the sake of conformity with the accepted structure of society or in the hope of curing his condition may result in disaster.

We have given anxious consideration to the third argument, that an adult male who has sought as his partner another adult male may turn from such a relationship and seek as his partner a boy or succession of boys. We should certainly not wish to countenance any proposal which might tend to increase offences against minors. Indeed, if we thought that any recommendation for a change in the law would increase the danger to minors we should not make it. But in this matter we have been much influenced by our expert witnesses. They are in no doubt that whatever may be the origins of the homosexual condition, there are two recognisably different categories among adult male homosexuals. There are those who seek as partners other adult males, and there are paedophiliacs, that is to say men who seek as partners boys who have not reached puberty.³

We are authoritatively informed that a man who has homosexual relations with an adult partner seldom turns to boys, and *vice-versa*, though it is apparent from the police reports we have seen and from other evidence submitted to us that such cases do happen. A survey of 155 prisoners diagnosed as being homosexuals on reception into Brixton prison during the period 1st January, 1954, to 31st May, 1955, indicated that 107 (69 per cent) were attracted to adults, 43 (27.7 per cent) were attracted to boys, and 5 (3.3 per cent) were attracted to both boys and adults. This last figure of 3.3 per cent is strikingly confirmed by another investigation of 200 patients outside prison. But paedophiliacs, together with the comparatively few who are indiscriminate, will continue to be liable to the sanctions of criminal law, exactly as they are now. And the others would be very unlikely to change their practices and turn to boys simply because their present practices were made legal. It would be paradoxical if the making legal of an act at present illegal were to turn men towards another kind of act which is, and would remain, con-

³ There are reasons for supposing that paedophilia differs from other manifestations of homosexuality. For example, it would seem that in some cases the propensity is for partners of a particular age rather than for partners of a particular sex. An examination of the records of the offences covered by the Cambridge survey reveals that 8 per cent of the men convicted of sexual offences against children had previous convictions for both heterosexual and homosexual offences.

trary to the law. Indeed, it has been put to us that to remove homosexual behaviour between adult males from the listed crimes may serve to protect minors; with the law as it is there may be some men who would prefer an adult partner but who at present turn their attention to boys because they consider that this course is less likely to lay them open to prosecution or to blackmail than if they sought other adults as their partners. If the law were changed in the way we suggest, it is at least possible that such men would prefer to seek relations with older persons which would not render them liable to prosecution. In this connection, information we have received from the police authorities in the Netherlands suggests that practising homosexuals in that country are to some extent turning from those practices which are punishable under the criminal law to other practices which are not. Our evidence, in short, indicates that the fear that the legalisation of homosexual acts between adults will lead to similar acts with boys has not enough substance to justify the treatment of adult homosexual behavior in private as a criminal offence, and suggests that it would be more likely that such a change in the law would protect boys rather than endanger them.

In addition, an argument of a more general character in favour of retaining the present law has been put to us by some of our witnesses. It is that to change the law in such a way that homosexual acts between consenting adults in private ceased to be criminal offences must suggest to the average citizen a degree of toleration by the Legislature of homosexual behaviour, and that such a change would "open the floodgates" and result in unbridled licence. It is true that a change of this sort would amount to a limited degree of such toleration, but we do not share the fears of our witnesses that the change would have the effect they expect. This expectation seems to us to exaggerate the effect of the law on human behaviour. It may well be true that the present law deters from homosexual acts some who would otherwise commit them, and to that extent an increase in homosexual behaviour can be expected. But it is no less true that if the amount of homosexual behaviour has, in fact, increased in recent years, then the law has failed to act as an

effective deterrent. It seems to us that the law itself probably makes little difference to the amount of homosexual behaviour which actually occurs; whatever the law may be there will always be strong social forces opposed to homosexual behaviour. It is highly improbable that the man to whom homosexual behaviour is repugnant would find it any less repugnant because the law permitted it in certain circumstances; so that even if, as has been suggested to us, homosexuals tend to proselytise, there is no valid reason for supposing that any considerable number of conversions would follow the change in the law.

. . . In only very few European countries does the criminal law now take cognisance of homosexual behaviour between consenting parties in private. It is not possible to make any useful statistical comparison between the situation in countries where the law tolerates such behaviour and that in countries where all male homosexuals acts are punishable, if only because in the former the acts do not reflect themselves in criminal statistics. We have, however, caused enquiry to be made in Sweden, where homosexual acts between consenting adults in private ceased to be criminal offences in consequence of an amendment of the law in 1944. We asked particularly whether the amendment of the law had had any discernible effect on the prevalence of homosexual practices, and on this point the authorities were able to say no more than that very little was known about the prevalence of such practices either before or after the change in the law. We think it reasonable to assume that if the change in the law had produced any appreciable increase in homosexual behaviour or any large-scale proselytising, these would have become apparent to the authorities.

We recognise that a proposal to change a law which has operated for many years so as to make legally permissible acts which were formerly unlawful, is open to criticisms which might not be made in relation to a proposal to omit, from a code of laws being formulated *de novo*, any provision making these acts illegal. To reverse a long-standing tradition is a serious matter and not to be suggested lightly. But the task entrusted to us, as we conceive it, is to state what we regard as a just and equitable law. We therefore do not think it appropriate that con-

sideration of this question should be unduly influenced by a regard for the present law, much of which derives from traditions whose origins are obscure.

Further, we feel bound to say this. We have outlined the arguments against a change in the law, and we recognise their weight. We believe, however, that they have been met by the counter-arguments we have already advanced. There remains one additional counter-argument which we believe to be decisive, namely, the importance which society and the law ought to give to individual freedom of choice and action in matters of private morality. Unless a deliberate attempt is to be made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business. To say this is not to condone or encourage private immorality. On the contrary, to emphasise the personal and private nature of moral or immoral conduct is to emphasise the personal and private responsibility of the individual for his own actions, and that is a responsibility which a mature agent can properly be expected to carry for himself without the threat of punishment from the law.

We accordingly recommend that homosexual behaviour between consenting adults in private should no longer be a criminal offence.⁴

This proposal immediately raises three questions: What is meant by "consenting"; What is meant by "in private"; What is meant by "adult"?

So far as concerns the first of these, we should expect that the question whether or not there has been "consent" in a particular case would be decided by the same criteria as apply to heterosexual acts between adults. We should expect, for example, that a "consent" which had been obtained by fraud or threats of violence would be no defence to a criminal charge; and that a criminal charge would also lie where drugs had been used to render the partner incapable of giving or withholding consent, or where the partner was incapable for some other reason (for example, mental defect) of giving a valid consent.

⁴ In the original report, one member of the committee expressed some reservation on this recommendation.—Eds.

We are aware that the quality of the consent may vary; consent may amount to anything from an eager response to a grudging submission. We are aware, too, that money, gifts or hospitality are sometimes used to induce consent. But these considerations apply equally to heterosexual relationships, and we find in them no ground for differentiating, so far as the behaviour of adults is concerned, between homosexual and heterosexual relationships.

Our words "in private" are not intended to provide a legal definition. Many heterosexual acts are not criminal if committed in private but are punishable if committed in circumstances which outrage public decency, and we should expect the same criteria to apply to homosexual acts. It is our intention that the law should continue to regard as criminal any indecent act committed in a place where members of the public may be likely to see and be offended by it, but where there is no possibility of public offence of this nature it becomes a matter of the private responsibility of the persons concerned and as such, in our opinion, is outside the proper purview of the criminal law. It will be for the courts to decide, in cases of doubt, whether or not public decency has been outraged, and we cannot see that there would be any greater difficulty about establishing this in the case of homosexual acts than there is at present in the case of heterosexual acts.⁵

The question of the age at which a man is to be regarded as "adult" is much more difficult. A wide range of ages has been covered by proposals made in the evidence which has been offered to us by our witnesses. On the analogy of heterosexual behaviour there is a case for making the age sixteen, for heterosexual acts committed by consenting partners over that age in private are not criminal. At the other end of the scale an age as high as thirty was suggested. Within these two extremes, the ages most frequently suggested to us have been eighteen and twenty-one.

It seems to us that there are four sets of considerations which should govern the decision on this point. The first is connected with the need to protect young and immature persons; the

⁵ Reservation was also expressed on this recommendation.—Eds.

second is connected with the age at which the pattern of a man's sexual development can be said to be fixed; the third is connected with the meaning of the word "adult" in the sense of "responsible for his own actions"; and the fourth is connected with the consequences which would follow from the fixing of any particular age. Unfortunately, these various considerations may not all lead to the same answer.

So far as concerns the first set of considerations, we have made it clear throughout our report that we recognise the need for protecting the young and immature. But this argument can be pressed too far; there comes a time when a young man can properly be expected to "stand on his own feet" in this as in other matters, and we find it hard to believe that he needs to be protected from would-be seducers more carefully than a girl does. It could indeed be argued that in a simply physical sense he is better able to look after himself than she is. On this view, there would be some ground for making sixteen the age of "adulthood," since sexual intercourse with a willing girl of this age is not unlawful.

We have given special attention to the evidence which has been given to us in connection with the second set of considerations—those which relate the notion of "adulthood" to a recognisable age in the fixation of a young man's sexual pattern—for we should not wish to see legalised any forms of behaviour which would swing towards a permanent habit of homosexual behaviour a young man who without such encouragement would still be capable of developing a normal habit of heterosexual adult life. On this point we have been offered many and conflicting opinions which agree however in admitting the difficulty of equating stabilisation of sexual pattern with a precise chronological age. Our medical witnesses were unanimously of the view that the main sexual pattern is laid down in the early years of life, and the majority of them held that it was usually fixed, in main outline, by the age of sixteen. Many held that it was fixed much earlier. On this ground again, then, it would seem that sixteen would be an appropriate age.

We now turn to the third set of considerations, that is, the age at which a person may be regarded as sufficiently adult to take decisions about his private conduct and to carry the respon-

sibility for their consequences. In other fields of behaviour the law recognises the age of twenty-one as being appropriate for decisions of this kind; for example, this is the age at which a man is deemed to be capable of entering into legal contracts, including (in England and Wales) the contract of marriage, on his own responsibility. Apart altogether from legal or medical technicalities, we believe that it would be generally accepted, as a matter of ordinary usage, that "adult" means, broadly speaking, "of the age of twenty-one or more"; and we believe that it is, as a matter of common sense, reasonable to accept this as designating the age at which a man is regarded as being maturely responsible for his actions.

To suggest that the age of adulthood for the purposes we have in mind should be twenty-one leads us to the fourth set of considerations we have mentioned, namely, the consequences which would follow from the decision about any particular age. To fix the age at twenty-one (or indeed at any age above seventeen) raises particular difficulties in this connection, for it involves leaving liable to prosecution a young man of almost twenty-one for actions which in a few days' time he could perform without breaking the law. This difficulty would admittedly arise whatever age was decided upon, for it would always be the case that an action would be illegal a few days below that age and legal above it. But this difficulty would present itself in a less acute form if the age were fixed at eighteen, which is the other age most frequently suggested to us. For whereas it would be difficult to regard a young man of nearly twenty-one charged with a homosexual offence as a suitable subject for "care or protection" under the provisions of the Children and Young Persons Acts, it would not be entirely inappropriate so to regard a youth under eighteen. If the age of adulthood for the purposes of our amendment were fixed at eighteen, and if the "care or protection" provisions were extended to cover young persons up to that age, there would be a means of dealing with homosexual behaviour by those under that age without invoking the penal sanctions of the criminal law.

There must obviously be an element of arbitrariness in any decision on this point; but all things considered the legal age of contractual responsibility seems to us to afford the best criterion

for the definition of adulthood in this respect. While there are some grounds for fixing the age as low as sixteen, it is obvious that however "mature" a boy of that age may be as regards physical development or psycho-sexual make-up, and whatever analogies may be drawn from the law relating to offences against young girls, a boy is incapable, at the age of sixteen, of forming a mature judgment about actions of a kind which might have the effect of setting him apart from the rest of society. The young man between eighteen and twenty-one may be expected to be rather more mature in this respect. We have, however, encountered several cases in which young men have been induced by means of gifts of money or hospitality to indulge in homosexual behaviour with older men, and we have felt obliged to have regard to the large numbers of young men who leave their homes at or about the age of eighteen and, either for their employment or their education or to fulfil their national service obligations, are then for the first time launched into the world in circumstances which render them particularly vulnerable to advances of this sort. It is arguable that such men should be expected, as one of the conditions of their being considered sufficiently grown-up to leave home, to be able to look after themselves in this respect also, the more so if they are being trained for responsibility in the services or in civil life. Some of us feel, on various grounds, that the age of adulthood should be fixed at eighteen. Nevertheless, most of us would prefer to see the age fixed at twenty-one, not because we think that to fix the age at eighteen would result in any greater readiness on the part of young men between eighteen and twenty-one to lend themselves to homosexual practices than exists at present, but because to fix it at eighteen would lay them open to attentions and pressures of an undesirable kind from which the adoption of the later age would help to protect them, and from which they ought, in view of their special vulnerability, to be protected. We therefore recommend that for the purpose of the amendment of the law which we have proposed, the age at which a man is deemed to be an adult should be twenty-one.

If our recommendation is accepted, any indecent homosexual act committed by a male person under twenty-one will continue to be an offence, wherever and with whomsoever it is committed.

It is not, however, our intention to suggest that criminal proceedings ought to be taken in respect of any and every detected homosexual offence committed by a person under that age. Where the offender violates public decency or otherwise causes a public nuisance, for example by persistent importuning, proceedings should continue to be taken as they are at present. And where his behaviour is such as to constitute an indecent assault, that is to say where a homosexual act is carried out against the consent of the partner, or with a partner who is incapable by reason of age or mental defect of giving consent, then clearly the law should continue to deal with it. But, short of this, it is our view that no proceedings should be taken unless the behaviour has been accompanied by conduct of a patently criminal or vicious nature, as for instance "bullying" at a school or institution, the abuse of his position by a superior in one of the Services, or an element of prostitution or blackmail. We hope that the responsible authorities, as well as parents or others under whose care the young man concerned might be living, would be ready to distinguish between conduct of this kind and behaviour which is often no more than the physical expression of a transient phase. Cases of the latter sort ought, in our view, seldom to reach the courts, though there may occasionally be cases where the offender would benefit from being placed on probation with a view either to treatment or to supervision of a more general kind.

In order to ensure uniformity of practice, we recommend that the law be so amended as to provide that except for prosecutions instituted by the Director of Public Prosecutions, no prosecution for a homosexual offence committed in private, other than indecent assault, should be commenced in England and Wales against a person under the age of twenty-one without the sanction of the Attorney-General. . . .

As regards offences by young persons under the age of seventeen, the provisions of the Children and Young Persons Acts are sufficient to ensure that in deciding how to deal with an offence the welfare of the young person concerned will be the overriding consideration. We have no doubt that where there has been no vicious or criminal intent the appropriate authorities would deal with the offender, if it were necessary to bring

him to court at all, under the "care or protection" provisions of the Acts rather than by charging him with a criminal offence.

We have discussed the possibility of trying to adapt the "care or protection" provisions of these Acts in such a way as to cover persons between the ages of seventeen and twenty-one, but we have come to the conclusion that this would be impracticable and that it would be more appropriate to leave such persons to be dealt with as we have suggested above where they cannot be dealt with by persons under whose authority they may be living. If the recommendations of the Children and Young Persons Committee at present considering the powers of the courts in relation to juvenile offenders result in the raising of the age for care or protection, the higher age limit would automatically apply to those we are here considering.

Since it is a defence to a first charge of sexual intercourse with a girl under sixteen that the man, if he is under the age of twenty-four, had reasonable cause for believing that the girl was over sixteen, we have considered whether a similar defence should be available to a man, up to an age to be specified, who had committed a homosexual act with a young man under twenty-one in the belief that he was above that age. We do not believe that it should. This defence applies only in the special case we have mentioned; it applies only to offenders within an age-range specified on no very clear grounds, and we see no valid reason for importing into the homosexual field a provision designed to deal with a particular heterosexual offence.

We wish to make it perfectly clear that our recommendation that the law should no longer regard as criminal offences homosexual acts between consenting adults in private is not intended to countenance any forms of behaviour approximating to the objectionable activities associated with female prostitution with which we deal elsewhere in this report. In accordance with our conception of the functions of the criminal law, we should expect that the law would continue to make provision for the preservation of public order and decency, the protection of the citizen from what is offensive or injurious and the suppression of the exploitation of the weaker members of society. The question of solicitation by males is dealt with below. Conduct approximating to "living on the earnings of prostitution" will be

covered to some extent by our recommendation that procuring or attempting to procure the commission of homosexual acts by third parties should continue to be an offence; but as an added safeguard, we recommend that the law relating to living on the earnings of prostitution should be made to apply, so far as may be practicable, to the earnings of male prostitution as it does to the earnings of female prostitution. Finally, we recommend that, if necessary, the law should be amended so as to make it explicit that the word "brothel" includes premises used for homosexual practices as well as those used for heterosexual lewdness.

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THE TREATMENT OF OFFENDERS

From our terms of reference, it is clear that we are concerned with the various ways in which convicted offenders are dealt with by the courts, and that the word "treatment" is not intended to be confined in its meaning to any specific kind of medical attention.

The punishment prescribed by law for homosexual offences (other than bye-law offences) is imprisonment. This is in accordance with customary legislative practice; but the general criminal law provides other methods by which the courts can deal with persons brought before them on criminal charges. These methods apply to persons convicted of homosexual offences just as they apply to other offenders, and in practice only a minority of homosexual offenders are sent to prison. For instance, in 1955, only 30 per cent of the persons found guilty by the English courts of homosexual offences punishable with imprisonment were, in fact, sent to prison; and in Scotland during the same year, only 37 per cent of those convicted of recorded homosexual offences were so dealt with. We think, therefore, that it may be helpful, as a background to our consideration of this part of enquiry, to review briefly the more important alternatives to imprisonment available to the courts at the present time.

In appropriate cases, the following alternative methods of

treatment may be applied to persons found guilty of criminal offences, including homosexual offences:⁶

- (i) absolute discharge
 - (ii) conditional discharge
 - (iii) binding over
 - (iv) probation
 - (v) fine
and, in the case of younger offenders,
 - (vi) borstal training (for offenders aged 16 to 21)
 - (vii) detention in a detention centre (for offenders aged 14 to 21)
 - (viii) committal to an approved school
 - (ix) committal to the care of a fit person
 - (x) attendance at an attendance centre
- } (for offenders under 17)
} (for offenders aged 12 to 17).

Absolute and Conditional Discharge

“Absolute discharge” is self-explanatory, and is appropriate where the court is of opinion, having regard to all the circumstances of the case, including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate. As an alternative to absolute discharge, the court may discharge the offender subject to the condition that he commits no further offence for a specified period not exceeding twelve months. This is known as “conditional discharge.” An offender committing another offence during the period of conditional discharge is liable to be sentenced for the original offence.

Twelve per cent of the persons convicted during 1955 of homosexual offences punishable with imprisonment were absolutely or conditionally discharged.

Binding Over

Where a court considers that the circumstances of a case make such a course expedient in the interests of justice it may, instead

⁶ This material applies to England and Wales. Special material on Scotland is in the original report and is omitted here.—Eds.

of imposing any punishment, require the convicted person to enter into recognisances, with or without sureties, to come up for judgment if called upon. The binding over is usually for a specified period, and it is usual to require the convicted person, during that period, to keep the peace and be of good behaviour. If he fails to do so, he may be brought up and sentenced for the offence in respect of which he was bound over. This method is not so frequently used as the more modern conditional discharge; but it is still used, and about 3 per cent of the persons convicted during 1955 of homosexual offences punishable with imprisonment were bound over.

Probation

Probation is a development of the system of binding over. Where the court by which the person is convicted is of opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, it may, instead of sentencing him, make a probation order. This method is frequently used by the courts in dealing with homosexual offenders, and 24 per cent of the persons convicted during 1955 of homosexual offences punishable with imprisonment were put on probation.

A probation order requires the offender to be under the supervision of a probation officer, whose duty is to "advise, assist and befriend" him for not less than one or more than three years. The order may require the offender to comply with such additional requirements (including requirements as to residence) as the court, having regard to his circumstances, considers necessary for securing his good conduct or for preventing repetition by him of the same offence or the commission of other offences. Unless the offender is under fourteen years of age, a probation order can be made only if he expresses his willingness to comply with its requirements.

Where a court is satisfied, on the evidence of a duly qualified medical practitioner appearing to be experienced in the diagnosis of mental disorders, that the mental condition of an offender, though not such as to justify certification under the Lunacy or Mental Deficiency Acts, is such as requires and may

be susceptible to treatment, it has power to include in the probation order a requirement that the offender shall submit, for a specified period not exceeding twelve months, to suitable treatment. . . .

The precise nature of the treatment is at the discretion of the doctor in charge of the case.

The court may not impose such a requirement unless it is satisfied that the necessary arrangements can be made.

A probationer who fails to comply with the terms of the probation order may be brought before the court and fined up to £10 or, if of appropriate age, ordered to attend at an attendance centre, the probation order remaining in force in either case. Alternatively, he may be dealt with for the offence in respect of which he was placed on probation. He can also be dealt with for the original offence if he commits a further offence during the period of the order.

Conviction of an offence in respect of which an order of absolute or conditional discharge or a probation order is made is not regarded as a conviction for the purpose of any future proceedings against the offender, except where an offender over seventeen is subsequently sentenced for the offence in respect of which he was conditionally discharged or placed on probation. In any event, the conviction of an offender who is placed on probation or discharged conditionally or absolutely must be disregarded for the purposes of any enactment imposing any disqualification or disability on convicted persons or authorising or requiring the imposition of any such disqualification or disability.

Fine

A court before which a person is convicted of any of the homosexual offences punishable with imprisonment may fine the offender instead of sending him to prison. The courts frequently avail themselves of this alternative, and 30 per cent of the persons convicted in 1955 of homosexual offences punishable with imprisonment were fined instead.

Borstal Training

Where a person over sixteen but under twenty-one years of age is convicted on indictment of an offence punishable by imprisonment the court may, in lieu of any other sentence, pass a sentence of borstal training where it is satisfied, having regard to the character and previous conduct of the offender and to the circumstances of the offence, that such a course is expedient for the offender's reformation and the prevention of crime. And where a person between the ages stated is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment, he may be committed to quarter sessions with a view to the passing of a sentence of borstal training, but in this case the court must, before committing the offender for sentence, consider any report or representations made by or on behalf of the Prison Commissioners on his physical and mental condition and his suitability for borstal training.

A person sentenced to borstal training is to be detained in a borstal institution for such period, not exceeding three years, as the Prison Commissioners may determine, but the Prison Commissioners may not release him in less than nine months unless required to do so by the Home Secretary.

The object of borstal training is to develop character and the moral, mental, physical and vocational capacities of the offender, with particular emphasis on the development of responsibility and self-control through giving trust which increases as the offender makes progress.

Borstal training is not frequently used by the courts in dealing with homosexual offenders. In 1955, only 19 youths were sentenced to borstal training for indictable homosexual offences; during that year 236 youths between seventeen and twenty-one were convicted of such offences.

Detention in a Detention Centre

Detention centres are available, on a limited scale, for the treatment of persons between fourteen and twenty-one years of age. Treatment at these centres is disciplinary, and is of the

nature of a "short sharp shock" for those who are thought to need it. The sentence is normally one of three months. This method of treatment is to be used only where the court has considered every other method (except imprisonment) by which the offender might be dealt with and is of the opinion that none of those methods is appropriate. It is available only in those cases where the offence is one in respect of which a sentence of imprisonment could have been imposed if it had been committed by an adult, and may not be used where the offender has been previously sentenced to imprisonment or borstal training, nor may it be used in the case of an offender over seventeen who has previously been detained in a detention centre. In areas where detention centres are not available, the court may order an offender between fourteen and seventeen years of age to be detained for up to one month in a remand home.

Seven youths out of a total of 170 within the prescribed ages convicted during 1955 of indictable homosexual offences were ordered to be detained in one of these centres.

Committal to an Approved School

A court by which a person under seventeen years of age is found guilty of an offence punishable in the case of an adult by imprisonment may order him to be sent to an "approved school." Approved schools, which come under the general supervision of the Home Office, are run by boards of voluntary Managers or, in some cases, by local authorities. In them an attempt is made to provide such education and training, under residential conditions, as is most suitable for the needs of the individual concerned. Of the 225 boys under seventeen convicted during 1955 of indictable homosexual offences, 21 were committed to approved schools.

Committal to the Care of a Fit Person

As an alternative to committing the offender to an approved school, the court may commit him to the care of a "fit person," whether a relative or not, who is willing to undertake the care

of him. Where an order is made committing the offender to the care of a fit person, a probation order may also be made. A local authority may be a "fit person" for this purpose, and in practice most offenders committed to the care of a fit person are committed to the care of a local authority, which, through its Children's Committee, makes such arrangements as it considers best for the offender's welfare, either in one of its own homes or by boarding him out with foster parents. One boy convicted of a homosexual offence was committed to the care of a "fit person" in 1955.

Attendance at an Attendance Centre

Attendance centres are available, also on a limited scale, for the treatment of boys between twelve and seventeen years of age found guilty by a court of summary jurisdiction of an offence for which an adult could be imprisoned. The primary objects of this method of treatment are to indicate the authority of the law and to educate the boys in the proper use of leisure time. The court may order the boy to attend the centre for not more than twelve hours in the aggregate. Arrangements for his attendance must be such as to avoid interference, so far as practicable, with his school or working hours. The boy cannot be required to attend the centre on more than one occasion in any one day, or for more than three hours on any one occasion. This method of treatment cannot be used if the offender has been previously sentenced to imprisonment, borstal training or detention in a detention centre, or has been ordered to be sent to an approved school. Three boys found guilty during 1955 of indictable homosexual offences were ordered to attend one of these centres.

Persistent Offenders

The criminal law contains special provisions applicable to offenders whom normal methods of punishment have failed to deter, or normal methods of training to reform. These provisions divide persistent offenders into two categories. First, those who,

while they are clearly committed to a criminal career if not stopped in time, are yet not so far beyond hope of correction that a period of intensive and constructive training may not succeed in diverting them. Secondly, those who by their age, criminal history and character seem to be beyond this type of correction and can be restrained only by prolonged detention. For the first category, the law provides a form of sentence known as "corrective training"; for the second, a form of sentence called "preventive detention."

A sentence of corrective training for a term of not less than two nor more than four years may be imposed on a person not less than twenty-one years of age who is convicted on indictment of an offence punishable with imprisonment for a term of two years or more, if he has two or more previous convictions of such an offence since attaining the age of seventeen. Like borstal training, the aim of corrective training is the reformation of the offender and the prevention of crime by trying to stop those who have already engaged in crime on a number of occasions from developing into habitual criminals. The system aims at providing opportunities for the prisoners to exercise self-determination and responsibility. Corrective training is carried out in special prisons where there is more free association among the prisoners than is possible at an ordinary prison with a heterogeneous population, and selected assistant governors are appointed to take special responsibility for the individual training of groups of men. A prisoner sentenced to corrective training becomes eligible for release on conditional licence when he has served two-thirds of his sentence. Only one man convicted of a homosexual offence in 1955 was sentenced to corrective training.

Where the court is satisfied that this is expedient "for the protection of the public," a sentence of preventive detention for a term of not less than five nor more than fourteen years may be passed on a person not under thirty years of age who is convicted on indictment of an offence punishable with imprisonment for a term of two years or more, if that person (*a*) has three or more previous convictions of such an offence since attaining the age of seventeen, and (*b*) has served two or more sentences of imprisonment, corrective training or borstal train-

ing. A sentence of preventive detention is in its nature aimed at the detention of confirmed criminals for a prolonged period in conditions of maximum security and strong disciplinary control, but effort is also made to do what is possible to send these hardened offenders out of prison both able and willing to avoid relapsing into crime. Five men convicted of homosexual offences in 1955 were sentenced to preventive detention.

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Medical Reports

It has been urged on us that in every case in which a person is found guilty of a homosexual offence, the court by which he is found guilty should be required to obtain a report on his mental condition before deciding how to deal with him. The ground for this suggestion is the alleged frequency of psychiatric abnormality in the homosexual offender. The suggestion is that this should be a report to the court, as distinct from any reports which had been offered as evidence while the case was being tried, and that it should be furnished by a member of a panel of consultant psychiatrists nominated by some appropriate authority. The purpose of such a report would be to indicate to the court (*a*) whether the offender was suffering from any condition which would result in diminished responsibility; (*b*) whether the offender's condition could be modified by some form of treatment which the court had power to require him to undergo, and the prospects of success of such treatment; and (*c*) what part, if any, in that treatment, should be taken by medical men.

At the present time, it frequently happens that expert psychiatric advice is furnished to the court during the hearing of the case. In some cases, the offender will have been medically examined while on remand. In others, medical evidence is called by the defence. In some cases, both happen. Some courts attach considerable weight to such evidence; others, less. It is at present within the competence of the court, if it should so wish, to obtain a report between the finding of guilt and the passing of sentence. The proposal made to us is therefore, in effect, that

what is now within the discretion of the courts should become a universal requirement in relation to all persons found guilty of homosexual offences, and that a body of independent consultants should be available for the purpose.

The proposal presents several difficulties. First, it is not clear to us that homosexual offenders should be singled out, from all offenders, for this special procedure. We have already given our reasons for thinking that the commission of a homosexual offence is not *prima facie* evidence of disease in the offender or of a condition to which can be attributed any relevant diminution of responsibility. We have, at the same time, indicated that homosexual offences may sometimes be due in whole or in part to a recognisable disease; but this possibility attaches to any other crime, and there is no obvious reason for distinguishing, on this ground, between homosexual offences and other offences. If a report of the kind proposed is to be compulsorily required in the case of homosexual offenders, there seems to be no reason why the requirement should not be extended at least to other sexual offenders; for it could well be argued that the conduct of many persons guilty of heterosexual offences was as likely to be attributable to some disease as that of the homosexual offender. Indeed, outside the range of sexual offences altogether, there are other crimes which seem to need medical investigation no less.

Secondly, it is not clear that much would be gained by making obligatory what is at present within the discretion of the court. It is important to remember that the court's responsibility for imposing sentence is, within the limits prescribed by law, absolute. This responsibility cannot properly be abdicated; and while it is desirable that the courts should be as fully informed as possible about the mental and physical state of offenders brought before them, it would be contrary to the principles of criminal jurisprudence in this country if the courts were to hand over to doctors the essentially judicial duty of passing sentence on a person convicted of a crime. Further, if a court is not disposed to use its present discretionary power to call for a report, it is doubtful whether it would be greatly influenced by a report which it was compulsorily required to obtain. Our evidence

suggests that the courts are ready to call for medical reports where there are any grounds, either in the facts of the case or in the convicted person's previous history (which is always before the court) for supposing that a medical report would be helpful. A survey of homosexual offenders remanded to Brixton prison in 1946 showed that out of 66 prisoners, 34 had some recognisable abnormality. Of the 66, the magistrates had called for a report in 39 cases, and this number included 29 of the 34 mentally abnormal cases. The Cambridge survey indicates that in dealing with homosexual offenders other than those convicted of bye-law offences, the courts called for medical reports in approximately 20 per cent of cases, and in the case of indecent assaults the proportion was as high as 31.7 per cent. . . .

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In the light of the foregoing objections, we do not recommend that the court should be required to obtain a report on the mental condition of every person found guilty of a homosexual offence before deciding how to deal with him. Short of this, it has been suggested to us (and one of our members favours this suggestion) that the court should be required to obtain such a report before sentencing to imprisonment for the first time a person found guilty of a homosexual offence. We share the desire of our witnesses that no homosexual offender should be sent to prison if a recurrence of his offences can, consistently with the interests of justice, be prevented by other means. We are anxious also that the courts should be aware of any factors which might diminish the offender's responsibility for his offences. But even this modified proposal is open to many, if not most, of the objections we have mentioned. In particular, we see no reason why this requirement should be limited to persons convicted of homosexual offences. Further, it seems to us that it would be inappropriate to require a court to obtain a medical report just because it had it in mind to impose a particular form of punishment, and that the decision whether or not a medical report should be called for should rest on other grounds. It might, for example, be much more important that a report should be obtained in the case of a young first offender who

offered some hope of successful treatment though his offence was not serious enough to justify a prison sentence, than it would be in the case of a persistent offender whom other methods of treatment had failed to deter and who must necessarily be detained for the protection of others.

There is a case for requiring the courts to obtain a medical report in respect of every young person convicted for the first time of a homosexual offence. So far as treatment is likely to be effective, the probability of success is greater among young persons; indeed, this is one of the considerations that have weighed with us in leaving as a criminal offence homosexual behaviour by young persons under twenty-one. As we have said earlier, we do not contemplate that all such cases should come before the courts. If our recommendations are accepted, persons under twenty-one will be charged with homosexual offences only where their homosexual behaviour has been accompanied by conduct of a patently criminal or vicious nature, or where it is apparent that the offender would benefit from being placed on probation with a view either to treatment or to supervision of a more general kind. In these cases, it is likely that the conduct or environment of the offender will have been such as to suggest some maladjustment which a course of treatment opportunely undertaken might remedy, and in any event a talk with an experienced doctor may well be salutary. We accordingly recommend that a court by which a person under twenty-one is found guilty of a homosexual offence should be required by law, before passing sentence on that person, to obtain and consider a psychiatric report.

Others who ought always to be referred for examination are those who appear obviously disturbed or dull, those with unsatisfactory home backgrounds, and those whose first offence occurs late in life; in such cases, the existence of some mental abnormality which might account for the offence is a distinct probability. Courts should always be ready, too, to refer for examination those who seem genuinely to want help with their problem; as we explain later, psychotherapy often depends for its success on the co-operation of the patient, and this co-operation is likely to be forthcoming if the offender has a genuine desire to be helped.

Whenever circumstances such as those we have mentioned in the preceding paragraphs suggest that a medical examination is called for in the case of an offender who is committed on bail for trial at assizes or quarter sessions, we consider it desirable that the committing magistrates should make use of their power to require the offender to submit to medical examination while on bail. This examination should be carried out by a medical practitioner experienced in the diagnosis of mental disorders. No further examination would then be necessary if the superior court wished to consider the possibility of putting the offender on probation with a requirement that he submit to medical treatment with a view to the improvement of his mental condition.

Therapeutic Measures

We are aware that in this section of our report we are dealing with professional matters of a complex and technical kind. The following paragraphs set out the assessment which has been reached by the Committee as a whole of the evidence submitted to us on these matters. The nonmedical members of the Committee recognise that to some of their medical colleagues this assessment, expressed, as it must be, in non-technical language and from the layman's point of view, may well seem inadequate. . . .

We have earlier made it clear that although homosexual behaviour in some cases may result from disease, the evidence placed before us has not established to our satisfaction the proposition that homosexuality is a disease. This does not mean, however, that it is not susceptible to treatment. As we explain elsewhere, psychiatrists deal regularly with problems of personality which are not regarded as diseases. It seems to us that the academic question whether homosexuality is a disease is of much less importance than the practical question of the extent to which, and the ways in which, treatment can help those in whom the condition exists.

In this connection, it is important to consider what the objectives of this help should be. It seems to us that these may be one or more of the following. First, a change in the direction

of the sexual preference; secondly, a better adaptation to life in general; and thirdly, greater continence or self-control. Success in achieving one of these objectives may help in achieving another.

The first implies such an alteration of a man's sexual propensity that instead of being directed towards his own sex it will be directed towards the other sex. The notion of a complete re-orientation rests, however, on the conception of homosexuality and heterosexuality as absolute conditions, whereas the probability is, as we have explained earlier, that these conditions can co-exist in an individual, and the degree to which they co-exist in an individual can vary during different epochs in his or her life. We were struck by the fact that none of our medical witnesses were able, when we saw them, to provide any reference in medical literature to a complete change of this kind. Some of them have since sent us one or two examples in which such a change is claimed, but it is extremely difficult to assess the results in such cases. This difficulty is well illustrated by the case of an elderly married man who sought advice, at his wife's instigation, for impotence. It transpired that he had always been entirely homosexual by propensity. He had married in the hope of cure, but had achieved intercourse only with the aid of homosexual fantasies. To all outward appearances this would have seemed a striking example of change in sexual orientation, but it was clear that he had always been and remained a homosexual. Our evidence leads us to the conclusion that a total reorientation from complete homosexuality to complete heterosexuality is very unlikely indeed. At the same time, there is evidence that the homosexual who is of a Kinsey rating lower than 5 or 6 provides opportunity for treatment with a better prospect of success in this sense. It should be noted, however, that behaviour does not necessarily correspond with propensity, so that a shift along the homosexual-heterosexual continuum would not necessarily be accompanied by a change in the form or extent of sexual activity.

Short of any alteration in the direction of the sexual urge, however, treatment may successfully lead to a better adaptation to life in general. A homosexual, like any other person who suffers from maladjustment to society, may be regarded as success-

fully treated if he is brought to a more nearly complete adjustment with the society in which he lives. This can happen without any radical change in his propensity itself. It can happen by his being made more fully aware of his condition, and by processes which are directed not to changing it, but towards his fuller understanding of it and of the problems which it raises for him in relation to society. The object of the treatment is to relieve mental stress by producing a better adjustment. It is perhaps worth adding that for this reason there may be good grounds, from the medical point of view, for not attempting any fundamental reorientation of the sexual propensity of a homosexual who is already well adjusted and is a useful member of society.

Treatment may have yet another purpose. It may be directed simply towards making the man more discreet or continent in his behaviour, without attempting any other change in his nature. This is not to be despised as an objective, for if it is successful such treatment will reduce the number of homosexual offences and offenders. It is here that the use of oestrogens, to which we refer later, has its place.

From whichever of the foregoing points of view it may be regarded, treatment itself will vary through a wide range, if only to match the diversity of individual personalities. It is important to remember that "treatment" need not necessarily, or even often, imply any active steps to be taken by a physician or by a psychiatrist. Often it will be desirable that various methods of treatment should be applied simultaneously, bringing into service a combination of many helpers. Treatment will not always be conducted under the direct supervision of a doctor, though the responsibility for the original advice will be his. Nor will it always involve psychotherapy. As often as not, it will be a matter of guiding the patient to help himself, not only by personal influence but also by helping to manipulate environmental factors. And in this work there is a place for the clergyman, the psychiatric social worker, the probation officer and, it may be added, the adjusted homosexual, as well as for the doctor. . . .

There are many obstacles to success in psychotherapeutic treatment. These include lack of co-operation from the patient and a low level of intelligence, and many homosexual offenders

show one or both of these features. Some of them do not wish to be changed, either in propensity or behaviour, if only because they are afraid of losing, without any sure prospect of anything to take its place, the one form of sexual satisfaction which they know; others are more concerned with escaping further criminal charges than with anything else; others are of a general level of intelligence so low as to prevent the establishing of the proper relationship between patient and psychiatrist. Out of 1,065 men in prison in 1955 for homosexual offences, only 158 (15 per cent) were regarded by the prison medical officers as possible subjects for treatment, and only 65 (6 per cent) were ultimately accepted for treatment at the psychiatric units at Wakefield and Wormwood Scrubs. Of the 907 regarded as unsuitable for treatment, 245 (27 per cent) evinced no anxiety or real wish for treatment, and no less than 355 (42 per cent) were found to be unsuitable on account of their age, inadaptability or inadequate character or intelligence. On the basis of these figures, it is not possible to expect dramatic results from widespread treatment of homosexual offenders by way of psychotherapy. To say this is not to belittle the work which has been, and is being, done by individual or group therapy, and it is estimated that of those selected for such treatment at the prisons during 1954 nearly one-half benefited therefrom.

From the medical, as distinct from the penal, point of view, there is much to be said for a wider use of probation with a requirement that the offender submits to medical treatment with a view to the improvement of his mental condition. The Oxford survey indicates that only 68 persons convicted of homosexual offences were put on probation with such a requirement in 1953. This is out of a total of approximately 2,200 convictions. It is true that this method of treatment is of limited application; it is appropriate only where a psychiatrist is satisfied that the offender's mental condition is such as requires and may be susceptible to treatment, and these desiderata are not met in the majority of cases. Moreover, this procedure can be used only where the court is satisfied that arrangements can be made for the necessary treatment. This may be either at out-patient clinics—and this may well be the appropriate place for most cases—

or in mental hospitals. In any case, this method can be used only with the offender's consent. And there is the overriding consideration that it must be for the court to decide, in each case, whether or not such a procedure is compatible with the protection of other persons from a man who has been convicted of a homosexual offence.

In this connection, the power of the courts to include in the probation order a requirement that the offender should submit to treatment as a voluntary patient in a mental hospital does not always ensure that other persons are adequately protected. Any person received into a mental hospital as a voluntary patient is entitled to leave there on giving seventy-two hours' written notice of his intention to do so. It is true that a probationer who voluntarily discharges himself from a mental hospital which he has entered as a voluntary patient in pursuance of a probation order breaches the conditions attached to the order, and becomes liable, as explained earlier, to be dealt with for the offence in respect of which he was placed on probation. In practice, however, the mental hospital authorities deprecate prosecutions for breaches of probation orders in cases such as this, since they tend to give rise to the impression that persons not certifiably of unsound mind can be detained in mental hospitals by the power of the law against their own will. Out of 42 cases covered by the Oxford survey, no fewer than 10 probationers in whose cases a requirement to submit to medical treatment was attached to the probation order, discharged themselves from treatment against medical advice, and none of these 10 was brought before the court for breach of probation when this breach consisted only of nonattendance or self-discharge. Considerations such as this doubtless weigh with the courts, and a reluctance to use this procedure is understandable in cases where the conduct of the offender has been such as to suggest that the protection of the public must be a decisive factor in determining how to dispose of him.

Nevertheless, the figures we have quoted suggest that there is room for a more extensive resort to probation with a condition of medical treatment. In saying this, we are not moved only by consideration for the offender. A prison sentence can, in

many cases, detrimentally affect any prospect of successful treatment, so that the offender remains in a state of mind predisposed to the repetition of his offence. If, by the use of other methods, the offender can be successfully brought to a state of better adjustment to society in which he is less disposed to repeat his offence, then clearly society gains. The Cambridge survey, however, shows that the proportion of homosexual offenders subsequently reconvicted was almost the same in the case of offenders who had been placed on probation (29.8 per cent) as it was in the case of offenders who had been sent to prison (30.1 per cent).

Prison as a Form of Treatment

The problem of dealing with the homosexual offender cannot be solved merely by substituting psychiatric or other forms of treatment for punitive methods. There is the consideration that the deterrent and preventive aspects of punishment are important, whether the question is considered merely from the point of view of what is best for the offender or from the wider view of what is best for the protection of society. The problem must be looked upon as one in which neither the considerations of therapeutic treatment nor the considerations of punishment can be disregarded. There must be effective methods of punishment and custody for the protection of the public, but the application of these methods should permit and encourage the use of therapeutic treatment in all suitable cases. In any case, the objections to imprisonment as a form of treatment for homosexual offenders can be over-emphasized. There are some men for whom a prison sentence is in itself a salutary shock, as an expression of society's disapproval of their behaviour; and although there doubtless are some homosexual offenders—as there are some burglars or embezzlers—to whom prison does more harm than good, yet there undeniably are others to whom it teaches an important lesson.

The fact must be faced that there will always be some men whom it is necessary to submit to some form of compulsory detention for the protection of others. Of 1,022 men in prison for homosexual offences in 1954, no fewer than 590 (58 per cent) were involved in offences against boys aged 15 or under.

Two hundred thirty-six of these had previous convictions for homosexual offences. Further, of the 1,022 prisoners, 211 (21.6 per cent) had four or more previous convictions of one kind or another recorded against them, and of these 102 (10 per cent) had seven or more. These previous convictions were not necessarily related to homosexual offences, but there is a strong probability that most of them were; the Cambridge survey indicates that two-thirds of the sexual recidivists under review had previous convictions for sexual offences only, and that generally there was a similarity between the repeated offences.

The Cambridge survey also indicates that the proportion of offenders who have been sent to institutions for mental defectives in recent years is much higher among sexual offenders than among offenders generally, and there are other indications that sexual offences, especially where they are repeated, are frequently committed either by men who are too dull to appreciate the real nature or seriousness of their conduct or by men who seem quite incapable of controlling their urges. In such cases it is futile to think of imprisonment in terms of deterrence and reform. At the same time such men must obviously be submitted to some form of compulsory detention for the protection of others.

Where they are certifiable as persons of unsound mind or as mental defectives, what to do with them presents no special problem since they can be detained in the appropriate institutions. Where, however, they fall into neither of these categories, the only way in which they can be compulsorily detained is through the normal process of the criminal law, and it is difficult to see how it could be otherwise. If the detention is not to be related to conviction of a criminal offence, it would be necessary to relate it in some way to the offender's mental state, and this would be tantamount to introducing a conception of mental disorder not recognised by the laws relating to mental illness and mental defect. The question whether the definitions of mental illness and mental defect are satisfactory in the light of present knowledge has been under consideration by the Royal Commission on Mental Illness and Mental Deficiency. If the Royal Commission's findings are accepted, they will result in a new definition of mental illness or mental defect which would

embrace a certain number of homosexual offenders and provide for their compulsory detention otherwise than in prison; but we do not think that it would be practicable to introduce, in order to deal with the homosexual offender, a conception of mental disorder not recognised by the laws relating to mental illness and mental defect in general, and it follows that offenders whose detention is imperative and who cannot be detained under those laws must continue for the time being to be detained under the provisions of the criminal law.

But if such persons are not to be detained in prison, where are they to be detained? Some of our witnesses have advocated the establishing of a special institution, part prison and part mental hospital, for this purpose.

We see serious objections to this proposal. It is open to many of the criticisms which are brought in this connection against prisons; indeed, to some of them it would be even more vulnerable than prisons are, since a community composed exclusively of men convicted of homosexual offences is likely to be an even more discouraging background for treatment and cure, in any sense of the word, than an ordinary prison. No doubt the presence of homosexuals in prison can be a nuisance, and is liable to have an unsettling effect on other prisoners, and from this point of view there might be some advantage in segregating them. But we are not convinced that homosexual offenders either deserve or need this segregation more than do offenders of other kinds. Moreover, it would not be appropriate to assign an offender to a special institution of the kind proposed merely on the basis that he had committed a homosexual offence. To do so would be to ignore two facts; first, that men who are not predominantly homosexual by propensity sometimes lend themselves to homosexual practices from a variety of motives, and secondly, that there are at any given time in prison a number of homosexuals who are there because they have committed offences other than homosexual offences.

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In brief, therefore, prison will always have its place as a method of dealing with the homosexual offender, whether as a salutary deterrent for some offenders, or as a place of detention

for those who in the last resort must be put away for the protection of the community. Offenders in the latter category will occasionally qualify for preventive detention and be dealt with accordingly. But there are others who have committed many offences which have escaped detection, with the result that they do not qualify for preventive detention, though their conduct clearly indicates that they need to be put away for a considerable time for the protection of others. Many of these offenders are, as we have said earlier, of low mentality and unable to appreciate the seriousness of their conduct. Since, however, the primary consideration in such cases is the protection of the public and not the punishment, deterrence or reform of the offender, it seems equitable that the offender should be subject to a regime less rigorous than that imposed on the general run of prisoners, and more akin to that which prevails in institutions for mental defectives. We have already said that a special institution for homosexual offenders would be undesirable; but it is not only among homosexual offenders that the dullard recidivist is found. A substantial proportion of the prison population consists of men with long criminal records, and we are told that about one-eighth of the prison population consists of non-certifiable dullards. It seems likely, therefore, that there are sufficient dullard recidivists among the prison population to justify their being treated separately and subjected to a régime which, while it would afford the necessary protection of the public, would not entail a code of discipline more rigorous than this and the requirements of orderly institutional government demand. If it were possible to set aside an establishment for use as a "maximum security, minimum discipline" establishment for the reception of mentally sub-normal recidivists who are not certifiable or treatable, this would take its quota of homosexual offenders, but we recognise that this is a question of general prison administration and not one peculiar to the treatment of homosexual offenders.

Oestrogens

While, as we have said earlier, we see little likelihood of any "cure" of homosexuality in the sense of changing the nature

and object of a man's sexual desires, it is possible in some cases to diminish the strength of these desires by physical means. The strength of a man's desires may well be an important factor in his behaviour, and if the strength of the desire can be diminished it is not unreasonable to suppose that the disposition to commit offences will be correspondingly lessened. In this connection we have given some consideration to the possible use of hormones (oestrogens), which affect the strength, though not the direction, of the sexual desire or libido, in the treatment of convicted homosexual offenders. At present, the use of oestrogens is forbidden in prisons in England and Wales (though not, we understand, in Scotland) even where the prisoner himself expresses a desire for oestrogen treatment.

The reluctance of the authorities to permit the indiscriminate administration of oestrogens for this purpose is understandable. Certainly there can be no question of departing, in respect of this form of treatment, from the general law that the consent of a patient must be given before medical treatment is administered. Nevertheless, where a prisoner himself clearly wishes to undergo oestrogen treatment, which may indeed have a beneficial effect, we think it wrong that he should not be afforded the opportunity.

We have made careful enquiry about two particular points in connection with oestrogen treatment: (i) the possibility of ill-effects of the treatment, and (ii) the permanence or transience of its effect upon sexual desire. On the former point we have been reassured by the evidence of doctors who have used this treatment in practice outside prisons. They were able to tell us that they had encountered no definite case of lasting impairment of general health. On the second point, the answer was the one that might have been expected, that the permanence of the cure depends on the regularity, continuity and persistence of the patient's obedience to his doctor's instructions. If he abandons the treatment as soon as he finds it to be temporarily effective, or as soon as he is freed from the threat of a criminal charge, the results are, naturally, transitory. If he perseveres with it, the relief from desire will persist. There are certainly cases in which this form of treatment is helpful to a patient who is undergoing psychiatric treatment. We have therefore come to the conclu-

sion that the ban on oestrogen treatment which is at present in force in prisons in England and Wales should be removed. We accordingly recommend that where a prisoner desires to have oestrogen treatment, he should, if the prison medical officer considers that this would be beneficial either as treatment *per se* or as an element in other forms of treatment, be permitted to do so.

Castration

We are aware that in some countries castration is practised, with the consent of the offender. We understand, however, that there is no guarantee that this operation removes either the desires or the ability to fulfil them; it would clearly have no effect, in the latter respect, in the case of the man who is addicted to the passive role of acts of buggery, or to other forms of homosexual behaviour not involving the use of his own genitalia. For many reasons, we do not believe that this operation would commend itself in this country.

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PREVENTIVE MEASURES AND RESEARCH

Our terms of reference are confined, strictly speaking, to the criminal law and the treatment of persons convicted of offences against that law. The law is, however, concerned with the prevention of crime no less than with its detection and punishment, and we have felt that it would not be proper to conclude our enquiry without giving some consideration to possible preventive measures.

Clearly, one of the most effective ways of reducing crime would be to eliminate its causes, if these could be identified and dealt with. Most homosexual behaviour is no doubt due to the existence of the homosexual propensity, in a greater or less degree, in one or both of the participants. As we have said earlier, various hypotheses have been put before us about the nature and origins of this propensity. But there is still a great deal of work to be done before any of the proffered explanations can

be regarded as established, or any inferences from them accepted as wholly reliable. We have no doubt that properly co-ordinated research into the aetiology of homosexuality would have profitable results.

Secondly, there is much to be learnt about the various methods of treatment, their suitability to various kinds of patients, their varying chances of success, and the criteria by which that success is to be judged. Whether or not it is possible to establish the nature or origins of homosexuality, it is evident that psychiatric treatment has beneficial results in some cases. As we have said elsewhere, this treatment does not always involve psychotherapy, neither does it necessarily lead to any discernible change in the direction of sexual preference. But reliable information showing what type of person was likely to benefit, and in what way, from a particular form of treatment, would clearly be of great value as a preventive measure.

We therefore recommend that the appropriate body or bodies be invited to propose a programme of research into the aetiology of homosexuality and the effects of various forms of treatment. The actual carrying out of such research would necessarily be in the hands of those directly concerned with the treatment of the homosexual, since it is only from observations carried out over long periods by doctors treating individual cases that results can be established. These should include both prison doctors and psychiatrists working outside the prisons. The organisation of the research suggests the establishment, on the pattern familiar to the Medical Research Council, of a research unit which would include, for example, psychiatrists, geneticists, endocrinologists, psychologists, criminologists and statisticians. This unit could well be based on some establishment (for example, a University Department) experienced in socio-medical research and having access to prisons, psychiatric clinics and other centres where homosexuals are undergoing treatment. We hope that such work will form part of a wider study of forensic psychiatry, not confined to homosexuality, for which this country has fewer facilities than some others. Research of this kind would also increase the two-way flow between the prison medical service and outside psychiatrists, which, as we have said earlier, we consider to be desirable.

Researches of the kind we have proposed will necessarily take a long time. We have, however, had suggested to us several other measures which might be taken to diminish the incidence of homosexual offences. Some of them are general and wide in their application, such as the desirability of a healthy home background; medical guidance of parents and children; sensible education in matters of sex, not only for children but for teachers, youth leaders and those who advise students. Particularly, it is urged that medical students should be given more information about homosexuality in their courses, and that clergy and probation officers should be better equipped to deal with the problems about which they are often consulted.

The Press might do much towards the education of public opinion, by ensuring that reports of court cases concerning homosexual offences were treated in the same way as that in which matrimonial cases have been treated for some years past; for there is little doubt that the influence of detailed reports of such cases is considerable and almost wholly bad. We have, incidentally, encountered several cases in which men have got into touch with homosexual offenders whose convictions were reported in the Press, with the result that further homosexual offences were committed.

It has been suggested, especially, that more care should be taken by those responsible for the appointment of teachers, youth leaders and others in similar positions of trust, to ensure that men known to be, or suspected of being, of homosexual tendencies, should be debarred from such employment. In regard to teachers, we are aware, and approve, of the steps taken by the Ministry of Education and the Scottish Education Department to ensure that men guilty of homosexual offences are not allowed to continue in the teaching profession. But it appears that headmasters of private schools are sometimes lax in taking up references in respect of teachers whom they propose to employ, and it occasionally happens that a teacher who has been dismissed, or asked to resign, from one post because of misconduct with boys under his charge subsequently finds employment in another school, where his misconduct is repeated. As far as youth organisations are concerned, these vary so much in their nature and structure that it is not possible to

devise watertight measures. But we hope that the Criminal Record Office would be ready to supply, to responsible officers of the Headquarters of recognised youth organisations, information about the convictions of persons who seek positions of trust in those organisations.

On a point of detail, it has been put to us that the number of lavatory offences would be substantially reduced if all public lavatories were well lighted; but the facts do not seem to support this suggestion, since some of the lavatories at which most of the offences take place are particularly well lit. Our own opinion is that if uniformed police officers in the course of their duties on the beat keep a vigilant eye on public lavatories, that is more likely to discourage potential offenders than anything else. We have been informed that in some places in Scotland there are in force bye-laws making it an offence to stay for more than a certain time in a public lavatory; and it is for consideration whether the wider adoption of some similar bye-law might further discourage the improper use of such places.

The preventive measures we have mentioned above are not, in our view, such as to call for legislation, but we put them forward for consideration by the appropriate bodies.

INCEST

S. Kirson Weinberg

The literature on incest, that strongest of all taboos, is vast. The subject has fascinated anthropologists, who have utilized it to delve into the mind of primitive man and to study theories of endogamy and exogamy, and the relationship of religion to fear, ritual, and superstition. Sophocles gave us Oedipus, whose misery and sufferings were unmatched when he learned that the man he had slain was his father, and the woman he had taken to his bed was his mother. And Sigmund Freud placed this unconscious incestuous drive, particularly of son for mother, in the center of the new vision of the human condition that he brought forth.

Few people, however, have studied incest in modern societies. Who violate the prohibition, from what social classes do they come, are they neurotic and psychotic before the violation has taken place, are they guilt-ridden thereafter?

Probably the most thorough such study was made by S. Kirson Weinberg, professor of sociology at Roosevelt University in Chicago, and a man who combines psychological insights with sociological training, having written on personality disorders, mental hospitals, and social problems.

Weinberg faces one difficulty in his approach to the data, however; for he concedes that we know almost nothing about participants in incestuous relationships except those who fall into the hands of the law. The sample thus becomes a biased one, with a

Source: S. Kirson Weinberg, *Incest Behavior* (New York: Citadel Press, 1955). Copyright © 1955 by the Citadel Press. Reprinted by permission of the publisher.

greater likelihood that a lower-class violator will be apprehended than a middle- or upper-class one; and a greater possibility that two willing participants, both adults and mutually consenting, will remain out of the sample, than is the case when one of the parties is rather reluctant. Some willing participants are arrested, as when a third member of the family complains, but who can say whether this occurs with sufficient frequency to make the sample representative of all incest violators, and not just those whose infractions come to the attention of authorities?

There were 203 cases subject to Weinberg's analysis and study, by far the most thorough and complete study in modern sociology of violators of the universal family taboo. Three chapters of his study are given below, with omission only of numerous brief case histories which the author used to illuminate his remarks.

Most scholars who have looked at incest have addressed themselves to the question of why there is a taboo: that is, why intra-familial sexual acts *do not* take place. Weinberg has asked another question: why these sexual acts *do* take place. The selections below are a part of Weinberg's excellent contribution toward an answer to that question.



SOCIAL CHARACTERISTICS OF THE INCEST PARTICIPANTS

What persons resort to incest behavior? The subjects of this study, except four, came to the attention of authorities in the State of Illinois and hence were detected incest offenders. These incest participants had varying social backgrounds. They were urban and rural, white and Negro, native and foreign born, convicted and discharged persons; they were of varied ages, of diverse religions and of varied educational and occupational levels. The social characteristics of the incest participants give a relevant background for an analysis of the participants' attitudes and social relationships.

Types of Incest

Four incest combinations comprised these 203 cases: father-daughter, 159 cases; brother-sister, 37 cases; mother-son, 2 cases;

combined father-daughter and brother-sister incest, 5 cases. This frequency difference in type of incest perhaps indicates the respective proportions of detected types of incest in our culture. Though brother-sister and mother-son incest combined might occur, this type of incest has not come to official attention.

Some families had more than one daughter incest participant. The father did not always limit himself to one daughter when other daughters were sexually accessible. In seven instances the father had relations with three daughters. Some families had more than one sister or brother incest coparticipants. Two sisters, for example, may have had relations with one, two, or three brothers.

How the Incest Affairs Were Detected

In father-daughter incest, the daughters were the most frequent informants. Many daughters told their mothers or siblings and some informed cousins, neighbors, or personal friends; those victims who were isolated on farms or who were watched very closely by the father wrote for help to relatives or to friends. They were then usually advised by these persons how to end the affair; some relatives went with the daughters to the authorities; other relatives had the father arrested themselves. Some affairs were detected by the daughters' pregnancy when the daughters under duress accused the fathers. Some cases came to light after a family quarrel: police were summoned and the daughters confessed the incest relationship. Some daughters who were arrested for delinquency or for plain vagrancy after leaving home divulged the incest affair.

The brother participants were detected in other ways than the fathers were. Those sisters who cooperated in the incest affair initially did not divulge it. But many sisters brought the affair to light after pregnancy, childbirth, or arrest. In two cases, the sibling participants were caught directly by the police.

In one of the mother-son cases, the husband reported the affair. In the other case, the mother complained to the police after she frustrated her son's attempt to rape her.

The Complainants

The complainants did not necessarily detect the incest offense; they reported it to the authorities. Sisters reported brothers more frequently than daughters reported fathers. The sisters were not afraid of the brothers while the daughters were afraid of the fathers. Some sisters who implicated the brothers after an arrest (for some other cause) did so "to save their own skins." Those siblings who were involved in other sex delinquencies also "drew the brothers in." Since the daughters were frightened by the fathers, they were often accompanied to the police by the mother, or relatives, or friends.

Disposition

Not all incest offenders who were reported to the authorities were convicted. The fathers were convicted more frequently—49.4 per cent—than the brothers—25.6 per cent. Although the male participants were the only ones tried, five daughters and sisters were sent to institutions for mental defectives. Frequently, female participants became witnesses or complainants; their testimony was crucial in providing evidence against those male participants who did not plead guilty. Some daughters and sisters, however, refused to testify against their fathers or brothers.

Male offenders tried several ways to escape conviction. Some appealed to mothers and to female participants. Others asked relatives or friends to dissuade the family members from testifying against them. Some mothers, who were very frightened by the severe penalties facing the father-offenders, relented and refused to prosecute, especially when they depended upon the father or brother participants for economic support. Although other mothers felt the penalties were too harsh, they either separated from the fathers or banished them from the home. Some mothers meted out similar punishment to the sons.

The incest offenders were more readily convicted in rural than in urban communities. Social pressure in a small town and village often impelled the participants to plead guilty. In large

urban centers, the neighbors were frequently unaware that the incest affair occurred. When they found out, they seemed to react less intensely.

Race, Nativity and Nationality

Though far fewer Negro cases (22) than white cases (181) were reported, the Negroes had a larger ratio when their number was compared with the total population of the state. In proportion to the total population, the native whites had fewer incest cases while the foreign-born whites and Negroes had more incest cases than their proportions in the total population. Of the foreign-born incest participants, the Polish had the largest and the Italians the next largest ratio of incest offenders. The Polish seemed to have acquired some tolerance for this form of behavior from the peasant communities in Poland and from the familial disorganization which resulted from resettlement in American urban communities. The Italians, it appears, also came from peasant communities where this form of activity may have been tolerated in some measure. Further, in the strong patriarchal Italian family the father had an autocratic control over his wife and children.

Of the 203 cases, the Bohemian, Mexican, and Scotch had a higher percentage of incest cases than their respective percentages of the total population of the city, while the Irish, German, Russian and other nationality groups had less than their proportion of the total population. Among the native born, Scotch, German, and Irish were preponderant in rural areas, while the Polish, Italian, and German groups were the main nationality groups in the metropolis. The nationality difference between the rural and urban groups reflected the ethnic composition of the particular areas.

Age

The average age of the fathers was 43.5 years. The youngest father participant was 31, while the oldest was nearly 65. Negroes on the average were younger—40.6 years—than the

whites—44.1 years. The urban participants were slightly younger—43.0 years—than the rural participants—45.9 years.

The father initiated incest at a period of life when his usefulness to industry had declined, when his wife's attraction had diminished, when extrafamilial women were less accessible, and when his daughters had become biologically mature.

The daughters averaged 15.3 years. Carney Landis has characterized the girl, 15 to 17 years of age in our culture, as one who has gone out with boys fairly frequently, but has not had complete sex experience. She has engaged in mild petting, but is still tied to her family emotionally. Her sex information is fairly adequate, but she still feels constrained in discussing such matters with her family, is definitely interested in boys, more as dates than seriously, has fairly strong attachments to her family and to her friends of either sex.

This characterization applies to many daughter participants at the beginning of the incest affair, but some had not reached this level of personality development.

The brothers averaged about 24 years of age, while the sisters were on the average 19.3 years. The youngest brother was 12 and the oldest, 44. The youngest sister was 11 and the oldest was 37.

In relating the ages of fathers and daughters, the modal interval between the two was forty to forty-five years for the fathers, and fifteen to twenty years for the daughters.

Between the siblings, three types of paired age relations existed. One type of pair included siblings in the adolescent or postadolescent stage. Another type of pair consisted of siblings past twenty-five. A third category of pairs consisted of adult brothers past twenty-five and juvenile or adolescent sisters. The collective promiscuity type of incest, in which more than one brother and sister participated, prevailed mainly among juvenile and adolescent siblings, who were detected most frequently.

Economic Level

Eight participants (5.9 per cent) were in the comfortable socioeconomic level, and 19.2 per cent were in the middle socioeconomic levels. (The economic status of the brothers

was determined by their incomes and/or by the occupation and income of the father.) Since 55.0 per cent of the participants were in the lower socioeconomic level, this may mean that participants in these levels either were detected more frequently than participants in higher economic strata, or that incest behavior is more prevalent in the lower socioeconomic groups. Sonden, Hentig, Riemer and Ebner found that incest was detected more frequently in the lower than in the middle socioeconomic strata.

Most fathers and brothers were unskilled; manual workers. Many participants (36.1 per cent) were skilled or semiskilled workers. Forty-three per cent were unemployed at the time of the incest. None of the offenders were in the professional or managerial category. Some skilled and semiskilled workers gravitated to unskilled occupations at the time of the economic depression, or became casual laborers floating from job to job.¹

Education

The father participants averaged about 5 years of formal schooling. Fourteen per cent of the fathers had no formal education and were illiterate; 81.7 per cent had between one and eight years of schooling; 4.3 per cent attended high school; none

¹ Riemer, Sonden, Hentig, and Ebner have shown that the detected incest offenders come from the lower socioeconomic strata. Riemer, however, has indicated that the preponderant proportion of his subjects were unskilled agricultural workers. Hentig has indicated that in his study the overwhelming proportion were unskilled industrial workers. This differential was a result of the different regions studied. At any rate, the detected incest participants come from the lower strata, whether urban or rural. The convicted incest participants of Canada, during the years 1907–1920, were of somewhat similar occupational composition: in agriculture—mainly farm hands—79; laborers, 46; industrial workers, 19; commercial employees, 15; domestics, 7; and professional, 2. See Canada: "Report of the Minister of Agriculture," *Criminal Statistics (1907–1920)* (Ottawa: Printer to the King's Most Excellent Majesty, 1935). See Svend Riemer, "Incest als Sociologic Problem," *Monatschrift für Kriminal Psychologie*, XXVII (February, 1936), pp. 86–96; and "A Research Note on Incest," *American Journal of Sociology*, XL (1940), pp. 566–75; also T. Sonden, "Die Inzestverbrechen in Schweden und ihre Ursachen," *Acta Psychiatrica*, XII (1938); also Hans von Hentig and Theodore Viernstein, *Untersuchungen Über den Inzest* (Heidelberg: Carl Winters, 1925); and Alfred Ebner, "Die Blutschande," *Kriminalistische Abhandlungen*, XI (1937), pp. 68–70.

attended college. The brother participants had slightly more schooling than the fathers, about six years of formal education. One was illiterate, and two had two years of high school training. None of the brothers went beyond two years of high school.

The daughter participants had 7.48 years of schooling. Four mentally deficient daughter participants remained in the first grade indefinitely, while one daughter participant, a Negro, attained the first year of college. The modal group (69.1 per cent) were in the fifth through the eighth grade interval. The sisters, though older than the daughters on the average, had 6.4 years of schooling. Only five sister participants (13.5 per cent) went beyond eighth grade.

In the two mother-son cases, both sons had not completed elementary school, while the mothers had not gone past the fifth grade.

Intelligence

As judged from official records, most fathers—64.3 per cent—were dull normal or below. Twenty-six (26.5 per cent) had average intelligence or above, and of this group, six fathers (9.2 per cent) had superior intelligence. Intelligence indirectly influenced social maladjustment, which, in turn, affected the personal organization of some father participants. Although many father participants were of dull normal intelligence level or below, we cannot infer that mental deficiency definitely influenced incest behavior, because so many mental defectives do not commit incest, and a substantial proportion of the offenders had average intelligence or higher.²

The brothers were more evenly distributed in their intelli-

² The sex offender is generally in the lowest intelligence category as compared with other convict groups. That is, "persons convicted of sex crimes are more likely to be feeble-minded than those convicted of other crimes." E. H. Sutherland, "Mental Deficiency and Crime," in Kimball Young (Ed.), *Social Attitudes* (New York: Holt, 1931), pp. 357-74. Schwab found that 50 per cent of the father incest participants and 33 per cent of the daughter participants showed great deficiency in their psychic makeup. George Schwab, "The Biology of Incest," *Monatschrift für Kriminalbiologie und Strafrechtsreform*, Vol. VI.

gence ratings than were the fathers. Fifty per cent were dull normal or below. Three brothers of superior intelligence were not so emotionally disturbed as the six father participants who had superior intelligence. Their incest relationship with the sister was transient and frequently occurred at her invitation or cooperation.

Although the data were insufficient to characterize the daughter and sister participants as a group, intelligence level of the female participants affected the incest affair. The incest relationship with mentally defective females was more sustained than with the females of higher intelligence. The feeble-minded daughters were more dependent upon and acquiescent to the fathers. They found adjustment on the outside difficult, and retreated into the family. Those daughters who had a higher intelligence level were well adjusted outside the family, frequently resented and resisted the relationship with the father. The sisters, though slightly more difficult to characterize than the daughters, behaved in a somewhat similar way. The mentally defective sisters tended to yield to the brothers. The sisters who were of superior intelligence, and who were sexually aggressive, sometimes seduced the brothers. The intelligence factor seemed to vary with the particular participant. Seemingly, mental deficiency hindered occupational and social adjustment in the outer community, and forced some female participants back to the family for their social outlets.

Personalities of the Male Participants by Official Diagnoses

The official diagnoses of the personalities of the initiating participants (e.g., fathers and brothers) were judged from two perspectives. Before incarceration, they were diagnosed for their personal responsibility of the offense, e.g., psychosis and feeble-mindedness. During incarceration, they were classified by such overlapping categories as: (1) egocentric, (2) inadequate, (3) emotionally unstable, (4) adequate, (5) psychopathic personality, and (6) sexual psychopath. The psychotics alone were given more extended analyses. Consequently, the analyses of the personalities of the nonpsychotic participants are incomplete. For

example, the classification "inadequate" denotes one who is economically and socially maladjusted. Since the majority of the incest participants come from the lower strata, many were classified as "inadequate."

Because the most appropriate classification pertains to convicted and incarcerated participants only, the discharged or non-convicted participants were not included in the analyses.

In addition to the participants who were psychotic before imprisonment, eleven participants became psychotic during incarceration. Five were paranoid, one catatonic, two alcoholic, one senile, and two had unclassified psychoses.

Some participants who were categorized as "inadequate" appeared self-centered and suspicious and behaved like paranoids. They arbitrarily quit jobs and quarreled with employers, friends, neighbors, and family members.

For example, one father participant, who was irregularly employed in a coal yard, could not keep a job because he felt that his employers worked him too hard and upset him by "ordering him around." Because of his belligerent attitudes, he was repeatedly fired from many jobs after an argument, or quit in defiance.

They suspected their wives and the daughter (or sister) incest participants of treachery. They accused them of having secret affairs when they saw them talking to men. When their wives were sexually unresponsive they charged them with infidelity. Some others punished their daughters for talking to boys and continually checked their social activities.

Marital Status

At the start of the incest affair, 40.3 per cent of the fathers were widowed or were separated from their wives. The fathers who were widowed or separated were admittedly more sexually deprived than the other male offenders, but they were also encouraged to initiate incest because of the wife's absence.

Only four daughter participants were married. Two other daughters, both Negro, had illegitimate children. One daughter, who was pregnant, married at her father's order so that he could

evade prosecution, but her husband never had sex relations with her. Another white daughter, who had been a prostitute, was divorced from a Filipino. A third daughter, who was very promiscuous, had sex relations with her father and brothers. Even after she married, she continued to have sex relations with her father. A fourth daughter, who married against her father's will, was compelled by her father to separate from her husband so that he, the father, could continue the incest affair. Of the siblings, ten brothers and four sisters were married, but in three of these cases, the brother and sister were married to each other.

Size of Family

The father participants had on the average between five and six (5.2) children. The native white group had an average of 4.91 children. The foreign-born group had the largest average number of progeny (5.45), while the Negro group had the smallest average (3.90). The relative sizes of these incest families is similar to their respective differences for the population in the area. The median size family was somewhat over three persons (3.60). The native white group had 3.52 persons in the family. The foreign-born group had the largest families (3.97 average), while the Negroes had the smallest families (3.31 average).³

Birth Order of Daughter Participants

The eldest daughters were the most frequent (64.36 per cent) incest partners of the fathers. Of the forty-four girls who were second in female birth order, nearly twenty were involved in incest affairs in which the fathers seduced two daughters. The seven cases with three daughter participants accounted in part for the daughters third in birth order. Those daughters not first in birth order could also be accounted for in the following ways: (1) Some eldest daughters resisted the fathers. The fathers then proceeded to the next in age. (2) Some daughters who

³ E. Franklin Frazier, *The Negro Family in the United States* (Chicago: University of Chicago Press, 1939), p. 623.

were not first in birth order were the eldest daughters in the home at the time the fathers made sexual advances; at that time the eldest daughters were married or out of the home. Consequently, the fathers selected the eldest daughter present in the home. (3) Some younger daughters became tempting to the fathers because of promiscuity or docility. (4) The fathers were detected for incest with the younger daughters, but seemingly were not detected for the incest experiences with the elder daughters. Since these elder daughters were married, engaged, or out of the home, they tried to conceal these past experiences. Their characteristic statements ("I don't want to get mixed up in this. What's past is over." "I don't want my husband to find out." "Keep me out of it. I had enough trouble myself.") lead us to suspect that the fathers had relations with more daughters than was indicated by the official records. Most frequently they chose the eldest daughters in the home as their first incest partners.

Birth Order of Sibling Participants

The brother participants were usually older than the sisters, but some sisters (11.4 per cent) were older than the brothers. The birth order in some measure influenced the dominance of the relationship.

Birth order as well as sex type was related to dominance in the incest relationship because the older siblings were usually the aggressors. Hence the brothers were the most frequent aggressors.

Effects of the Relationship

The fathers seemed to have exercised more caution or had a greater knowledge of birth control than did the brothers. At any rate, the ratio of pregnancies and childbirths was higher among the sisters (40.5 per cent) than among the daughters (20.6 per cent), although the sisters who were not pregnant may not have been easily detected. The sisters, however, were not necessarily ignorant of birth control, because they were older and more promiscuous than the daughters. In general, 76.3 per cent of the

female participants did not become pregnant, 23.7 per cent became pregnant, and 8.7 per cent gave birth.

Sex Habits of Female Participants

The general sexual laxity of the female participants influenced their cooperation in the incest affair. When promiscuous, both the daughters and the sisters participated willingly or complied in the relationship. The sisters seemed more willing (51.4 per cent) than the daughters (8.6 per cent).

The sex habits of the sisters also influenced their aggression in the incest affair. The promiscuous sisters had a greater tendency to invite the relationship than did the nonpromiscuous group. In the father-daughter group, the fathers were almost always the aggressors.

Previous Arrests and Mental Hospital Commitments

The plurality (49.4 per cent) of father incest participants had no previous criminal records. Those arrested were usually arraigned for personal offenses, such as disorderly conduct, rather than for property offenses. Few adopted crime as a career. The father participants who were arrested for disorderly conduct were usually disturbed and disorganized. Though many fathers were disturbed, few fathers were psychotic. In fact, only three father participants (1.8 per cent of the father group) were arrested and confined to mental hospitals before the incest charge.

The brother participants, who were a younger group, had a marked propensity toward participating in group property offenses (23.08 per cent). However, they were less prone to commit personal offenses (7.69 per cent) than were the fathers (51.70 per cent).

Fewer brother participants (39.5 per cent) had previous arrests than had the fathers (50.6 per cent). This difference does not necessarily mean that they were less inclined to criminality, but merely were a younger group. The fathers were mainly petty thieves or vagrant and disorderly persons. The brothers usually

committed property offenses and were mainly delinquents. The fathers were usually arrested for: (1) quarreling in the family, such as wife beating and cruelty to children, (2) sex offenses, such as contributing to delinquency of minors, rape, bigamy, and previous incest charges, and (3) personal disorders, such as drunkenness, fighting, and public nuisance. One was arrested for murder. Their property offenses consisted of bootlegging, delinquent in payments, carrying a gun, and petty larceny. One father was convicted for armed larceny. The brothers were usually arrested for larceny, malicious mischief, robbery, rape, and drunkenness.

The brothers, as indicated, had a higher proportion (23.08 per cent) of property offenders, while the fathers had a higher proportion (31.70 per cent) of personal offenders. Only 6.89 per cent of the fathers and the brothers were arrested for sex offenses before the incest charge.

Summary

The average father was between forty and forty-five years of age, had spent his childhood in a rural community in Europe or America, and had come from a dependent or marginal socioeconomic group. He had about five years of schooling and was of dull normal intelligence. He was usually a manual worker, whether skilled, semiskilled, or unskilled. At the onset of incest, he may or may not have been living with his wife, with whom he had about five children. Usually he selected the eldest daughter in the home as his first incest partner, but also tried to initiate incest with the other accessible daughters. The father usually did not commit property offenses, but had been arrested for personal offenses, such as wife beating, disorderly conduct, public nuisance, and sex charges. These offenses arose from personality disturbances rather than from criminal inclinations.

The brother participant was in one of three age groups: juvenile, postadolescent, or middle-aged. The majority were single, although the adult brothers were married or divorced. On the average, the brothers had about six years of schooling, and more of them were of normal intelligence than the fathers.

Though arrested less frequently than the fathers, they committed property, rather than personal, offenses. The brothers, however, like the father participants, were personal offenders, while the juvenile and adolescent brothers usually were property offenders. On the whole, the brothers seemed less disturbed and more socially adjusted than the fathers were.

The average daughter participant was about fifteen years old, single, had completed about seven years of schooling, and was the eldest daughter in the home when the incest affair began. Usually, she was not promiscuous, had seldom been arrested, but could have been arrested for truancy from home or for sexual delinquency. Having been coerced in the incest act, she was usually the passive participant. She divulged the affair, when under duress, to her mother, relative, friend, or to the authorities. Usually she did not become pregnant.

The average sister participant was about nineteen years old, although the age range was from about twelve to about thirty-six years, had completed about six years of schooling, but had a lower intelligence rating than the daughter. Also, she was more promiscuous and was arrested more frequently than the daughter. She was cooperative and aggressive in the incest affair, and became pregnant more frequently than the daughter.

In general, the daughter participants seemed more stable emotionally than the sisters.

These descriptions may be considered typical pictures of detected incest participants, and indicate the diverse and similar traits that characterize detected incest participants. These characterizations can be the bases for comparison with other samples of incest participants in different areas and communities. For in terms of age, education, economic status, occupation, intelligence, and degree of emotional stability, the subjects in this study are closely similar to the subjects of other studies. These characterizations also provide a framework for an intensive analysis of the attitudes and social relations of the incest participants. By analyzing the participants' attitudes and social relations before the incest occurred, we shall stress personality dynamics and social processes which culminated in incest behavior.

THE HOME SETTING

The overcrowded home has been recognized by many investigators as contributing to incest behavior. Some investigators have drawn this inference from cursory observations but others have made careful and precise analyses. "Overcrowdedness," however, is a vague word. To evaluate its influence upon incest behavior, we must derive definite and comparable standards of overcrowding.

Finck, Flugel, Kay, Bloch and others regarded the overcrowded home as a crucial factor in incest. Flugel maintained that incest in England was more prevalent among the poor than among the rich because of the deplorable housing conditions.⁴ Finck earlier observed that

in the slums of the large cities where families are herded together like swine there is a horrible indulgence in every kind of incest by adults as well as children.⁵

Kay, who observed the sex morals in the rural sections of England, believed that overcrowded homes facilitated sexual license and incest.⁶

In a survey of sexual offenses against young children in Scotland, the investigating committee concluded that:

overcrowding is one of the main contributory causes of incest. We have a great deal of evidence on this point all tending to show the want of any decent and proper separation of the sexes in the smaller houses. In many cases youths and girls of the same age of puberty occupy the same bedrooms and indeed the same bed. In such circumstances some cases of incest are sure to occur. When the offender

⁴ J. C. Flugel, *The Psychoanalytic Study of the Family* (London: Hogarth Press, 1935), p. 194n.

⁵ Henry T. Finck, *Primitive Love and Love Stories* (New York: Charles Scribner's Sons, 1899), p. 50.

⁶ Joseph Kay, "Dwellings of the Poor in Our Town," in *The Social Conditions of the English People* (New York: Harper & Bros., 1864), quoted in A. M. Armand, Jr., *Bundling*, Part III (Harrisburg, Penn.: Armand Press, 1928), pp. 103-106.

is the father, the crime may be discovered; when the offender is the brother and the sister consents, detection is less likely.⁷

From representative instances described in this survey, overcrowded home conditions meant three or more persons per room with no provisions for the separation of the sexes in different sleeping quarters. In one case, a widow, a son sixteen years old and two daughters, twelve and nine years old respectively, slept together and lived in a single room nine-feet square. A girl of ten who dwelt under similar home conditions "taught her brother to do what she had seen her parents doing." In a third case, a mother, a twenty-one year old son, and a fifteen year old daughter, who was mentally defective, shared the only bed in a single room. This sister gave birth to a child.

But crowded as these conditions appear, they were not far worse than the homes of a large proportion of the urban population in Scotland. In Glasgow, for example, during 1921, 12.5 per cent of the population dwelt in single room apartments. Of the 50 per cent who dwelt in two-room apartments, many converted them into two one-room flats and took in lodgers to supplement their incomes.

Riemer and Hentig regard overcrowding as a contributory and facilitating factor in incest behavior. Ebner has shown that incest is more prevalent in regions with inadequate housing and that it rises during periods of housing shortages. Marcuse found that, of eighty sex offenses which were tried in court, forty were father-daughter incest, and the others were general sex offenses. Of these eighty cases, five had lived in three-room dwellings, twenty-one in two rooms, and forty-nine in one room—five cases were unknown. Thus 319 children and 142 adults lived in 112 rooms, which averaged more than four persons per room.⁸ Marcuse illustrated these overcrowded conditions by the following instances: In one case, the parents, one daughter with three

⁷ *Report of the Departmental Committee on Sexual Offences Against Children and Young Persons in Scotland*, Parliamentary Papers, Vol. XV (London: H. M. Stationery Office, 1926), p. 14.

⁸ Max Marcuse, "Zur Kritik des Begriffes und der Tat der Blutschande," *Sexual Probleme*, IV (1908).

illegitimate children, two other daughters fourteen years of age, and two sons, twenty-one and eighteen years of age, dwelt in a single room 36 meters long and 5 meters wide, and shared two beds among them. In another case a husband, his second wife, and twelve children lived in two rooms.

Evidently these homes are very overcrowded. But to obtain a measurable norm of overcrowdedness as it bears upon incest, we shall have to compare the homes of incestuous with non-incestuous families. The standards of a "normal" home have changed since the early part of the century. In England during the first decade of the century, an "overcrowded tenement" had more than two occupants per room, "bedroom and sitting room included."⁹ In 1920, after investigating the homes of American workers (non-English speaking groups and immigrant families less than five years in the country were excluded), the United States Bureau of Labor Statistics adopted as a minimum housing standard consistent with health and decency, "one room per person exclusive of bath."¹⁰ In this survey of 15,115 occupied apartments, they found that 5,506, or 36.4 per cent of the sample, were overcrowded. Those living in flats averaged .931 rooms per person, while those residing in homes averaged 1.007 rooms per person.¹¹

In 1923, McCluer found that out of a total group of 3,167 wage earning families in Chicago, 1,542 or 48.7 per cent had more than one person per room. Of the 2,463 rental families, 1,206 or 48.9 per cent had more than one person per room.¹² In 1926, Leila Houghteling found that 67 per cent of 467 abodes of unskilled laborers had more than one person per room. Many cases were far below the Bureau of Labor standard. In some households, three, four, and five persons lived in one

⁹ Great Britain Local Government Board, *Public Health and Social Conditions* (London: 1909).

¹⁰ "Minimum Quantity Budget Necessary to Maintain a Worker's Family of Five in Health and Decency," *Monthly Labor Review*, X (January, 1920).

¹¹ "Minimum Quantity Budget Necessary to Maintain a Worker's Family of Five in Health and Decency," *loc. cit.*

¹² F. L. McCluer, "Living Conditions among the Wage Earning Families in Forty-One Blocks in Chicago, 1923" (Ph.D. thesis, University of Chicago, 1923), pp. 62-67.

or two rooms. In 1928, a survey of United Charities' families in Chicago showed that 73 per cent of the homes were overcrowded.¹³ In 1935, Mackelman, in a study of 906 United Charities' families, found that 48.5 per cent of those renting flats were overcrowded, while 41.9 per cent of the home owners' abodes were below standard.¹⁴

These studies indicate that though homes of incest families are grossly overcrowded, dwellings of poor people generally are below the minimum standard, and some are as overcrowded as the incestuous families. In the present inquiry, the home conditions of the total urban group was compared to the previous investigations of both incestuous and nonincestuous families.

Of the white urban father-daughter incest families, 32.67 per cent of the participants lived in homes above the minimum standard of one person per room, while 67.33 per cent were below standard. This group averaged .76 rooms per person, and 1.39 persons per room. Of the total urban group—that is, Negro and white father participants as well as brother participants—35.82 per cent were above the standard of one person per room, and 64.18 per cent were below the standard. The group averaged .79 rooms per person, and 1.26 persons per room. The homes of Negro fathers and white brothers participants seemed to pull up the average toward the minimum standard.

These averages indicate, on the one hand, that homes of the incestuous families in this study approximated the minimum standard of housing more closely than the homes of incestuous families in previous studies did, in which there were on the average two to four persons per room. On the other hand, the homes of this group are more overcrowded than those of the nonincestuous families.

However, congestion in the home does not determine the

¹³ See Leila Houghteling, *Income and Standard of Living of Unskilled Laborers in Chicago* (Chicago: University of Chicago Press, 1927); Mary Zahrobsky, "The Problem of Congestion," in E. Abbott (Ed.), *The Tenements of Chicago: 1908-1935* (Chicago: University of Chicago Press, 1936), p. 252.

¹⁴ D. E. Mackelman, "Housing Conditions of 906 Families Known to the Family Service Bureau of the United Charities of Chicago, August, 1935" (Master's thesis, University of Chicago, 1936).

social relationships and the type of sex attitudes in the family. Further, it does not reveal how incest relations came about.

Not all incest occurred in the home. And those cases that did occur in the home did not always result from congestion. Only in eighteen cases did the fathers sleep with the daughters and only in four cases did the brothers sleep with the sisters. Even in these instances other arrangements could have been made. Some fathers made the sleeping arrangement in order to have direct access to the daughter. Other fathers assumed it was a paternal prerogative to sleep with the daughters, because it had occurred in their families. Some fathers slept with daughter and mother and committed incest while the mother was asleep. In a fourth group, the fathers and daughters shared different beds but the father came to the daughter's bed during the night. Many brothers and sisters slept together because this was the family arrangement for sleeping, in most instances without the contrivance of either brother or sister.

Some disorganized families accentuated the overcrowded conditions because they were indifferent about separating the sexes into different sleeping quarters. Some families had the members sleep in one or two rooms, although other rooms could have been used for sleeping purposes. In one family of thirteen, all slept in one room, although the apartment had four rooms.

In another family of six, two beds were used, although three were available. The mother claimed that she had no blanket for the third bed, and also saw nothing amiss in the mingling of the sexes in the same bed.

Overcrowded homes influenced the incest relationship in two ways: the homes facilitated the consummation of the incest when the aggressive participant already had the desire for such a relationship. (Some sibling cases were exceptions.) The overcrowded conditions and lack of personal privacy affected the sexual attitudes of the family members.

Some fathers, because of very crowded conditions, found a pretext for sleeping with their daughters. Only in two cases were the fathers compelled to sleep with the daughters because of congested quarters, and in one of these cases, another sleeping arrangement was possible. The siblings, especially juveniles, were more inclined to engage in incest because of inadequate

quarters than the fathers were. Some children tried incest because of personal curiosity and parental leniency. Other children imitated their parents whom they saw having sex relations.

But family members do not have sex relations when the aversion is present, although they may sleep together. This fact becomes clear when the varied types of incest are considered. In some families, the daughters slept with the brothers, but did not have intercourse with them. They were compelled, however, to have relations with the fathers with whom they did not sleep. . . . In some instances incest may occur between a brother and sister, but rarely between mother and son who sleep together.

In most cases lack of privacy for the two participants was more responsible for initiating the incest affair than were crowded sleeping conditions. Aggressive participants made sexual advances when other family members were out of the home or were asleep.

Overcrowded homes, by disrupting personal privacy, may break down the sexual barriers. The Scotland Report found that:

(these children) are brought prematurely into contact with the gross facts of sex. The organs of sex become familiar sights, menstruation cannot be concealed, babies are born under (their) eyes. . . . Many of these children talk of and carry into practice their knowledge of things sexual. . . . Many parents similarly reared are utterly indifferent about training them. . . . In a word, these conditions conduce to incest and other sexual crimes.¹⁵

Overcrowding may prevent sex activities from becoming redefined into more socialized attitudes. Plant noted that home congestion destroys the illusion of sex as a unique symbol of a unique relationship, displaces it with the notion of physical gratification, and fosters an intimacy in which the family members "are seen as they are, rather than as they would wish to be seen," or as one would wish to see them.¹⁶

¹⁵ *Report of the Departmental Committee on Sexual Offences Against Children and Young Persons in Scotland*, loc. cit., p. 26.

¹⁶ James S. Plant, *Personality and the Cultural Pattern* (New York: Commonwealth Fund, 1937), pp. 213-16.

In a few cases, overcrowding alone influenced the family attitudes about sex. But in most cases, "open" attitudes about sex existed between parents and children regardless of the crowded home conditions. These attitudes, as well as the social positions of the aggressive participants in the family, were decisive in determining the types of incest which resulted. Since these cases are mainly detected offenders, perhaps in some very crowded homes, incest may not be detected.

In the present study, the participants in the families that dwelt in overcrowded homes had latent and active attitudes about sex which were more important to contributing to incest than the crowded quarters were. Congested quarters usually facilitated the expression of desires already active in one or both participants. Consequently, overcrowdedness cannot be considered a causal factor in incest. Many families who live in very congested quarters do not experience incest. On the other hand, about 36 per cent of the urban incest participants did not live in overcrowded homes. The more relevant influences upon incest behavior emerged from the interpersonal relations in the family.

THE FAMILY SETTING

The family is a social unit with a structure and a culture. The structure consists of the roles and functions of the members. The culture consists of the members' common attitudes, shared expectations and skills. These conceptualized phases of family life, although overlapping, are useful for analytic purposes.

In the contemporary family of the United States, the structure usually consists of the father in the dominant role, the mother in a comparatively subordinate role, with the children dominated in part by the parents. These roles also subsume definite economic, sexual, and social functions.

Sex is both a function in the family structure and a phase of the family culture. As a function, it is more properly speaking an aspect of marriage, because the father and mother, as husband and wife respectively, are the only ones to whom sex is permitted. As an aspect of the family culture, sex arises from

the attitudes, expectations, and behavior of the family members. These family attitudes toward sex are initially imported into the family by the parents. From family interaction, these attitudes are modified by the experiences of the parents and by the children who acquire conceptions of sex from outside sources. In some families, a loose sex culture evolves; in other families, a restrained sex culture develops.

The family is a primary unit of interacting persons and an agency of personality development. The parents normally are socially intimate with and devoted to their children. The children usually become attached and respectful to their parents. Though parents may impart sexual information to the children, they remain sexually distant from the children. The parents teach their children to restrain immediate impulses and to inhibit gross desires, especially sex desires. The developing individual, as a result, acquires his initial social attachments and social aversions from the family. More personally educable during childhood, his early family impressions remain very lasting.

The disjunction between family and community requires a gradual independence of the developing person from the family by cultivating social relations with, and by deflecting his sexual desires to, persons outside the family. The family can impede this personal growth by fixating the child's relations and desires to family members. Or, the seclusive individual may retreat into the family as his sole outlet for social desires.

These aspects of personality development in the family may predispose a person to incest behavior. These facets of family life pertain to personality development of the passive incest participant, whether daughter or sister, in the family of orientation. But the family is also a setting within which incest occurs. We shall describe how the varied types of incest emerge from these different families by the modes of parent-child relations and by the types of sex culture.

Father and Daughter Incest

In the family organization of father and daughter incest participants, the father dominated and adversely influenced the

family by his emotional instability and by his sex attitudes. Besides, no person in the family could effectively restrain him from his incest advances. The presence of a restraining agent would have been crucial in deterring him from resorting to incest.

The father's dominant family position did not necessarily result from his financial contributions, but from his intimidation and control of other family members. Some fathers were supported by their wives, daughters or sons. Some fathers even resorted to incest while their wives were away working. . . .

In most families (52.44 per cent), either other family members worked (28.66 per cent) or the family depended for support upon public agencies (23.78 per cent). In about one-third of the families (37.19 per cent), only the father was employed.

The father asserted his authority by customary means and by threats, intimidation, and physical violence. His beatings were not always intended for disciplinary purposes but for expressing his hostility, which in some instances was very sadistic. . . .

Some fathers became so abusive that they were removed from home. Those who were without funds then would become more compliant, and plead to return. But they became assertive once they returned. Some fathers tried to return home by threatening their wives and children with bodily harm.

Many fathers also exploited the family. Indifferent to their needs, they shifted responsibilities to other members, but kept authority. Some tried to exploit their daughters or wife. Some fathers, who were employed, frequently squandered their earnings in drinking or philandering; some refused jobs which they considered too strenuous. "The way he sleeps and mopes around the house," stated one wife, "you'd think he's retired and living off an investment. The children are hungry, and one is without shoes. We're three months behind in rent, and they'll turn the gas off sure if he don't pay."

Some fathers of highly ingrown families became very "possessive" of their children, dominated their personal lives, tried to find out all about their social activities and their friends—in effect eliminated their personal privacy. . . .

Some fathers were very abusive when drunk, but more considerate when sober, or unpredictably affectionate and abusive to the children.

Still a third category of fathers were considerate of the children until a short time before incest occurred; then they became abusive. Their personality changes resulted from unemployment, injuries, financial reverses, and consequent personal distress. . . .

Some fathers were sexually familiar with their daughters long before incest occurred: bathed them, took indecent liberties, discussed sex obscenely, showed them obscene books, told dirty jokes, got into their beds at night, or watched them undress. One father burned a hole in the door of the bathroom with a poker so he could watch his daughter bathe.

In most families, the children submitted to the fathers, but were not necessarily respectful or attached to them. Most children did not become fond of their fathers.

Some exceptional fathers and daughters were very fond of each other. In an ingrowing social process, they willingly confined their social relations to each other. . . .

Some socially maladjusted daughters, who could not cultivate friendships with persons their own age, retreated into the family for companionship. Seclusive, they depended emotionally upon the fathers, and eventually responded to their incest advances. . . .

The father's attitudes to his sons ranged from domination to resentment. He frequently became estranged from them, particularly when they challenged his authority, and often expelled them from home. One father wished that all his children were daughters. The sons usually remained submissive, or left home to escape the father's abuse; others were expelled.

While the father prevented the siblings from sexual familiarity, he himself became sexually intimate with the daughter. . . .

Two general types of organization characterized the families in which father and daughter incest occurred. In one, the father's incest advances were tolerated or at least not resisted. In the other, his incest advances were condemned and usually

thwarted. The two types of families differed chiefly by the absence or presence of a restraining agent who could effectively deter the father from his sexual designs. Although this agent was usually the mother, a relative or friend sometimes had this function.

In the first type of family, the mother might have been away, incapacitated, insane, physically helpless, chronically alcoholic, indifferent to, or tolerant of the father's activities.

Sometimes the mother was so self-indulgent that she shirked maternal responsibility, or was so bent upon having a good time and in avoiding household duties, or so emotionally submissive to the father, that she could not deter him even from incest.

In the second type of family situation, the mother or some other person in the family thwarted the father's incest advances. Self-assertive, the mother was able to resist him, at least concerning incest. Sometimes, when the mother was away, or tolerant, another person restrained the father. Thus a grandmother, while present, deterred the father from incest; when she left, he renewed the incest affair. An elder daughter, in another instance, successfully prevented the father's advances toward another daughter; while in still another case a boarder thwarted the father's attempt to start incest relations. Sometimes an older son, even, may be a thwarting agent.

Other essential differences between the two types of families is the sex culture and the way the father initiates incest.

The first type had a loose sex culture, little sex privacy for parents or children, and a permissive attitude toward the father's flagrant sexual advances. The parents were not even very discreet in concealing their sex relations from the children. One father deliberately awakened his daughter to have her watch sex intercourse between himself and his wife. Careless in his sexual manner, he went about the house nude or half-nude, quarreled with his wife about his promiscuity, or accused her of infidelity. . . .

In the second type of family situation the father had to resort to his sexual advances in secret. Some resorted to expressions of paternal affection or interest. The mother tried to prevent sexual familiarity between father and daughter but did not

succeed completely. Since the mother or another restraining agent resisted the father's open advances, his sex familiarity did not become accepted by the family. The family sex culture then remained more restrained while the father's sexual contacts with the daughter became secretive. . . .

The mother was socially closer to the children than the father was, but she was more removed sexually. Some mothers protected and befriended their children, who in turn regarded them as confidants and devoted parents. . . .

Other mothers were indifferent to their children, or sided with the father. The children, as a result, sought attachments with relatives, neighbors, or friends who were outside the family. In this family situation, children did not remain home long, but sought the company of others. Some mothers, especially stepmothers, exploited their children for their own purposes. . . .

Though many mothers and daughters became mutually attached, they seldom discussed sexual matters except possibly at the onset of the daughter's menstrual period. The daughter, as a result, learned about sex from reading, from what her sisters or her girl friends told her. In some communities, sexual promiscuity was accepted behavior among adolescent and post-adolescent girls. When the daughter, influenced by her peers, found no marked disapproval about sex relations, she assumed that sex relations with the father were not wrong. Sometimes, sexual promiscuity was taken for granted by the family, so that she did not consider incest wrong. Many times the father, who became very familiar with his daughter, persuaded her that seduction was proper. But when, at the same time, the mother impressed upon the daughter that sex relations were immoral, the daughter became confused, guilt-ridden, and reluctant to admit incest. When the mother was indifferent to the incest relationship, or was not in the home, the daughter believed that the father was acting properly. Later she learned "the truth," by discussing the matter with friends or relatives. When relatively isolated from social companions, the daughter, completely under parental sway, became very credulous of the father's reasons concerning incest. . . .

Brother and Sister Incest

The family organization of the brother and sister incest participants differed from that of the father and daughter incest participants in the following ways. (1) The father did not have the dominant position that he had in the father-daughter family, (2) parental relationships with the children—when the parents were present—varied from those of the parents in the father-daughter setting, (3) the sex attitudes between the siblings were less inhibited.

At the onset of brother-sister incest, the father was absent from, subordinate in, or indifferent to the family; or he was incapacitated, old and weak, overworked or concerned with earning a living; or he may have been completely concerned with nonfamily matters. Frequently he was removed from the family through death or desertion.

The children had considerable sex freedom. The brother was not necessarily subservient to the father, or at least not controlled by him. When he and the father liked each other, the sister was estranged from or in conflict with the father. The father then sided with the brother. Sometimes the brother worked or was self-supporting and also was not emotionally dependent upon the father. . . .

The parents, by absence or indifference, had not impressed the children with the significance of the incest restraint. Usually the parents were careless in supervising or indifferent to their children's sexual activities. Adolescent or adult siblings, however, who usually were away from home, clearly were not impeded by parental demands.

Because of inadequate childhood training, some siblings had slight guilt about sibling incest. Their sexual waywardness was further encouraged by community influences. Sometimes, because of parental separation, children were not impressed by the sexual restraints expected of siblings. Some siblings, who were separated from early childhood and who regarded each other as strangers, also viewed each other as eligible sexual partners. In the broken families, in which one parent had a dual parental role, the siblings became unsupervised and "free" in

their sexual play. For example, some fathers, who worked during the day, were compelled to neglect household and family matters. Some siblings who were personality problems could not "get along" with the family and became alienated. In their wayward hostility, brothers seduced sisters. . . .

Some mothers were socially and sexually distant from the children, but were not hostile to the fathers. Because of indifference or leniency, the mothers did not adequately restrain the children. Left to their own devices, they acquired common understandings about sex which influenced their sex play.

Many juvenile and adolescent siblings were members of the same play group or formed their own play group, which without parental guidance was led by the dominant brother or sister. . . .

Some siblings, despite close maternal supervision, resorted to incest anyway. The mother's close supervision, in this instance, indirectly contributed to the incest because the daughter was so restricted in her social relations. Consequently the sister had incest fantasies and even craved sexual attention from her brother. . . .

Six pairs of siblings were separated in infancy and reared apart because of the death or separation of their parents. They developed without the normal social familiarity characteristic of those siblings who have a common rearing. The siblings appeared as strangers when they did meet. Though intellectually aware of an incest taboo, each did not feel an aversion to the other as a sex partner because each considered the other a stranger. . . .

Some brothers were much older than their sisters, lived away from home, and did not depend upon the father for support. Some married brothers had their sisters in their homes as roomers. The discrepancy in age between the siblings made the relationship resemble father-daughter incest. Usually, the brother's wife was the chief restraining agent. Two married sisters, who were incestuous, regarded their husbands as their chief restraining agents. In these latter instances, clearly the siblings had outgrown parental restrictions.

Among siblings, the family lines of sexual laxity were created by the incest participants. Their loose sex attitudes broke down

the sibling incest taboo. But the parents retained their sexual distance from the children. The father usually was sexually distant from the daughter, and the mother sexually distant from the son.

The parents did not cultivate the necessary sex restrictions among the children. Some parents allowed the siblings to sleep together, although other sleeping arrangements could have been made.

Sometimes neighborhood companions who were sexually loose influenced the sister or brother to become promiscuous. In some slum areas, the dichotomy of "nice girl" and "lay girl" influenced some brothers to force sex relations with promiscuous sisters.

The siblings' lax attitudes to sex were expressed because of various social influences. The children did not feel that sex behavior was wrong; some tried to imitate their parents; others were unrestrained and incorrigible in their personal lives, and attempted sex relations because of lax discipline. Marcuse found that children imitated their parents by lying side by side, and that their gestures of sleeping together led to feelings which suggested the deeper relations "of the common couch." In such situations, their physical maturity sometimes led to incest. Such children were not properly supervised and lived in crowded homes.¹⁷ Usually siblings who attempted incest after puberty were emotionally disturbed; the participants were reared together and understood the incest taboo. As a result, their behavior became more cautious and secretive.¹⁸ When one brother

¹⁷ Max Marcuse, "Incest," *American Journal of Urology and Sexology*, XVI (January-July, 1923), p. 277.

¹⁸ Louis S. London and Frank S. Caprio show in an analysis of a sibling incest case from the psychoanalytic viewpoint that the brother and sister "did so much in the way of sexual play because they were watched too much. This made them very cautious, and they were never caught. Both her brother and herself experimented sexually on chickens and dogs, and thought of all possible sexual methods." The two siblings practised cunnilingus and fellatio, and had intercourse frequently, but were never caught because of their caution. In this case, as indicated previously, there was a distinct sexual distance between the mother and the daughter. Louis S. London and Frank S. Caprio, *Sexual Deviations: A Psychodynamic Approach* (Washington, D.C.: Linacre Press, 1950).

forced the sister, the two may have had no sexual familiarity before the assault. Sometimes, a brother came home drunk and raped the sister. Sometimes, a sister, who admired her brothers, submitted and cooperated. This sexual familiarity was expressed by tactual closeness, by telling dirty jokes, and by seeing each other nude or seminude.

Some sisters who were sexually aggressive had relations with more than one brother. This sexual looseness among the siblings resulted in a kind of group promiscuity. But when the siblings were companionable and sexually familiar, one pair alone was involved in the incest relationship. . . .

Father-Daughter and Brother-Sister Incest

When father-daughter incest and brother-sister incest occurred in the same family, the family was more disorganized than in those families in which each incest type occurred singly, because the female incest participant changed the family structure by her intense sexual aggression and general waywardness.

The respective family positions of the father and brother changed in the course of their sexual advances upon the daughter-sister. The father, though initially dominant socially, may have left or been removed from the family. Or the brother may have matured and assumed a dominant family role. The brother then ceased to fear or to obey the father. The brother who might have been abused by the father reversed the situation by intimidating the father.

The mother, either absent from the family or subordinate to the father when present, was devoted to the younger children, usually respected by the son, but was very hostile to the daughter, who was often incorrigible. . . .

When the father was removed from the home, the brother became dominant socially and then started sex relations with the sister. The sister, who usually was promiscuous, seemingly responded to this relationship. . . .

When the sister was aggressive sexually, she invited her brother to have relations with her and disregarded the father's efforts to control her. Though the father could control the other

family members the sister was more or less free from his control. Seldom home, usually promiscuous, and sometimes a prostitute, she occasionally responded to the father, but retained the license of her sexual ways.

The family seemed to disintegrate socially. The members were sexually familiar, but were individualized by their diverse and conflicting paths. The sister frequently fought with the mother. The brother and father competed for authority or were mutually indifferent.

The father, by his abuse, antagonized the family members; the mother, in a subordinate position, could not control their behavior. The family members became estranged, and the nucleus of social stability resided in the attachment between the mother and younger children. The sister, on the verge of leaving home, could not be controlled, while the brother was mobile and independent of the family.

The mother strived to retain family solidarity by removing the sister from the family, whom she considered the source of dissension. The father, indifferent to the family, shifted responsibility to the mother or to another family member. Having lost the respect of other family members by his shiftlessness and his disorganized condition, the father was not paternal to the daughter, but in lust pursued her as a sexual object. . . .

Since two incest taboos broke down, these five families expressed a minimum of sexual restraint or of sexual shame. The mother, by her sexual distance from the children, prevented the family from disintegrating completely.

Promiscuity was accepted. Sex was frequently discussed. Language was profane. The daughter participant, by her sexual aggression, invited sex advances. Siblings did or did not sleep together, depending upon sleeping arrangements.

The mother was sexually distant from other members, but the children were aware of each other's promiscuity. Their sexual laxity often was accompanied by other forms of dissipation, such as drinking and gambling, which further disorganized the family. . . .

Mother and Son Incest

Families in which mother-son incest occurred have the following characteristics: (1) the mother was dominant while the father either was absent or very subordinate, (2) social relations between mother and son were of two types: (*a*) when the son was the aggressor, the participants could be distant or close, (*b*) when the mother was the aggressor, they were very ambivalent—intimate yet hostile, (3) the family sex culture which pertained to the mother and son was very loose.

Usually the mother was widowed or separated from her husband. When the husband was present, he was either weak or incapacitated, and had a low status. The family usually consisted of mother and son only, or of the mother, son, and some small children. The father, when present, had little to say about family matters. The mother was aggressive, both sexually and socially, and could not sustain enduring relationships with her spouses or paramours.

Her attitudes to her children were of two polar types; she considered the children as burdens who, at best, could become prospective economic assets for her—or she possessively regulated their routine. In both types, she exploited the children for her own advantage.

In the first type, she neglected and tried to rid herself of the children. Her interests were directed outside the family, with which the children interfered. She especially was apathetic to the son, who did not fear the mother, but was dependent upon her. He seemed to crave maternal affection which the mother did not offer. The mother's indifference emotionally disturbed him. He became hostile but dependent upon her. Although emotionally and economically dependent upon the mother, the son was hardly controlled by her. . . .¹⁹

In the second type, the mother and son had harmonious social

¹⁹ Viernstein described a case of maternal dominance. The child was illegitimate, separated from the mother during his juvenile and early adolescent life, was an habitual delinquent, and quarreled with his grandmother and foster parents. The husband was completely under the mother's control. The incest occurred when the son visited the mother. See Hentig and Viernstein, *op. cit.*, pp. 116–18.

relationships although the son was submissive. Relatively isolated from outside relationships, he remained under her control. She regulated his routine although he was not necessarily dependent upon her economically. . . :

Since mother-son incest is so rare, the case presented by Guttmacher may be rather illuminating.²⁰ Incest occurred only one time and the son was the aggressor. At the time, the widowed mother, who was fifty-four, and the son, twenty-seven, had been living together. They had been at a gathering of friends and relatives during which six pitchers of beer had been consumed by the party. The mother and son left about 2:00 A.M. and walked home. About an hour afterward, the son burst into his mother's room and demanded intercourse. She pleaded with him, but he threatened to kill her if she were not quiet. He then had relations with her. Later she ordered him from the house, while she went to her other son's home and reported the affair. This son called his sister's husband and they returned to the mother's home. When the son returned from work the brothers fought with him and the neighbors called the police.

The mother had been widowed for about twenty-two years and had supported her three children as best she could. The son was retarded in his development, was enuretic until thirteen, a persistent school truant and generally irresponsible. He had been a heavy drinker since the age of fourteen. Generally he was unfriendly, belligerent and touchy, and drinking made him even more bellicose. At twenty he married a girl of sixteen and they had two children. The marriage was marked by conflict and frequent separations. He was very demanding sexually and when drunk he insisted on perverse actions. He had two psychotic episodes: one occurred when he was about 22, and the other somewhat later while he was in the Navy. After his discharge from the Navy, his drinking and aggressiveness increased. After the case was detected, he became depressed and could not remember the act. But under the influence of sodium pentathol, his recollections became more clear. His guilt at the mention of his mother was so intense that he began beating

²⁰ Manfred S. Guttmacher, *Sex Offenses: The Problem, Causes and Prevention* (New York: W. W. Norton, 1951), pp. 89-95.

the pillow with his fist. He also expressed paranoid ideas. The Rorschach test revealed a withdrawn, hostile, very defensive person who felt anxious and aggressive and who had obsessive-compulsive and schizophrenic tendencies. In fact, he was considered an ambulatory schizophrenic.

Although the facts in the case are scant, the attitudes of the mother are underplayed. Whether the mother was tacitly seductive in this whole process is unknown. At any rate, the intense guilt manifested by the mother and the son after the affair is apparent. But the family structure at the onset of the incest occurrence concurs with the typical mother-son family structure, namely the father absent and the lack of a restraining agent in the family as well as the ambivalent attitudes between the mother and son participants.

In one type the mother is very indifferent and socially distant to the children. In the other type, the mother is very friendly and devoted to her offspring. In the latter type, the mother may dislike the other children, but becomes very fond of the participating son.²¹ She demands, however, reciprocal attachments from him by making him obligated to her. Jealous of his friends and other associates, she isolates him from social contacts, and restricts his social interests. . . .

Though the father may be promiscuous before his absence from the family, the mother's behavior is the chief influence upon the family sex culture. Since her behavior varies for the two types of families—in one the mother is dominant and in the other the son is dominant—the sex culture also differs. In both types of families the sex culture depends mainly upon the social relations between mother and son.

When the mother initiated the incestuous relationship, she directed her sex desires to the son and became sexually and socially familiar with him. In one instance where the mother was promiscuous and had been married a few times, she concen-

²¹ Zilboorg has shown that a mother may be fond of one son and intensely hostile to the others. To her favorite, she is indulgent and devoted, while she is indifferent or even cruel to the other sons she dislikes. See Gregory Zilboorg, "Depressive Reactions Related to Parenthood," *Manic-Depressive Psychosis* (Baltimore: Williams & Wilkins, 1931).

trated her affections upon the son, and tried to deter him from sex contacts and even from social contacts with other women. He, in turn, became socially dependent upon the mother; and, from his social dependence, the mother started sexual intimacy. . . .

When the son is the aggressor, the mother may try to be sexually distant but the son is aware of her promiscuity. He ceases to defer to her as a mother, for her behavior does not seem to warrant any deference. The mother is calloused about her sex life and indifferent to the children's promiscuity. Indifferent about her bodily privacy, she arouses the son. Though opposed to sex relations with the son, she indirectly encourages his sexual aggression by her open and aggressive promiscuity. . . .

Though the types of incest behavior emerge from divergent family settings, the types of incest participants cut across these settings.

RAPE

Morris Ploscowe

A leading member of the American bar, Morris Ploscowe is part of that select circle of American criminal court judges who have adventured beyond the restricting confines of the penal law and codes of criminal procedure to make major contributions to criminology, criminal justice administration, and the philosophy of criminal law. An experienced, "no-nonsense" jurist, impatient of mawkish sentimentality, Judge Ploscowe has exhibited both on the bench and in his prolific writings on organized crime, police corruption, narcotics, and sex as a socio-legal problem, a consistently humanitarian, liberal, and tolerant balancing of paternal concern (the state as *parens patriae*) for the maladjusted, misunderstood, and all too often much abused offender, with a recognition of the law's responsibility to ensure security of person and property, and pursuit of happiness to the law-abiding citizens of our society.

As magistrate of the City of New York, Judge Ploscowe has arraigned literally hundreds of alleged rapists. In a society which demands that the male be the initiator and aggressor in the sex relationship, and that the female, be she ever so willing, at first refuse and resist, and then succumb with seeming reluctance, the judge in a significant proportion of these cases would need the wisdom of a Solomon to distinguish between what Eric Berne has

Source: Morris Ploscowe, *Sex and the Law* (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1951). Copyright © 1951 by Prentice-Hall, Inc. Reprinted by permission of the publisher.

termed the American game of "rapo" and the universal crime of forcible rape.

In 1951, Judge Ploscowe synthesized his practical experience as lawyer and magistrate with his vast theoretical understanding in a book entitled *Sex and the Law*. The book was revised and brought up to date some ten years later, and from that revision the chapter on rape is presented here, in full. In order to supplement the information given by Ploscowe, and with the latter's consent, the editors have appended to this selection a brief addendum on the subject.



Rape is a word of fearsome connotations. It calls forth visions of men who lurk in dark alleys and hallways, in vacant lots and behind bushes, ready to spring upon and attack the first female who passes by. It conjures up pictures of women who have been brutally attacked by beasts in human form, and who have defended themselves to the point of death. The term "rape" brings out all the hostile, aggressive, and protective instincts of the human male. The rapist is an object of universal detestation. His activities strike a sphere where man is most sensitive, the sexual honor of the female, whether the female be wife, mother, daughter or sister. A rapist on the loose is a potential threat to all women. Once he is caught, no penalty is too extreme. It is in this spirit that the legislatures in the various states have decreed the most severe penalties for the crime known as rape. In eleven states the penalty for rape may be death or life imprisonment, and in seventeen other states, life may be imposed in rape cases. Additionally, in two states, terms of up to ninety-nine years may be given. During the thirty years from 1930-1959, 426 persons under civil authority were actually executed for rape in the United States, an average of fourteen a year. During this period there were also seventy-three executions under United States military authority for the crime of rape or murder, including rape, which would bring the sum total average to about sixteen executions for rape per year.¹

¹ Dept. of Justice, Bureau of Prisons.

If the term "rape" were limited to those factual situations where a man by means of force and violence imposes his will and has sexual intercourse with a woman who desperately repels his advances, one might not quarrel too much with the great vigor that is used in the repression of rape. For a man who springs upon a woman who is not known to him and who attempts to compel her to have sexual intercourse with him against her will is a potential murderer. He is a dangerous individual outside prison walls. However, the law has considerably diluted the term "rape." The offense of rape includes many situations far less likely to do damage to the individual or to the community. As a result, large numbers of men who by no stretch of the imagination can be considered dangerous individuals are convicted of rape every year by the courts. They may be lacking in ethical or moral principles or a sense of social responsibility. They may be immature men who believe that sexual conquest is a sign of adulthood and virility. They may be emotionally disturbed men who are seeking an outlet for frustrations in sexual activity. They may be men who are simply following the pattern of racial or cultural behavior with which they are familiar. But they are not potential killers, potential threats to the moral integrity and honor of all women.

Unfortunately, the law designates such men as rapists under certain circumstances. It puts them in the same category as the brutal violators of women. The righteous moral indignation which is stirred by the term "rape," therefore, compels prosecutors to demand and judges to impose sentences which are out of line with the inherent moral obliquity or social damage of the particular offense. Long after the man has been sentenced to prison, the parole board which passes upon his release from prison is also influenced by the notion that womanhood must be protected at all costs from potential rapists. The result is that a man convicted of rape may spend many years in prison atoning for a single regrettable lapse in sexual behavior which has occasioned no basic damage to the individual or to the community. Moreover, his behavior may have been no different than that of hundreds of other young men in his community who have had the good fortune not to be caught. The extensiveness of the legal concept of rape therefore causes a waste in

human resources through the excessive penalization of what may be normal behavior in a man's cultural, social, or racial milieu. A revision of the term "rape" so that it more nearly corresponds with traditional concepts is a compelling necessity for the legal reformer. How compelling that necessity is will be demonstrated in the following pages.

TYPICAL RAPE CASES

Cases which correspond to traditional notions of rape are frequently brought to the attention of our courts. Criminal courts are occasionally called to pass upon cases of men who have forced their way into a house and brutally assaulted and raped a young girl or woman who is alone in the house at the time. In the Texas case of *Garza v. State*, for example, Mrs. Schmidt, the complaining witness, was alone in her house with two small children.² The defendant burst into the house with his trousers unbuttoned and his sex organs exposed. He threw himself upon Mrs. Schmidt, choked her, dragged her out of the house and into the yard and tried to rape her. A dog was the hero of this occasion, for he came to Mrs. Schmidt's assistance and finally drove the defendant off. But in many such cases there is neither man nor beast to save the woman from the fury of the rapist, and what has been begun as attempted rape ends up as homicide.

A woman or girl may be alone on a city street at night, or may be out in the country. She may be accosted by a man who demands sexual intercourse. When she refuses, a struggle follows in which the girl or woman is brutally beaten. Death may result from this beating.

Details differ, but every community at some time is shocked by the finding of a female body in a state similar to that of Mrs. Parent. Her body was found in a playground, a short distance away from the place where she first encountered the defendant convicted of murdering her while attempting to rape her.

"Her lips were swollen and split and had bled freely. Her jaw was swollen, one tooth had been knocked out and another

² 1936, 130 Tex. Cr. 401, 94 S. W. 2d 439.

on the other side had been loosened. . . . Her hands were swollen, abraded, discolored, and contused. There were many abrasions on her arms and others on her legs which were consistent with her legs having been spread apart forcibly. Death had been caused by repeated blows on the jaw. . . . There were indications that her body had been dragged to the place where it was found.”³

Sometimes a man, by stealth or otherwise, gains entrance into a woman’s house or apartment, slides into her bed, and attempts to have sexual intercourse with her. Where the man impersonates the woman’s husband and she had intercourse with him under the impression that he is her husband, courts have quibbled over whether this was rape. The woman consented to the intercourse even though the consent was induced by fraud, and some courts have held that such consent took the intercourse out of the category of rape. The better view is that a fraudulent consent of this character is no consent at all and may be disregarded. Thus the incident can and should be treated as any ordinary case of rape. No such legal question, however, is raised where the man makes no pretense that he was the woman’s husband and insists upon having sexual intercourse with her over her protests. In one such case, *State v. Wagstaff*, where a young man violated a forty-year-old woman in her own bedroom, he paid with his life for a few moments of violent, transitory pleasure.⁴

Another kind of traditional common-law-rape situation is illustrated by the case of *People v. Kinne*, where the man took off his clothes, lurked in a vacant lot waiting for the first female to pass, grabbed her, choked her, beat her, and had sexual intercourse with her.⁵

Sometimes a number of men cooperate in grabbing a single woman and by threat of bodily violence compel her to have sexual intercourse with them. Only too frequently in the underprivileged areas of our cities a young girl is seized by a number of men and adolescents, taken to a roof or into a cellar or hall-

³ *Commonwealth v. Gricus*, 317 Mass. 403, 58 N. E. 2d 241.

⁴ 1941, 219 No. Car. 15, 12 S. E. 2d 657.

⁵ 1936, 25 Cal. App. 2d 112, 76 P. 2d 714.

way, and compelled by threat of bodily harm to submit to sexual intercourse. We are confronted in cases of this character with gang and neighborhood patterns of behavior. The young men or adolescents involved in situations of this kind may individually be relatively inoffensive personalities. But they draw strength and courage from numbers and are collectively a dangerous threat to women and girls in the area in which they live. Frequently the defendants in such cases allege that the woman consented to the act of intercourse even though anywhere from two to fifteen men may have been involved in the sexual assault. However, unless the woman is a prostitute, a consent in this kind of situation is normally obtained by the fear of immediate bodily harm. The intercourse is usually against the will of the woman and may be deemed a common-law rape.

Frequently an automobile is used to facilitate the rape in this type of case. This is illustrated by the case of *People v. Flores*.⁶ The woman in this case had met with an accident. Dazed and bleeding, she walked over to four men seated in a car and asked to be taken to a doctor. Instead of taking her to a doctor, they took her out to a lonely rural area and prevented her from jumping out of the car. They slapped her around, and while one man held her the others had sexual intercourse with her. The case of *State v. Marable* is similar in character.⁷ There the two defendants slipped into the complainant's car and threatened her with a knife. She had just left a hospital where her husband was critically ill. The men compelled the complainant to drive to a shack situated in a lonely area and there, under threat of death, had sexual intercourse with her and committed various perversions upon her. There was no denial of the charges by the defendants. But they sought to excuse themselves by the fact that they had been smoking marijuana cigarettes and drinking bay rum for many days and were in such a state of intoxication that they did not know what they were doing.

People v. Bradley illustrates a variation of this type of situa-

⁶ 1944, 62 Cal. App. 2d 700, 145 P. 2d 318; compare *People v. Mumert*, 1943, 57 Cal. App. 2d 849, 135 P. 2d 665.

⁷ 1941, 4 Wash. 2d 367, 103 P. 2d 1082.

tion, where a rape was prevented only because the numbers were on the side of the women.⁸ In that case the defendant picked up three sisters waiting for a bus and promised to take them home. Instead of taking them home, he drove to a lonely spot and at the point of a knife demanded sexual intercourse with one of them. When the women broke away after a scuffle, he chased them with his car, ran over one of them, and attempted to run over the others before he was apprehended.

Obviously, in cases such as these, where women are abducted and kidnapped by a number of men or where a single man takes a woman to a place where she does not want to go and at the point of a weapon compels her to submit to sexual intercourse, the elements of common-law rape are present. The intercourse which takes place is against the will and without the permission or consent of the woman. The behavior of the man involved characterizes him as a dangerous individual whose dangerousness may be due to a mental condition, to drunkenness, to narcotic intoxication, or to just plain wickedness. There is no doubt that prison or the asylum must be used to protect women from the attacks of such men.

RESISTANCE REQUIRED IN FORCIBLE-RAPE CASES

Many so-called "forcible-rape" cases, however, are of an entirely different character. In such cases the complaining witness is no stranger to the defendant, but is someone who has been friendly with him. She may have been out with him and gone drinking and dancing with him. She may even have gone on what is popularly known as a necking party with the man. At some point in the *tête-à-tête*, the man insists on having sexual intercourse, which the woman refuses. When the man attempts to impose his will a little too forcibly upon her, a charge of rape may be made.

Crucial in a case of this type of "rape" is the question of the amount of resistance to the sexual intercourse. For the sexual intercourse can only be deemed rape if it was against the will of the woman, which fact is manifested by the struggle that she

⁸ 1945, 71 Cal. App. 2d 114, 162 P. 2d 38.

puts up against the penetration of her person. Mere coyness or feigned opposition, mere resistance indulged in to increase the sexual ardor of the male, cannot convert the sexual intercourse to rape. But how much more of a battle is expected from the woman? What efforts must she make to repel the man's advances? Must she use every physical means at her command, must she resist to the uttermost limits of her capacity before the sexual intercourse will be deemed "against her will" and therefore rape? Must she, as one case put it, "kick, bite, scratch, and scream" to the utmost of her power and ability, and if she does not do so, be deemed to have consented and, indeed, to have invited sexual intercourse?⁹

The answer to this question is of vital importance. Many experts in the field of legal medicine believe "that rape cannot be perpetrated by one man alone on an adult woman of good health and vigor." Medico-legal experts therefore tend to regard all accusations of rape made under such circumstances as false. For example, Beck states in his treatise on medical jurisprudence: "I have intimated that doubts exist whether a rape can be consummated on a grown female in good health and strength. . . . The opinion of medical jurists is very decisive against it. The consummation of a rape, by which is meant a complete, full, and entire coition which is made without any consent or permission of the woman, seems to be impossible unless some very extraordinary circumstances occur. For a woman always possesses sufficient power by drawing back her limbs and by the force of her hands to prevent the insertion of the penis while she can keep her resolution entire."¹⁰

The older law of rape took cognizance of this medical skepticism and demanded a very high degree of resistance on the part of the woman to a sexual assault upon her before such assault could be converted into rape. This position is also taken by some modern courts. For example, in the Wisconsin case of *State v. Hoffman*, where the Court had before it a charge of rape grow-

⁹ *People v. Cook*, 1935, 10 Cal. App. 2d 511, 52 P. 2d 538.

¹⁰ Taylor, *Principles and Practice of Medical Jurisprudence*, (10th ed.) II, 76; Beck, *Medical Jurisprudence*, p. 203; *People v. Morrison*, 1854, 1 Parker Cr. 625 (N.Y.).

ing out of a somewhat strenuous "necking party," the Court took the position that the voluntary submission by the woman while she has the power to resist, no matter how reluctantly yielded, removes from the act an essential element of the crime of rape. The woman, stated the court, must:

"... exert the utmost power in the protection of herself. The utmost reluctance must be shown and it must also appear that she availed herself of every reasonable opportunity to make the utmost resistance in repelling the assailant and preventing him from accomplishing his purpose. . . . A passive demeanor on her part is not sufficient to show utmost resistance, if she was sufficiently possessed of her mental faculties to apprehend her danger and to control her physical powers in her defense. . . . There must be the utmost vehement exercise of every physical means and faculty within the woman's power to resist the penetration of her person and this must be shown to persist until the offense is consummated."¹¹

In most states, however, the law is far less exacting. The courts demand much less resistance on the part of the woman. Convictions of forcible rape are therefore easier to obtain in cases where the man and woman have been having a party and he tried to persuade her somewhat overstrenuously to have sexual intercourse with him. The woman in such states is expected to put up some show of fight, some show of resistance. But her opposition to the sexual intercourse need only demonstrate to the satisfaction of a jury that the defendant actually used some force on her to compel her consent and that she did not in fact agree to the intercourse. As the Connecticut Court put it in the case of *State v. Esposito*:

"... whatever the law elsewhere, it is established here that the state need not prove resistance to the extent claimed by the defendant. [The latter contended that the woman must show that she resisted to the uttermost limit of her power and that she made every possible effort to prevent the act.] The importance of resistance is simply to show two elements in the crime—carnal knowledge by force by one of the parties, and non-consent thereto by the other. These are essential elements, and

¹¹ 1938, 288 Wisc. 235, 280 N. W. 357.

the jury must be fully satisfied of their existence in every case by the resistance of the complainant, if she had the use of her faculties and physical powers at the time, and was not prevented by terror or . . . brute force. . . . To make the crime hinge on the uttermost exertion the woman was physically capable of making would be a reproach to the law as well as to common sense."¹²

The amount of resistance demanded of the woman to make the act rape, moreover, is a relative matter. The woman is expected to do no more than her age, strength, and all the attendant circumstances make reasonable under the circumstances in order to manifest her opposition to the sexual intercourse. No unvarying criterion of the amount of resistance can be laid down. As the Court put it in *People v. Connor*:

"It is quite impossible to lay down any general rule which shall define the exact line of conduct which should be pursued by an assaulted female under all circumstances, as the power and strength of the aggressor, and the physical and mental ability of the female to interpose resistance to the unlawful assault, and the situation of the parties, must vary in each case. What would be the proper measure of resistance in one case would be inapplicable in another situation accompanied by different circumstances. One person would be paralyzed by fear and rendered voiceless and helpless by circumstances which would only inspire another with higher courage and greater strength of will to resist an assault."¹³ The California case of *People v. Cook* expressed similar opinions:

". . . the female need not resist as long as either strength endures or consciousness continues. Rather, the resistance must be proportioned to the outrage, and the amount of resistance necessarily depends upon circumstances such as the relative strength of the parties, age, condition of the female, uselessness of resistance, and degree of force manifested, which rule in some jurisdictions is expressly adopted by statute."¹⁴

The medical opinion that an adult woman cannot be raped if she does not want to be rests in part on the notion that a

¹² 1937, 122 Conn. 604, 191 Atl. 341.

¹³ 1891, 126 N.Y. 278, 282, 27 N. E. 252.

¹⁴ 1935, 10 Cal. App. 2d 511, 52 P. 2d 538.

completed act of sexual intercourse involving the emission of semen is necessary for rape. But while some English and American cases have held that before there can be rape there must be a completed act of sexual intercourse, this is no longer the law. With great monotony and regularity, modern cases hold that the crime of rape is completed if there is "penetration, however slight."¹⁵ "The slightest penetration of the vulva is sufficient to complete the offense of rape, and emission is not necessary."¹⁶ Under a statute which provides that any sexual penetration, however slight, is sufficient for rape:

" . . . penetration means that the sexual organ of the male entered and penetrated the sexual organ of the female. However penetration to any particular extent is not required . . . there need not be an entering of the vagina or rupturing of the hymen; the entering of the vulva or labia is sufficient."¹⁷

There is great danger of unjustifiable convictions in rape cases when the rule of law that only sufficient resistance need be displayed by the female to negative the idea that she consented to the sexual intercourse is combined with the concept that only the slightest penetration of the woman's person is necessary to make out a case of rape. For a man may be convicted of so-called forcible rape where there has been only token resistance by the woman to the sexual intercourse. The Texas case of *Keeton v. State*, in which the defendant was sentenced to twenty-five years of imprisonment, clearly illustrates this danger and demonstrates how these two rules operate to the prejudice of defendants.¹⁸ In that case the defendant Keeton had been drinking with the complainant in a tourist cabin. He demanded sexual intercourse which she apparently refused. A struggle of some kind then took place, and is described in the complainant's testimony as follows:

"Well, I fought just as long as I could and then I could not fight any more, and then he picked me up and put me on the bed and I still had my coat on. With reference to my pants or undergarments, Keeton didn't do anything at that particular

¹⁵ *Fox v. Commonwealth*, 1945, 299 Ky. 293, 185 S. W. 2d 394.

¹⁶ *State v. Pollock*, 1941, 57 Ariz. 415, 114 P. 2d 249.

¹⁷ *State v. Snyder*, 1939, 199 Wash. 298, 91 P. 2d 570.

¹⁸ 1945, 149 Tex. Cr. 27, 190 S. W. 2d 820.

time. I still had them on at the time and at that time he made an effort to have sexual intercourse with me. As to whether he penetrated my person . . . yes, sir, he did. He remained in that position just a minute or so and then he took my pants off. I don't remember whether they were torn. . . . He succeeded in removing the garment from me. Then with reference to having or tending to have intercourse with me, he went ahead. . . . As to whether or not the defendant had completed act of sexual intercourse with me or whether it was only partial, it was only partial. There was no discharge. . . . He complained because he wasn't getting any satisfaction out of it. . . ."

It is obvious that under the older rule of resistance to the uttermost, there could not be any conviction for rape on this kind of testimony. There is even considerable doubt as to whether there should have been a conviction under the relaxed modern rule as to resistance. For there does not appear from this testimony to have been any very serious effort on the part of the woman to prevent the sexual intercourse from taking place. But even if sufficient resistance to indicate lack of consent were present here, the enormity of sentencing this man to twenty-five years of imprisonment when the woman practically invited the incident by drinking with him in a lonely tourist cabin becomes clearly apparent.

FORCIBLE RAPE AND INTOXICATION

There are other factual situations which are treated like "forcible rape" by the law and which may result in heavy penalties being imposed upon defendants. Where a man has sexual intercourse with a woman who is under the influence of a narcotic or an intoxicating agent so that she cannot offer resistance to the intercourse, such intercourse is also deemed "forcible" rape, and is subject to the same penalties as any other type of forcible rape. The woman was in no position to consent to the intercourse, and it is therefore deemed to be without her consent and against her will.

If a man gives a woman a narcotic or knockout drops in order to render her insensible and then takes advantage of her sexually

while she is in that condition, there is no reason why he should not be classed as a "forcible" rapist. But occasionally rape charges are made against doctors or dentists who have anaesthetized patients in order to perform minor operations on them. These charges are usually false, and doctors and dentists have learned from bitter experience to have a third person in the room at all times when they are operating on a female patient who is under the influence of an anaesthetic.

Where a man has sexual intercourse with a woman who is so drunk that she does not know what she is doing, this too is classified as "forcible" rape. But there is unquestionably a difference in iniquity between a man who has sexual intercourse with a drinking partner and the rapist who brutally violates a complete stranger. Drunkenness generally is no excuse for crime. The fact that the defendants had been drinking bay rum and were so drunk that they did not know what they were doing was no defense to the charge of rape made against them in the Marable case mentioned above. A man who is drunk cannot defend himself by saying, "If I had been sober and in full command of my faculties, I would not have committed this brutal rape." Similarly, a woman who drinks herself into a stage of intoxication should not be permitted to claim, "If I had been sober and in full command of my faculties, I would not have consented to the sexual intercourse." By getting drunk she took a chance that she would be tampered with sexually. When a woman drinks with a man to the point of intoxication, she practically invites him to take advantage of her person. She should not be permitted to yell when she is sober, "I was raped!" A similar conclusion is much more cautiously stated by Taylor in his classic work on medical jurisprudence:

"If it were proved that a known soporific such as opium had been used, there would be little doubt about a conviction (for rape), but if no foul means had been used (to intoxicate the woman), there is a definite probability that a constructive consent (to the intercourse) had been given, however much it may have been regretted afterwards."¹⁹

¹⁹ Taylor, *op. cit.*, II, 74.

RAPE ON INSANE OR MENTALLY DEFICIENT WOMEN

Where a man has intercourse with an insane or idiot woman, he may be treated as a "forcible" rapist and sentenced to a long prison term. Since the woman has no mental capacity to consent to an act of sexual intercourse, the act is presumed to be without her consent and against her will and therefore rape. There is no specific test of insanity or mental deficiency in these cases. Our courts apply the general test, did the woman understand the nature and consequences of the sexual act? If she did, even if her understanding was somewhat deficient or defective, a conviction for rape may not be sustained. Appellate courts are inclined to construe this requirement somewhat liberally in favor of the man. This is one of the few situations in connection with rape in which men obtain at least an even break at the hands of the courts. For example, in *Hacker v. State*, in which a preacher had been sentenced to fifteen years in the penitentiary for having sexual intercourse with a mentally defective member of his flock, the conviction was quashed although the twenty-six-year-old woman involved "had the mind of a child of ten."²⁰ In the case of *State v. Jewett*, the Vermont court took similar action where the woman involved had the mental age of a child of seven.²¹

But suppose the woman is so mentally defective or insane that she does not know the nature and consequences of the sexual act. Suppose the man who has sexual intercourse with her does not know of her mental condition. What burden of inquiry should be placed upon him? Can he go blindly ahead and gratify his sexual passions without inquiry into the woman's mentality, and be heard to say, "I did not know she was feeble-minded or insane when I had sexual intercourse with her?" Or shall he be held to a much stricter accountability, and be held as a rapist, irrespective of his knowledge or lack of knowledge concerning the woman's mental condition?

These are not mere law-school questions, for the cases of men having sexual intercourse with insane or mentally defective

²⁰ 1941, 118 P. 2d 408 (Okla.).

²¹ 1937, 109 Vt. 73, 192 Atl. 7.

women are occasionally brought to the attention of criminal courts. Recently, three men were brought before me for having spent a few nights with a woman on parole from Letchworth, an institution for the feeble-minded. The defense was, "We did not know she was mentally defective." Yet it was apparent to me after about three minutes' conversation with her that there was a great deal that was wrong with this woman mentally, for she had no knowledge of the simplest things in her environment. However, counsel for the defense insisted that my quick perception of the woman's mental deficiency was no test. I was a Harvard man and the three defendants were simple, uncultured, and uncouth individuals who were accustomed to taking their sex where they could find it without too scrupulous inquiry of the source.

It is this fact—that men do not make too scrupulous inquiry of the source of their sexual satisfactions—which causes the trouble in these cases of sexual intercourse with insane or mentally defective women. This is illustrated by the case of *Wilson v. Commonwealth*.²² Mayme, the forty-four-year-old woman involved in this case, was mentally afflicted. She lived with a younger sister in a ground floor apartment and would hang out of the window and call to men. She was described as "man-crazy" by one witness. Wilson, the defendant, did not know this woman. He was fixing a flat tire on his car in front of Mayme's house, when she invited him into the house and assisted his entry through the window. The brother-in-law of Mayme caught her *in flagrante* with Wilson and his arrest, prosecution, and conviction of rape followed. He was sentenced to *ten years* imprisonment in the penitentiary.

Wilson contended that he had no knowledge of the woman's mental condition at the time he had intercourse with her and therefore could not be deemed a rapist. This contention was accepted by the Court of Appeals of Kentucky, which stated in the course of its opinion that "sexual intercourse with an insane or idiot woman with her consent is not rape unless the man knows she is insane or idiot and takes advantage of that fact to accomplish his purpose."

²² 1942, 290 Ky. 223, 160 S. W. 2d 649.

This is the usual position taken by appellate courts. However, there is authority which supports the contrary view that irrespective of the man's knowledge of the woman's mental condition, if she was in fact so insane or mentally defective that she did not know the nature and consequences of the sexual act, intercourse with her is rape. In the California case of *People v. Griffin*, for example, the defendant, who had been convicted of attempted rape upon a feeble-minded girl, contended that he did not know of the girl's lack of intellect and therefore could not be convicted of attempting to rape her, if he was acting with her apparent consent. The Supreme Court of California rejected this contention, stating in the course of its opinion:

"It can scarcely happen that one seeking illicit intercourse with a woman of weakened intellect will not know that fact. If he indulges in niceties as to whether or not she be just so far mentally infirm as to save him from criminal consequences and so pursues his purpose, he does so at his peril."²³

STATUTORY RAPE

Most of the injustice done by the concept of rape is not in the field of violent sexual crime nor in cases of sexual intercourse with drunken or mentally deficient women, but in the so-called statutory-rape situations. These involve acts of sexual intercourse by a man or boy with the consent of a girl who is under the age of consent fixed by the state statute. There are many more statutory-rape cases than common-law rapes. For example, in New York City in the ten years 1930-1939, there were 2,366 convictions in rape cases. In only 418 of these, or 18 per cent, were the defendants originally indicted for rape in the first degree, which corresponds roughly to common-law rape. However, 1,948 of these convictions, or 82 per cent, were statutory-rape situations involving acts of sexual intercourse with the consent of girls under the age of eighteen years.²⁴

One would not complain about the law of statutory rape being too harsh if the early rules of the English law were still

²³ 1897, 117 Cal. 583, 49 Pac. 711; *cf.* *State v. Dombroski*, 1920, 145 Minn. 278, 176 N. W. 985.

²⁴ "Mayor's Committee Report," *op. cit.*, 45.

in force in this country. For under these rules, the age at which a girl could legally consent to an act of sexual intercourse and shield a man from a charge of rape was ten or twelve years, depending upon which authority was followed. The consent of the child to the sexual intercourse was deemed immaterial, since it was conclusively presumed that a child under the age of ten or twelve could have no understanding of the nature and consequences of the sexual act. Her apparent consent to the intercourse might therefore be disregarded. Like forcible rape, therefore, the sexual intercourse was deemed against the will and without the consent of the girl. Anyone who had intercourse with her might be dealt with like any other rapist and punished by death. Thus early English law forbade sexual intercourse with young children as rape punishable by death.²⁵

But children grow up. At some point in their growth they begin to understand the nature and consequences of the sexual act. There comes a time in the development of a girl when sex begins to take on meaning, when the relationship between sexual intercourse and the birth of babies becomes apparent. For the law to presume that intercourse with such girls is against their will and without their consent because they do not know the nature and consequences of their acts is to do violence to the facts. Yet the law, in its desire to shield young girls from sexual experience, has done just that. It has extended the age limit below which girls cannot consent to acts of sexual intercourse to fourteen, sixteen, eighteen, or even twenty-one years.²⁶

In many states, a girl can legally marry long before her consent to sexual intercourse can shield a man from a rape charge. In Tennessee, for example, a girl can obtain a license to marry if she is sixteen years of age.²⁷ But until she is over twenty-one years of age sexual intercourse with her, even with her consent, may subject her paramour to a sentence of from three to ten years in the penitentiary. Even if a woman under the statutory age of consent is married and consents to sexual intercourse with

²⁵ Compare Edward Coke, *Third Part of the Institutes of the Laws of England*, chap. 11, and Matthew Hale, *History of the Pleas of the Crown*, chap. 58; see also W. L. Burdick, *The Law of Crime*, Vol. II, pp. 238-39.

²⁶ See the chart on the age of consent in statutory rape in Robert Veit Sherwin, *Sex and the Statutory Law*, charts 11, 89.

²⁷ Michie's Tennessee Code 1938, 10786.

a man who is not her husband, such sexual intercourse may not only be prosecuted as adultery but may be prosecuted as rape. This is illustrated by the case of *State v. Skobe*, in which the defendant was convicted of rape as a result of sexual intercourse with a girl by the name of Liddie.²⁸ The latter, though not quite sixteen years of age, was married, but was being prostituted by her husband. The defendant was one of several men who had visited and had sexual intercourse with her. Neither Liddie's marriage, nor her lack of chastity, nor the fact that the sexual intercourse grew out of a prosti-tutional situation, sufficed to save the defendant from a long prison sentence.

Although the so-called age of consent in statutory rape has been considerably extended, courts still continue to write opinions and to act as if the common law had not been changed. They still use language and reasoning which were much more appropriate in the cases of acts of sexual intercourse with ten-year-old children. Courts still talk of "conclusive presumptions of non-consent," and such palpable fictions as the "law offering resistance for the female." This type of befuddlement is apparent in the case of *People v. Gibson*, where it is stated:

"The intention of the law is to protect unmarried girls from carnal copulation, such intercourse being fraught with peril to the morals of the community and to the well-being of the individual. With the age of consent fixed at eighteen years, it may not confidently be stated that all girls under that age do not comprehend what they are doing when they consent to intercourse. The law, however, deals with all, and not with individuals. In law, the act of intercourse, or the attempt to have intercourse, is without their consent, and against their will. The state says that they do not consent, or that their apparent consent shall be disregarded. It offers resistance for them. It deals with the case as *rape*; not as a mere statutory offense. A rape with consent is an anomaly . . ."²⁹

Actually, what the law has done is simply to designate any act

²⁸ 1924, 268 S. W. 81 (Mo.). The case was, however, reversed on another ground. See also *People v. Sheffield*, 1908, 9 Cal. App. 130, 98 Pac. 67.

²⁹ 1922, 232 N.Y. 458, 134 N. E. 531.

of sexual intercourse with a girl below the age fixed by statute as rape, without any regard as to whether she consented or resisted, whether she knew what she was doing or not, whether she was the pursuer or the pursued.

In statutory-rape cases, as well as in forcible rape, it is desirable to distinguish the different kinds of social situations involved. For they all do not represent the same danger to the individual or to the community. Of primary importance are the cases of statutory rape arising out of adolescent sexual experimentation. The sex play of adolescents is not limited by legislatures. The fact that a statute designates an act of sexual intercourse with a girl under eighteen as rape will not normally deter an avid boy friend even if he knows about the statute. There may even be considerable doubt in many cases whether the girl wants the boy deterred, for she usually is a willing partner to the intercourse. A girl may carry on sexually for some time with a boy friend and no complaint will be made by anybody. But when she becomes pregnant, or when he shifts his attentions to some other girl, or when the girl's relatives disapprove of the boy friend, then a charge of rape is likely to be made. A charge of rape may also result where the adolescents do not carry on their affair with discretion. If they run off and spend a couple of nights together, the violation of the penal law becomes too patent and official action may result therefrom.

The crime is charged to the boy, belying the adage that it is the woman who pays. If the girl is above the children's court age, she may escape any official censure. Only the boy is guilty of rape.

There is a growing recognition that it is unfair to characterize this type of situation, involving sexual experimentation of adolescents, as a felonious rape. In many of these cases grand juries simply refuse to indict and juries fail to convict, even though there may have been no question but that rape was technically committed. In New York, the legislature at the 1950 session made it possible to treat sexual intercourse of boys under twenty-one with girls under eighteen as a misdemeanor instead of a felony, as theretofore. The punishment prescribed became a normal maximum of one year instead of the ten-year maximum

for statutory rape, as theretofore. But the New York statute still designates such intercourse as rape, although it is called "rape in the third degree."³⁰

There are other types of statutory-rape situations which are far more serious than cases of adolescent sex experimentation. There are mature men who glory in the number of young virgins they can seduce. There are men to whom adult women have no attraction and whose sexual attentions are directed exclusively to young girls. The younger the girls that are chosen, the more dangerous and abnormal such individuals are likely to be. Money and gifts are frequently used to obtain the girl's consent to acts of sexual intercourse and various types of sexual perversions. Sometimes these older men stand in a parental or guardianship relation to the girls whom they abuse sexually. The number of girls who have been introduced to sexual intercourse by their own fathers, by their stepfathers, or by their mothers' boy friends is far greater than is generally realized. The lecherous preacher or minister who, in violation of all tenets of his church, takes advantage sexually of a young member of his flock is also occasionally seen in the criminal courts. In a number of states, special statutes have been passed to deal with cases of the seduction of pupils by their teachers.³¹

Many of the statutory-rape situations involving mature men, however, are little more than ordinary sexual promiscuity, little different from acts of sexual intercourse with prostitutes. There are sexually promiscuous young girls in every neighborhood of a city whose favors can be bought by any boy or man for a pittance. Sometimes these girls set up as prostitutes. In one New York case in which two young girls were practicing prostitution from a hotel room, eleven men were charged with statutory rape and other sexual offenses arising out of their contacts with these girls. In another New York case a single girl, Ernestine, only

³⁰ Sec. 2010 of N.Y. Penal Law, as amended Laws of 1945, c. 525; compare §1111 Code of Laws of South Carolina (1942). The age of consent under South Carolina Law is sixteen years of age. If the boy is under eighteen and has intercourse with a girl between fourteen and sixteen years who is unchaste, the punishment of the court is limited to one year imprisonment and a five-hundred dollar fine.

³¹ See Sherwin, *op. cit.*, 76-77.

thirteen years old, secured the conviction of two men and five boys on statutory rape charges. In New York City there is a class of young girls who specialize in Chinese prostitution. At an early hour in the morning they knock on the doors of apartments in which they know that Chinese men live and offer their bodies for a fee. If these girls are under eighteen years of age, every man that has intercourse with them is guilty of committing the felony of statutory rape.

There are states which have taken account of the fact that sexual intercourse with a young girl who is chaste and a virgin is different in character and social meaning from sexual intercourse with a promiscuous girl or a prostitute. For example: In North Carolina, it is rape where a man has sexual intercourse with a girl "over the age of twelve and under sixteen years of age" who "has never before had sexual intercourse with any person."³² In West Virginia it is a felony for a man "to carnally know a female of *previous chaste character and not his wife*" who is under the age of sixteen years.³³ Statutes of this character are frankly designed to protect the virginity of young girls. This is illustrated by the Texas case of *Coots v. State*.³⁴ There the girl, who was seventeen years of age, went out to the country with the defendant and another man named Alexander. The latter first had intercourse with her and was followed by the defendant a few minutes later. The defendant was prosecuted for rape and was sentenced to eight years in the penitentiary. This conviction was reversed, the Court stating that if the complainant "had voluntarily surrendered her chastity to Alexander" prior to the alleged act of the defendant, "she was not a chaste woman within the meaning of the term as used in the statute." Thus, as the Court put it, "Only the first act of sexual intercourse with the consent of a female over the age of fifteen can amount to rape." Or, as stated by another court, the statute denouncing as a felony carnal intercourse with any previously chaste unmarried person under the age of eighteen

³² See *State v. Trippe*, 1943, 222 N.C. 600, 24 S. E. 2d 340.

³³ See *State v. Ray*, 1940, 7 S. E. 2d 654 (W. Va.).

³⁴ *Coots v. State*, 1928, 10 Tex. Cr. 105, 7 S. W. 2d 39; *see also Huckabee v. State*, 115 Tex. Cr. 590, 27 S. W. 2d 802.

years was "designed to protect the youth of this state . . . from initial violation of their actual condition of sexual chastity, rather than from the consequences of their subsequent voluntary indulgence in immorality or the promiscuous engaging in sexual intercourse on the part of those persons under eighteen years of age . . ." ³⁵

In other states, the interest in the preservation of virginity is not quite as clearly apparent, for the statutes are phrased somewhat differently. In Tennessee, for example, an act of sexual intercourse with a girl under twenty-one years of age is rape if the girl is not "a bawd, lewd, or kept female." There are no definite rules as to how many acts of sexual intercourse must be shown before a girl can be proved to be a "bawd, lewd, or kept female."

Nevertheless, it is obvious that in states like North Carolina, West Virginia, and Tennessee, it is not rape to commit an act of sexual intercourse with a prostitute or promiscuous girl. The lack of chastity in the girl is a defense to the rape charge. ³⁶ Similar rules of law are found in a number of other states. In most states, however, the lack of chastity of the girl who is involved in the sexual intercourse is no defense to a charge of rape. It does not matter what the reputation of the girl is for virtue or promiscuity, it does not matter whether she has or has not been a neighborhood prostitute; the mere fact that she is below the age of consent fixed by the statute makes any act of sexual intercourse with her *rape*.

The injustice of this social policy was clearly pointed out by one court in a case in which a number of boys were charged with rape because they had sexual intercourse with a young prostitute. The Court said:

"We have in this case a condition and not a theory. This wretched girl was young in years, but old in sin and shame. A number of callow youths of otherwise blameless lives . . . fell under her seductive influence. They flocked about her . . . like moths about the flame of a lighted candle, and probably with the same result. The girl was a common prostitute. . . . The boys

³⁵ *Deas v. State*, 1935, 119 Fla. 839, 161 So. 729.

³⁶ *Ledbetter v. State*, 1947, 199 S. W. 2d 112 (Tenn.).

were immature, and doubtless more sinned against than sinning. They did not defile the girl. She was a mere cistern for foul toads to knot and gender in. Why should the boys misled by her be sacrificed? What sound public policy can be subverted by branding them as felons? Might it not be wise to engraft an exception in the statute? But that is a question solely for the law makers; courts must construe the statute as they find it.”³⁷

The statute, in other words, made no distinction between sexual intercourse with a young virgin and sexual intercourse with a young prostitute. It therefore required the conviction of these boys on rape charges and their characterization as rapists. The harm that such a conviction and characterization may do to them in later life, when they try to pursue a career or a profession, may be irreparable.

BELIEF THAT GIRL IS OLDER AS DEFENSE TO STATUTORY RAPE

When the law declares that sexual intercourse with a girl under the age of ten years is rape, it is not illogical to refuse to give any credence to the defense, “I thought she was older, and I therefore did not believe that I was committing a crime when I had sexual intercourse with her.” There is a quality of abnormality in the desire to have sexual experiences with young children which is well recognized by both psychiatrists and laymen. Moreover, the exposure to sexual experience represents a real threat to the life of the child. Anyone who tampers sexually with a young child is potentially a killer and hence a dangerous individual outside prison walls. When young children are molested sexually, the law can ignore the defense that “I thought the girl was older.” The mere fact that the man directs his sexual attentions to a young girl indicates that he is in need of care from a psychiatrist or custody from a jailer. The public requires protection from the abnormal desires of such an individual. But when age limits are raised to sixteen, eighteen, and twenty-one, when the young girl becomes a young woman,

³⁷ *State v. Snow*, 1923, 252 S. W. 629 (Mo.).

when adolescent boys as well as young men are attracted to her, the sexual act begins to lose its quality of abnormality and physical danger to the victim. Bona fide mistakes in the age of girls can be made by men and boys who are no more dangerous than others of their social, economic and educational level. The defense, "I believed the girl to be older than the sixteen or eighteen years fixed by the statute," may be a reasonable one. Yet the general rule in the interpretation of rape statutes is that a bona fide belief that the girl was above the age fixed by the statute is no defense to a rape charge when sexual intercourse is had with her consent. Even if the girl looks to be much older than the age of consent fixed by the statute, even if she lies to the man concerning her age, if she is a day below the statutory age, sexual intercourse with her is rape. The man or boy who has intercourse with such a girl still acts at his peril. The statute is interpreted as if it were still protecting children under the age of ten.

MARRIAGE AS A DEFENSE TO RAPE

When boys or young men are caught in the net of the law on statutory-rape charges and sometimes even in forcible-rape cases, they frequently offer to marry the girl or woman involved, particularly when the latter is pregnant. A marriage, however, may create more problems than it solves. It may "give the child a name," but it will not necessarily establish a stable family unit. No man or boy likes to marry under compulsion. Nobody likes to be given a choice between matrimony or jail. If marriage is chosen as an escape from jail, the man may not live with the girl and the law cannot compel him to do so. All it can do is compel the man to support his wife and child. Moreover, many of the boys and girls caught in the statutory-rape situation are quite unready for marriage. They are too immature, too lacking in understanding of the responsibilities of marriage, and too unprepared vocationally to meet the economic needs of marriage. In one case before me, where a sixteen-year-old girl had run off with a boy of seventeen with whom she had spent a number of nights, marriage was suggested as an

alternative to the rape charge. But the boy had been a chronic truant in school, had tried a number of jobs, none of which he kept, was of borderline intelligence, and belonged to a family which was itself on relief. The girl was an illegitimate child rejected by her mother. She had been living with an aunt in whose home she was no longer welcome. It appeared obvious that a marriage of these two unstable and underprivileged youngsters would not lead to any satisfactory family unit, but would merely add another family to the relief rolls.

Nevertheless, when marriage does take place between a defendant and a complainant, the general rule of law is that such marriage is no bar to a prosecution for rape. This may be contrasted with the rule in seduction cases. The crime of seduction is committed by a man who has sexual intercourse, under promise of marriage, with a chaste female. If the man is prosecuted for the seduction and finally carries out his promise to marry the girl, however reluctantly, the marriage is a bar to the criminal prosecution. But where a man is prosecuted for statutory rape because he had sexual intercourse with a girl who was under the age of consent, a marriage between the man and the girl will not free him from the possibility that he will be prosecuted on the rape charge and sentenced to prison. It is true that prosecutors, judges, and juries look with a tolerant eye upon statutory-rape prosecutions which have resulted in marriage. If an attempt is made upon the part of the man to establish a bona-fide marital relationship, the prosecution is frequently quashed, or, if a conviction is had, sentence may be suspended or the defendant placed on probation. But there are cases where the strict letter of the law is followed, and where marriage will not save a man from a long prison term. This is similar to the prosecution for ante-nuptial incontinence which did so much to bring Ecclesiastical Courts into disrepute. An example is *State v. Newcomer*, where the defendant had an act of sexual intercourse with a girl under sixteen.³⁸ He was arrested on a charge of statutory rape, but the prosecution was dismissed after he married the girl. He

³⁸ *State v. Newcomer*, 1899, 59 Kan. 668, 54 Pac. 685; compare *State v. DeMoss*, 1936, 92 S. W. 2d 112 (Mo.); *Zell v. State*, 1920, 189 Ind. 433, 127 N. E. 1.

lived with her for some time after the birth of their child and supported his wife and child during this period. Some time after the child was born, he went to work on a new position in another town. While there, he obtained information which led him to believe that he was not the father of the child. He wrote to his father-in-law concerning the information, and stated he did not intend to live any longer with his wife. A prosecution for statutory rape followed, based on the sexual intercourse before marriage. The defendant was sentenced to five years in the penitentiary, and his conviction and sentence were upheld by the Supreme Court of Kansas.

It should be noted however that the statutes of some states have been modified so as to make a bona-fide marriage a defense to a prosecution for rape. For example, where intercourse is had with a girl between the ages of fourteen and sixteen years in Virginia, the man may not be prosecuted for rape if he marries the girl, lives together with her, and supports both her and her issue. But if the man should desert the girl before she reaches sixteen without just cause, then he can still be tried on the indictment for the rape.³⁹

PROOF IN RAPE CASES

Whether the crime charged against a defendant is forcible or statutory rape, the problem of proof is always a very serious one. There are few crimes in which false charges are more easily or confidently made than in rape. Experience has shown that unfounded charges of rape are brought for a variety of motives. The adage, "Hell hath no fury like a woman scorned," is frequently encountered in rape prosecutions. Rape charges are sometimes brought for the purposes of blackmail; sometimes they are the products of the psychopathy of the complainant. Sometimes they rest on pure fantasy. Unfounded accusations of rape are particularly apt to come from young children. As one court pointed out:

"And yet there are instances of accusations by children of innocent men, charging crimes and requiring much cunning and

³⁹ Code of Virginia, 1950, 18-55.

imagination for their fabrication. Innocence is an attribute of childhood. But there are countless instances of children old beyond their years in crime, in wickedness, and in cunning.”⁴⁰

The tendency of complainants in rape cases to make false accusations is well known to doctors, who have had experience in criminal cases. “In some instances,” writes Taylor, “as in alleged rapes on infants and children, the charge may be founded on mistake, but in others it is often wilfully and designedly made.

“Amos remarked that, for one genuine case of rape tried at Assizes in his time, there were on the average twelve pretended cases. In some few instances these false charges are proved by medical evidence—in others, medical men may be sometimes the dupes of designing persons. In the majority of cases, the falsehood of the charge is proved by the inconsistencies in the statement of the prosecutrix herself.”⁴¹

One such case of false accusation of rape is found in the case of *Shock v. State*, in which the defendant had been convicted of rape for having sexual intercourse on numerous occasions with a girl under twelve years of age.⁴² He was sentenced to life imprisonment. Five years after his conviction and sentence, the prosecutrix submitted an affidavit which stated, “I made the charges against him and testified because I was angry. . . . Fred never had sexual intercourse with me and he is not guilty of the offense for which he is now in prison! . . .” The mother of the girl also submitted an affidavit stating that she, too, did not believe that sexual intercourse had taken place. The court suggested that the defendant apply for executive clemency.

In one case before me, a little girl of eleven accused the corner pharmacist of having had sexual intercourse with her on two occasions. She made this charge after a physical examination had disclosed that her hymen was ruptured. The pharmacist strenuously denied the charge. Further investigation disclosed that the culprit was not he but the girl’s own father, who was

⁴⁰ *People v. Donohue*, 1906, 114 A. D. 830, 100 N.Y. S. 202.

⁴¹ Taylor, *op. cit.*, 79.

⁴² 1929, 200 Ind. 469, 164 N. E. 625.

separated from her mother. The child had run away from the mother and spent a number of nights with her father.

This affinity of rape cases for false accusations has been well-known and well-understood for a long time. Sir Matthew Hale, a classic writer on the criminal law, wrote in 1630:

“It is true rape is a most detestable crime, and therefore ought severely and impartially to be punished with death; but it must be remembered that it is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, though never so innocent.”

The law has had great difficulty in solving the evidentiary problems involved in rape cases. There is a decided public interest in preventing violent sexual assaults upon women and girls and in preventing men and boys from having sexual intercourse with young girls, even with their consent. But there is also a decided public interest in not sending men and boys to prison on unfounded sex-crime charges. Unfortunately, judges and juries are inclined to get emotional in sex crime prosecutions and may not give the defendant the benefit of a calm and careful consideration of the evidence. This, too, was noted by wise old Hale when he stated: “the heinousness of the offense many times transporting the judge and jury with so much indignation that they are over-hastily carried to the conviction of the person accused thereof by the confident testimony, sometimes of malicious and false witnesses.”⁴³

In order to provide some safeguards against unfounded accusations of rape the law in New York and many other states has provided that: “No conviction can be had for rape or defilement upon the testimony of the female defiled, *unsupported by other evidence.*”⁴⁴ The New York law therefore required more than the mere accusation of the woman to convict in a rape case. Her testimony must be corroborated by other evidence besides her own accusations, such as signs and marks of a struggle, physical evidence of the sexual intercourse, proof of outcry, proof of immediate complaint, the defendant’s presence at the scene of the crime or flight therefrom, etc. The other evidence

⁴³ Matthew Hale, *op. cit.*, I, 634.

⁴⁴ New York Penal Law, §2013.

must tend to show that the crime of rape was actually committed as claimed by the complainant, and that the defendant was the one who committed it.

In many states, however, corroboration of the complainant's testimony in a rape case is not required as in New York. A man may be convicted of rape on the unsupported word of the woman if she is believed by a court or jury. It is true that the judge frequently warns juries in rape cases about the dangers of convicting on the uncorroborated testimony of the woman alone. But if the jury decides to take her word for what happened, a conviction for rape will follow, which will usually be sustained on appeal, despite the man's denials, so long as the woman's story appears convincing, is not too contradictory, and not inherently improbable. This is exactly what happened in the Illinois case of *People v. Sciales*, where the complainant was a thirteen-year-old girl.⁴⁵ She testified that five months previously she had gotten into a car driven by the defendant, who was a cook in her mother's restaurant, and that the defendant parked the car in front of a church and had sexual intercourse with her in the back seat of the car. After the incident, she got out of the car and told no one about it. Four months later, when it was apparent that she was pregnant, she accused the defendant for the first time. The defendant flatly denied the charge, and there were no witnesses to the alleged rape. The trial judge preferred to believe the girl's story. As a result the defendant was convicted of rape and sentenced to five years imprisonment. This judgment was sustained on appeal.

It is obvious from a case of this character that the rule that a man can be convicted on the uncorroborated testimony of the female complainant alone places any man at the mercy of revengeful, spiteful, blackmailing, or psychopathic complainants. It may even permit a man to be convicted of rape "on the uncorroborated testimony of a strumpet," unsupported by any other evidence.⁴⁶ The rule also makes it possible to convict men of heinous offenses against children upon the testimony of the

⁴⁵ 353 Ill. 169, 187 N. E. 169; compare *Addington v. Commonwealth*, 1933, 161 Va. 975, 170 S. E. 565.

⁴⁶ *State v. Walton*, 1939, 43 N.M. 276, 92 P. 2d 157.

child itself, uncorroborated by other evidence. In one such case, in which the defendant has received a sentence of thirty to fifty years imprisonment for an alleged rape upon an eight-year-old stepdaughter, the Appellate Judge who voted to reverse the conviction stated:

"The defendant was convicted of a heinous offense and sentenced to serve not less than thirty nor more than fifty years in the Arizona State Prison; this upon the uncorroborated testimony of an ignorant, frightened child of eight years. The child was permitted to testify to previous offenses of like nature alleged to have been committed by the defendant upon her. The child did not know her own age, month of birth, or date. The child testified that the defendant had repeatedly almost daily had sexual intercourse with her since she was three years of age. What little testimony was elicited was accomplished by leading questions. The cold record here bristles with animosity, bias, and prejudice, upon which no restraints were imposed."⁴⁷ Despite this judge's indignation, the conviction was sustained.

It is apparent that in states which do not require corroboration of the woman's or child's story in rape cases, one can say with Matthew Hale, "It is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, though never so innocent."

SUMMARY AND CONCLUSIONS

The good sense of courts, prosecutors, and juries will very often mitigate the deficiencies in the statutes concerning rape. For example, in New York, grand juries frequently refuse to indict youngsters whose only crime was that their love-making took no account of the limitations of the calendar or of penal statutes. Where indictments have been handed down in statutory-rape prosecutions, the general tendency throughout New York City has been to treat such cases not as felonies subject to ten-

⁴⁷ *Culdin v. State*, 1945, 161 P. 2d 121 (Ariz.), dissenting opinion of LaPrade, J. The conviction was subsequently reversed after a rehearing. See 1945, 162 P. 2d 907.

year sentences of imprisonment, but as misdemeanors punishable by only one year. In the ten years from 1930 through 1939, for example, 1,948 defendants were convicted in statutory-rape prosecutions. Only 394, or 20 per cent, were convicted of rape or some other felony. The rest of the defendants, 1,554, or 80 per cent, were convicted of misdemeanors.⁴⁸

It should be noted that the aforementioned figures were based on an original exhaustive study of court records. However, even a cursory glance at later New York City police department reports indicates that in recent years, as formerly, a substantial part of rape felony arrests eventually wind up as misdemeanor convictions.

In the eight-year period from 1950 through 1957, of 2,128 convictions in statutory-rape prosecutions, 1,069, an average of 133 per year, or a little over 50 per cent, were convictions for misdemeanors.

In 1960, there were 152 "rape misdemeanors" convictions and twenty-eight "rape reduced felony" convictions. The 1959 figures were 145 and 39 respectively.

Despite this tendency to mitigate the harshness of the rape statutes, there can be no escape from the necessity of revising such statutes. For the reactions of judges, administrative officials, and jurymen vary from county to county with respect to the different aspects of the problem of rape. Where one prosecutor or judge may view a particular fact situation with a tolerant eye, another may insist upon the letter of the law and the harsh penalty that it provides. The social policy with respect to rape, therefore, cannot be left to the uncertain whims, caprices, and attitudes of varying groups of officials. That policy should find expression in legal texts which are guides to official action.

In analyzing the legal provisions concerning rape, we have found the older law far more realistic and much easier of enforcement than our modern law. The older law limited the fact situations covered by the offense of rape to those which were heinous in character. The older concept of rape required a high degree of resistance on the part of the female, a completed act

⁴⁸ "Report of Mayor's Committee," *op. cit.*, 47.

of sexual intercourse, and the limitation of the consent cases to girls under ten or twelve years of age. Thus the core of the older law of rape consisted in the brutal violations of women against their will and the abnormality inherent in sex play with young children. In our opinion, this should continue to be the core of any modern law of rape. The law must require real, and not token or feigned, resistance on the part of the woman to the penetration of her person before there can be a foundation for a rape charge. A woman must show by the efforts she made to prevent penetration that her protests against the sexual intercourse were not merely half-hearted or perfunctory. The rule requiring resistance to the uttermost more nearly corresponds with popular notions of what is involved in rape and hence is far more realistic than the more chivalric rules concerning the amount of resistance demanded from the female in our present law.

The law should also require more than "the slightest penetration of the woman's person" to make the act of attempting to have intercourse, rape. Courts and legislators sometimes forget that attempted rape and assault are also crimes, though they are punishable less severely than rape. Sexual intercourse, which is the essence of rape, is not present where there has been only the slightest of sexual contacts. The rule as to slight penetration also complicates the problem of proof. In one case in which a man was convicted of rape largely on the uncorroborated testimony of a woman, a doctor examined her two hours after the alleged assault took place and could find no evidence of sexual intercourse. Nevertheless, the conviction for rape was sustained, since the slight sexual touching required for rape under the law did not necessarily leave any physical evidence.⁴⁹

While we cannot go back to the requirement of some of the older cases that a completed act of sexual intercourse is necessary for rape, since in many cases of brutal violation of a woman's person there may not be a seminal discharge, the law might at least demand a more complete penetration of the woman's person as a prerequisite to a rape charge. Such penetration is much more likely to leave physical traces which can

⁴⁹ *State v. Pollock*, 57 Ariz. 415, 114 P. 2d 249.

be discovered by a doctor than the slight penetration of the vulva which is all that is necessary under our present law.

The rule which makes sexual intercourse with a drunken woman rape should be modified so as to eliminate the normal situation where the man and woman have been drinking together. The rare case where a woman has been deliberately given a narcotic or intoxicating agent so that she can be violated later is quite a different situation and should continue to be treated as rape.

The law should take account of the fact that men are not too choosy with respect to the objects of their sexual attentions. Where a woman is so mentally deficient and so insane that she does not know what she is doing, the law might designate sexual intercourse with her as rape. However, it should permit the lack of knowledge on the part of the defendant of the mental condition of the woman to be shown as a defense. A deliberate act of intercourse with a woman known to be feeble-minded or insane is of far greater moral obliquity than the mere promiscuity of a man who is seeking an outlet for his sexual passions.

Under our present rules of law far too many young men under twenty-one years of age who have simply followed the sexual patterns of behavior with which they are familiar in the social, cultural, educational and racial milieu in which they live have been branded as felons. The sexual integrity of girls and young women must be protected by law. But that does not require branding every man who has sexual intercourse with a girl sixteen or seventeen as a rapist and felon. The age of the male involved should be taken into account by the law as well as the age of the female. Accordingly, cases of adolescent sex experimentation should be treated as fornication rather than rape, and subject to the penalties for misdemeanors rather than those prescribed for felonies.

Legislators have been blithely unaware of the limitations of the penal law in deterring the expression of as deeply rooted a drive as sex when they set the ramparts of rape around the sexual intercourse of grown girls and young women. The concept of Tennessee law that an act of sexual intercourse with a girl under twenty-one with her consent is rape would, if Professor Kinsey's researches are accurate, require the imprison-

ment of a substantial part of the Tennessee male population if the law could be enforced. But the law is enforced only sporadically in the few cases which come to official attention and which are little different in character from the thousands of cases which occur and in which no complaint is made.

A realistic modern law of statutory rape would go back to the concept of abnormality inherent in the older law. Sexual intercourse with grown girls or young women is quite different in character from sexual intercourse with children. A girl who is experienced in the ways of sex, who is promiscuous or a prostitute, is an entirely different problem from the girl who is a virgin and who is chaste. Accordingly, the age at which a girl's assent may shield a man from rape charges should be reduced. Eighteen years of age, which is the standard existing in New York and many other states, is entirely too high. The sixteen-year age limit of many other states is much closer to the realities of modern life. In any event, it would also be desirable to make the lack of chastity of the girl a defense to a charge of statutory rape.

A law of statutory rape based on concepts of abnormality would permit a man's reasonable belief that the girl was above the age of consent to be shown as a defense to a rape charge. It would also bar a prosecution for rape where a bona fide marriage relationship has been established.

If men are not to be imprisoned on false and fantastic charges of rape, there is no alternative but the adoption of a requirement that the complainant's testimony in a rape case must be corroborated before there can be a conviction. It is true that this requirement will permit many guilty men to escape penalties where such corroboration cannot be had. But it has traditionally been one of the glories of Anglo-American law that it is better that guilty men escape than innocent men suffer.

RAPE/ADDENDUM

In 1965, there were 22,467 forcible rapes or assaults with intent to commit rape "known to the police" in the United States. This figure represented an increase of approximately

9 per cent over the 1964 total; and the preliminary estimates for 1966 indicate a further 10 per cent rise. The crime index trend in rape has been consistently upward since the slight decline recorded in 1963. Rape is moreover an underreported crime, with a significant number of victims reluctant to make official complaints because of fear, embarrassment, or family pressure to protect the perpetrator. Underreporting, too, results from the varying policies of police departments in recording some instances of forcible rape as incest (when the attacker was a father, brother, or other near relative), carnal abuse of a minor (when the victim was of tender years), or as assault. So-called statutory rape (intercourse by consent with a partner under the legal age) is not included in these figures.

While the national rape rate in the United States is 11.6 per 100,000, there are significant regional variations. In cities of over 250,000 population the rate is 21, but the nation's largest city, New York, often accused of inadequately protecting its womenfolk from rapists, has a rate of only 11.3, below the national average. The Western states have the highest rape rates (17.2), while New England records the lowest (5.0); California with a rate of 21.2 rapes per 100,000 has the highest state rate, and Hawaii with a miniscule 0.8 enjoys the lowest. Rape is a seasonal offense, the highest incidence occurring during the summer months (June for the cities and July for rural and suburban areas).

The Federal Bureau of Investigation reports that approximately 64 per cent of reported rapes are "cleared by arrest"; but it further reports that of 10,734 men arrested for forcible rape in 1965, only 3,386 were formally charged with that crime; and of these, 30.7 per cent were convicted, 32.5 per cent acquitted, and 23.4 per cent referred to juvenile courts. In the case of the last figure, it is of interest to note that 64 per cent of the total arrested for rape were under twenty-five years of age, and 14 per cent under eighteen. Of the total, 4,485 were whites, 4,665 Negroes, 85 Indians, 4 Japanese, 2 Chinese, and 13 "others" among those arrested for this offense.

Although the rapist is usually thought of as a compulsive, repeating offender, a study of 983 suspected rapists arrested in

1965 (average age twenty-eight) indicated that for more than 85 per cent this was their first arrest on this charge; nearly 13 per cent had one previous rape charge; and 2 per cent had been arrested two or more times previously. It is quite likely, however, that a number of those arrested for the first time had attacked more than one victim before being apprehended.

In order to understand rape fully as a criminological phenomenon, the student must examine the circumstances in which rapes occur and the characteristics of both perpetrators and victims. Analysis of many hundreds of reported rapes fully documents the victimologist's hypothesis that in a significant proportion of cases, the victims consciously or perhaps unconsciously invited the attack. The circumstances surrounding a rape attack break down into ten typical situations: (1) victim surprised and attacked while pursuing her normal activities in a normal and even prudent manner (e.g., a woman attacked while in her home or by a stranger in a public place); (2) victim attacked as a partial result of her own highly incautious or provocative behavior (e.g., sleeping on an unguarded beach or frequenting an isolated "lovers lane"); (3) victim attacked by a person known to her and with whom she had previous social and/or sexual contacts; (4) victim attacked by a stranger from whom she had accepted favors (e.g., drinks at a public bar, an auto ride, money, etc.); (5) victim attacked by a stranger she had invited to her home or whom she had accompanied to his apartment or hotel room; (6) victim attacked by man with whom she had engaged voluntarily in "heavy necking" or other erotic play almost to the point of intercourse (some women who are essentially man-hating lesbians make a game of such "teasing"); (7) victim attacked while she was under the influence of alcohol or drugs voluntarily ingested; (8) victim was mentally defective, insane, ill, or handicapped; (9) victim was confined (jail, asylum, orphanage) and was attacked by staff member or fellow inmate; and (10) those rare instances in which the victim was attacked by ruse (i.e., joined in bed by attacker pretending to be her husband or lover).

Rapists, contrary to popular opinion, are rarely oversexed satyrs, and their victims are frequently not young and attractive

females. A small percentage of rapists are women-haters who act out their misogynistic impulses by assaulting females, sexual gratification playing a secondary role; while a still smaller group is comprised of the sexual sadist who finds his greatest satisfaction in the infliction of pain, death, and obscene disfigurement on his victims. Many rapists entertain doubts as to their masculinity and potency or their physical attraction to females; and interracial rapists are sometimes venting their general hostility toward the other race (which may involve in the United States the selection of a white victim by a Negro, or the reverse).⁵⁰ Adolescent gang rapes ("gang bangs") are not infrequently the result of a combination of drinking, "daring," sexual experimentation, and adventurousness on the part of the males, with provocative behavior by the female victim or victims.

Bernard Glueck found that his thirty rapists of adult females studied at Sing Sing were close to the general personality organization of the nonsexual offenders used as controls. He found them more aggressive, outgoing, and impulsive than other sex offenders, better integrated into the community, younger, and with poorer employment records. They had unresolved sexual feelings toward their mothers, who were generally rejecting and hostile yet sexually seductive toward them. The sex attack took place typically while the perpetrator was under the influence of alcohol.

One must not ignore the possibility that at least a small percentage of reported rapes are false and malicious charges, sometimes resulting from the fantasies of sexually neurotic women, but more frequently deliberately resorted to by women who find themselves pregnant and "invent" a rape to excuse their condition or threaten to allege rape as a means of forcing the fathers to marry them (the abduction-rape-marriage sequence is quite common in Corsica, various parts of Italy, and in some isolated areas of Greece, and was not unknown in eighteenth-century England and Ireland). Rape has also been charged by women surprised *in flagrante delicto* (particularly

⁵⁰ For a strongly worded rationalization of an assaultive rape as an expression of black-white social hostility, see Eldridge Cleaver, *Soul on Ice* (New York: McGraw-Hill Book Co., 1968).

in cases involving Negro partners in the South) and as a part of the *modus operandi* in shakedown, blackmail, and extortion schemes. Many charges of rape in occupied areas after World War II were determined by Criminal Investigation Division agents to be cases in which a dispute had arisen between the girl and soldier involved as to how much should be paid for her sexual favors, or as retaliation against a soldier who, having satisfied himself, refused to pay the agreed price.

Punishment for rape historically has varied widely in severity. In many societies the law of torts was applied and a payment of cattle, other goods, money, or even labor (often depending on the relative social status of victim and perpetrator) set matters aright; in some societies an offer to marry the victim sufficed to rectify the damage. In the United States punishments range from a few years' imprisonment to the death penalty; the latter usually being reserved for minority group members who have raped white women, particularly in our Southern states. New York, New Jersey, California, and other states have in recent years experimented with "sex psychopath" statutes, which permit sentencing rapists and other sex offenders to indeterminate terms of imprisonment "from one day to life," with release on parole only when the prison psychiatric personnel pronounce the prisoner cured of his aggressive sex compulsions and no longer dangerous to society. Some states permit the castration of rapists, and such countries as Denmark, Holland, and Norway have reported some success in the use of this technique. However, there is little support among psychiatrists and criminologists for this procedure, and there are basic ethical and legal questions as to its feasibility as a general societal sanction.

CHILD MOLESTATION

*Paul H. Gebhard,
John H. Gagnon,
Wardell B. Pomeroy, and
Cornelia V. Christenson*

Perhaps *Sexual Behavior in the Human Male*, which came to be known as *The Kinsey Report*, was not the most world-shaking book on sex that had come off a printing press since the Gutenberg Bible. Possibly not, but one would be hard-pressed to name a more influential and anxiety-provoking work than that 1948 volume that came from the workers at the Institute for Sex Research founded by Alfred C. Kinsey.

Almost two decades and many books and studies later, the Institute published *Sex Offenders: An Analysis of Types*, as thorough an empirical study of people convicted of sexual offenses as had ever appeared. Gebhard and his colleagues defined a sex offender as "a person who has been legally convicted as the result of an overt act, committed by him for his own immediate sexual

Source: Paul H. Gebhard, *et al.*, *Sex Offenders: An Analysis of Types* (New York: Harper & Row, Publishers, Inc., 1965), pp. 54-55, 69-82, 272-273, 292-297. Copyright © 1965 by The Institute for Sex Research, Inc. Reprinted by permission of the publisher.

gratification, which is contrary to the prevailing mores of the society in which he lives and/or is legally punishable.”

The offenders in this study were all white, sixteen years of age or over, and had been convicted of a sex offense. Not all, however, admitted their guilt. They were compared with two groups, a nonprison control group, and a prison group of convicts not convicted of a sex offense.

The sex offenders were themselves divided into several categories, according to the partner's age, the partner's sex, and whether force was used. The first-mentioned characteristic enabled the researchers to divide the offenders into three groups, those who had offended against children, against minors, and against adults. The children were under the age of twelve (but not daughters or sisters, and not those who were subjected to forcible rather than statutory rape).

If homosexuality offers the greatest stigma, rape the greatest potential for arousing ethnic passions, incest the severest repulsion and revulsion, then the sexual advance of an adult to a child probably brings forth fear and anger in the adult world most out of proportion to the potential injury to the child. If anything, in fact, the child seems often to be injured more by the reaction of parents and authorities than by the act itself.

How frequent are sexual relations between adults and children? There are many difficulties in determining the answer to that question: the child may be a willing and consenting partner, or even an aggressive one, and hence would assist in the concealment; many parents believe that the situation, when discovered, is better left unreported, because of the traumatic experience of exposure upon the child; the child often does not wish to acknowledge participation in the act, even unwillingly. On the other hand, this is an area where malicious, false, and at best exaggerated charges may be made by children, out of spite, anger, gossip, search for excitement, suggestibility, or even fantasy.

The phrase “child molestation” is that of the editors of this volume, not the authors of *Sex Offenders*. It is value-laden and emotion-inciting, but it captures a social attitude. Gebhard and his colleagues have given us the first solid empirical study of men convicted of such offenses. As such, it is a unique contribution, worthy of the Institute for Sex Research.



HETEROSEXUAL OFFENDERS VS. CHILDREN

The sex offenders treated here are adult males convicted of sexual contact, without the use of force or threat, with female children under the age of twelve, who were not their daughters. The majority of these children were prepubescent; they had not developed pubic hair, breast enlargement, and other adult sexual characteristics that are sexually attractive to ordinary men. The heterosexual offender vs. children thereby differs from other men in seeking or at least accepting as a sexual partner a female who lacks the physical attributes that are considered sexually attractive in our society. The term "pedophiles" has often been attached to the offenders vs. children who many times would prefer, as we shall later demonstrate, an adult sexual partner.

In formulating this category of sex offenders we encountered the problem of eliminating from it the cases that involved the use of physical force or direct threat. Force ranges from unmitigated violence to, let us say, holding a child by the wrist; threat runs the gamut from specific verbal threat or brandishing a weapon to a subtle implication. In any relationship between a child and an adult there is always in the background an element of duress; the inevitable disparity in strength and social status is an omnipresent factor. A man, even though a stranger, is in an authoritarian superior position. While it was manifestly impossible to cope with these vaguer (but nonetheless effective) forms of force and threat, we were able to exclude from heterosexual offenders vs. children anyone who told us of using force or threat or whose official record mentioned its use.

This does not mean that the children involved were necessarily eager and cooperative; it does, however, mean that the man did not have to resort to physical violence or specific threat in order to achieve the sexual relationship.

The horror with which our society views the adult who has sexual contact with young children is lessened when one examines the behavior of other mammals. Sexual activity between adult and immature animals is common and appears to be biologically normal; however, it reflects no preference for the immature as such.

Among some preliterate societies a sexual relationship between an adult and a child evokes only a mildly negative reaction. The relationship may be considered somewhat ludicrous or it may be considered evidence that the adult is too socially inept or unattractive to obtain an adult partner. Fear of ridicule and loss of prestige operate even in sexually permissive cultures to restrict sexual activity between children and adults. In a small number of societies infants or occasionally children may be masturbated by adults (usually relatives) in order to soothe them, but there is no evidence that the adult receives any sexual gratification. In some cases such masturbation seems to be done as a casual jest or as an amusing display of the child's sexual potential.

The universal tendency to express affection and love through physical contact naturally comes into conflict with taboos concerning incest, homosexuality, and age disparities. In our culture the dilemma is solved by assuming that physical contact is not sexually motivated in certain cases. For example, we see a sexual element when an unrelated male and female embrace, but when a mother and adult son embrace we automatically reject the idea of there being any sexuality involved. In the same way a certain amount of physical contact, which would be construed as sexual under other circumstances, is socially permitted between children and adults. If the child and adult are related, it is not only permitted but expected.

Humans, however, are not psychologically and physically so constituted that a particular act can always be invested with purely sexual or asexual overtones as the social situation may demand. Our physiology and our subconscious recognize and react to warmth, body contact, and other stimulation; they do not make the fine social differentiation between, say, one's wife and one's sister-in-law. Thus a grandfather bouncing his grandchild on his lap may be aghast to discover he is developing an erection; a brother embracing his sister upon his return from a long absence may guiltily recognize a sexual response in himself.

It is easy to envision how a person under stress and starved for affection might find in the uninhibited responses of a child a strong sexual stimulation. If his culturally constructed mental barriers against such behavior are, in addition, weakened by

intoxication, senility, or emotional upset, it is not hard to see how an initially asexual relationship can readily become sexual. The actual sexual behavior may amount to little and be hastily ended, but the act is irredeemable—Uncle George or the nice young roomer upstairs or the old man who lives down the street or whoever he may be is now a sex offender both legally and in the eyes of his fellow men. On the other hand, of course, not all offenders vs. children are innocent victims of the conflict between biology and society; the nice young roomer may have had his eye on his landlady's daughter for months.

Circumstances of the Offense

The public is accustomed to thinking of the "child molester" as an old man, and it is true that the average offender vs. children was older at the time of his offense than any other sex offenders except the incest offenders, yet can scarcely be described as on the verge of senility since he was on the average aged thirty-five. However, one-sixth of them were over fifty and one-quarter were over forty-five.

Approximately 31 per cent were married at the time of their offense, nearly an equal number were widowed or divorced, and 40 per cent had never married by that time. Later the proportion of bachelors shrinks, but at the time of offense it is large for a group of this age.

The offense against the child was in 40 per cent of the cases not the first sex offense; in fact in nearly 20 per cent the offense had been preceded by two others, not necessarily against children. These are higher figures than apply to other heterosexual offenders, but compared with the figures for a number of other types of sex offenders they are not remarkable.

As for the mental state prior to the time of the offense, it appears that the offenders vs. children had a high degree of psychiatric disturbance in comparison with other sex offenders: almost 10 per cent had been psychotic or severely neurotic. Only one other group exceeded this figure.

Since alcohol and drugs can impair judgment quite as effectively as a psychosis, they deserve attention here. Drugs may be summarily dismissed as an etiological factor—only one

offender vs. children was a drug user at the time of his offense. Only a relatively small number, 13 per cent, had a history of any drug use, and nearly all of it was experimental—chiefly trying marijuana. Alcohol, however, was a factor in nearly 30 per cent of the offenses, and in most (three-fourths) of these the man was drunk and not just moderately intoxicated. It is only in the other pedophilic offenses and offenses involving force that alcohol looms larger in importance. This importance of alcohol is not reflected in the general life of the offender vs. children: their ranks contain only a moderate number of alcoholics and frequent drinkers, and the percentage of abstainers, 16 per cent, is the same as for the control group. Alcohol appears to have been a significant social factor in the lives of 37 per cent of these offenders, a proportion that is neither large nor small compared to that of other offenders, but definitely larger than that of the control group.

Despite the role of alcohol, about 70 per cent of the offenses against children were obviously premeditated. Some 6 per cent were committed by men who claimed to be *non compos mentis*, and only 14 per cent were predominantly opportunistic in nature. Thus we see a recognized and clearly planned type of behavior outweighing unplanned impulsive behavior by a ratio of about 5 to 1. In some instances the first contact with the child was fortuitous, but the later contacts were sought.

The offenses typically occurred in residences: nearly a third took place in the offender's home, 10 per cent in the child's, and 5 per cent in a shared residence, for example, a rooming house. This "homebody" tendency is, however, even more marked in the heterosexual offenders vs. minors and adults. Next in importance as a place for the offense is the out-of-doors (almost one-quarter of the instances), then theaters (a rather high figure, nearly 13 per cent), autos (7 per cent), and school grounds or buildings (only 3 per cent, but still the highest incidence reported for this location). The approach in the theaters usually is stereotyped: the man makes a visual census of females of acceptable age who are unaccompanied by adults, and changes his seat accordingly. A rebuff simply requires another move; it is not surprising that the offenders refer to their nomadic activity as "playing checkers."

Three-fifths of the young girls were known to the offenders and two-fifths were strangers. This is a high proportion of "pickups" compared with those made by offenders vs. minors and adults, but low when compared with the aggressors. Among the girls known to the offenders, over two-thirds were friends, about a fourth were casual acquaintances, and 5 per cent were related to them. Contrary to general opinion and to parental fears, it seems that the immature female is more vulnerable to adult friends and acquaintances than to mythical strangers lurking in concealment.

The girls ranged in age from three through eleven, the average (median) girl being eight, which made them younger by a year and a half than the boys approached by the homosexual offenders vs. children. Moreover, they were about a year younger than the girls involved in the aggressors vs. children cases.

In the great majority of cases the sexual behavior consisted of petting and fondling. In only 6 per cent of the cases was coitus attempted, and in less than half of these (2 per cent) was any intromission effected. These cases involved girls aged eight to eleven, i.e., the older girls within this pedophile category. It is interesting that the percentage of completed coitus was lower than in the incest or force cases involving girls of a similar age. Turning back to the majority of cases, we find that in a quarter of them the physical contact stopped short of genital stimulation, but in two-thirds of the instances there was such stimulation of either the child or the male. In some cases this was through the clothing or underclothing. Mouth-genital contact occurred in about a sixth of the cases. It is clear that these offenses against children involve mainly the use of extensive petting techniques and only to a minor degree attempts to effect coitus.

The lack of coitus stems in part from the youthfulness and physical immaturity of the children and in part from one of the criteria defining the group—lack of force. Attempts at coitus are more apt to provoke resistance, which in turn often engenders the use of force.

To gain a picture of the child's behavior in these cases it is necessary to consider both the police or court record and the offender's account of the event to the interviewer. Unfortu-

nately, in the majority of official records information concerning the child's behavior is lacking; only 61 cases had sufficient data. Even some of the interview data was incomplete in this respect, as when the offender denied the offense or omitted certain essential details. At any rate, the behavior of the child as reported by the official record and by the offender is summarized below:

	RESISTED %	PASSIVE %	ENCOURAGING %	CASES N
<i>According to record</i>	75.4	8.2	16.4	61
<i>According to offender</i>	14.6	36.9	48.4	157

It is obvious that the offender believes, or would like others to believe, that the child either encouraged his sexual advances or received them uncomplainingly; conversely, the agents of society find that in three-quarters of the offenses the child resisted and presumably wished to avoid the man's advances. Not having interviewed the children, we can only report the above findings and add a few notes of evaluation. The offender, of course, wishes to escape as much onus of guilt as possible: consequently, when he does not deny the offense, he usually offers mitigating circumstances. Sometimes he believes his own excuses; sometimes they are designed to persuade others, but either way there is a powerful bias in the reporting. Occasionally it may be that he could not recognize, or would not recognize, a modest degree of resistance. On the other hand, the official records are apt to include equally suspect emotional verbiage about the heinous degenerate and the helpless child. However, they contain factual information as well, and consequently we tend to rely upon them more than upon the offender in forming our overall impressions.

The term "resisted" should not be construed as any great physical resistance or struggle; the child simply pulled away or attempted to avoid the activity. In only 4 per cent of the 273 offenses did the offender use some degree of force, though not enough to result in his being classed as an aggressor. The force was minor—holding the child by the arm, pushing, pinching, and so forth. In only one case was there duress in the form of a serious threat.

In over 90 per cent of the cases the likelihood of the offense's being reported depended primarily on the child's keeping silent. This means that the event was not observed by other adults nor were there any other elements in the act that might have resulted in its being brought to the attention of persons other than the participants.

As one would expect, in slightly over three-quarters of the cases the authorities were notified by the child's relatives or by adult friends or neighbors. Usually the child tells her parents or tells a girl friend who, in turn, tells her own parents. Strangers who witnessed the act or who became suspicious account for another 14 per cent, and the remaining percentage became known for miscellaneous reasons.

As to the admission or denial of guilt, we used two sources of data: the official record and what the offender told us in the interview. These data are given below:

	OFFICIAL RECORD %	INTERVIEW %
<i>Full admission</i>	59.7	65.8
<i>Qualified admission</i>	10.7	9.2
<i>Too drunk to remember</i>	2.8	3.5
<i>Guilt denied</i>	26.9	21.5

Setting aside 20 cases where either the official record or the interviewer's information was lacking, we find that in 221 instances there was full agreement between the official record and the interview; in 23 cases there was fuller admission of guilt to the interviewer; and in nine cases the reverse held true.

There remain about a fifth of the offenders vs. children who stoutly denied their guilt—this is a very large proportion compared to other types of sex offenders; only the incest offenders vs. adults rank higher as proclaimers of innocence. Almost without exception these men maintained their innocence in the face of ample testimony and evidence to the contrary, and one often felt that they could not admit the truth even to themselves. Their explanations were generally unconvincing and frequently contained a paranoid theme concerning their having been "framed."

Varieties of Offenders

An inspection of all the case histories of offenders vs. children resulted in our differentiating no less than eight varieties. At first glance these varieties may appear to be based upon causative or at least explanatory factors, but actually they are simply gross descriptive categories. Between one-fifth and one-fourth of the case histories were not classified either because they fell into two or more categories or because sufficient background data were lacking. The classification is as follows: pedophiles, the sociosexually underdeveloped, amoral delinquents, situational cases, mental defectives, psychotics, drunks, and senile deteriorates.

The great majority of the offenders vs. children tend to fit one of these categories more logically than others. This does not imply mutual exclusivity; one may find a feeble-minded male who got drunk and responded in a situational fashion. In such a case one must try to determine which was the more important element in the offense behavior. Because of such overlapping, because of the subjective judgments involved, and because of the variable amounts of data available, we feel it wise to speak only in broad generalities about the varieties of offenders vs. children and eschew exact figures.

PEDOPHILES / The pedophiles are the commonest variety and constitute from perhaps one-quarter to one-third of the offenders vs. children. This prevalence is no surprise: a sexual interest in children (or a broad age tolerance for sexual partners) probably underlies the offense behavior of most of the varieties. The term "pedophile" is somewhat unfortunate since these men evidently did not consciously prefer children as sexual partners, but simply found them acceptable. In about half of the cases some degree of sociosexual deprivation existed at the time of the offense, which may have triggered the behavior. Of course, sociosexual deprivation is a chronic condition with most men; at least it is uncommon to find a man who claims he has all the sociosexual contact he wants. Consequently, the finding concerning the pedophiles is significant only in comparison with

the other varieties of offenders vs. children. While with some people sociosexual deprivation stems from shyness and feelings of inferiority and insecurity, such internal handicaps were uncommon in those pedophiles who were interested in children *per se* and who did not turn to them only after attempts to contact adult females had failed. Indeed, not a few pedophiles had quite adequate sexual relationships (in terms of frequency) with women at the time of offense.

In the small number of instances where any deep affection existed between the offender and the child, the former was usually a pedophile, but even among pedophiles affectionate relationships were uncommon. This lack is to be expected, considering the necessarily different interests and outlooks of adults and children, and the fact that even physical intimacy is difficult and dangerous to repeat and maintain if the child and adult are unrelated. Lastly, the usual male promiscuity plus the transitory interest of the child make for temporary rather than long-term relationships.

Of all the varieties, the pedophiles had the longest records of interest in and sexual activity with children. Of all offenders vs. children whose interest and/or activity covered twenty or more years, nine out of ten were pedophiles. Of those with a ten- to nineteen-year span, two-thirds were pedophiles. Such lengthy durations were not unusual among offenders vs. children: between one-third and two-fifths of them had records of ten or more years. It is evident that a reasonably prudent pedophile can indulge in his predilection for years before the human law and the law of averages catch up with him. In fact, our most extensive pedophile, who had sexual contact with hundreds of little girls and boys, died in his sixties with never an arrest and only a few "close calls" in his case history.

One pedophile, who was also sociosexually underdeveloped, had a case history which affords a simple story of the genesis of his pedophilia. As a child he had gratifying prepubertal sex play with girls, but in early postpubertal life he found his female peers had become much more difficult to deal with. The days of unashamed mutual exploration and play were ended, the girls were now aware of social demands, and had something of an

adult attitude toward sex. The boy felt awkward and embarrassed with girls his own age, a typical early teen-age situation, but unlike the typical teenager he responded by reverting to females of prepubertal age. This led to his first arrest, and when news of this spread through his high school his stunted heterosexual life with girls of his own years was blighted still more, which served to engender more pedophilic activity. His first coitus with an adult came at age eighteen when an aggressive married woman seduced him. The experience was not particularly enjoyable and was marred by fear at the time and guilt later. His feelings of inferiority and shyness were exacerbated. Since his teens he had been almost wholly attracted by prepubescent girls, and viewed women with disinterest or apprehension. He stated, "I just can't help it . . . I can't control myself." His pedophilic activity was confined to petting during which he did not ejaculate; instead he would go home and masturbate. The petting was emotionally satisfying. As an adult on parole, he attempted to follow the prison psychologists' advice and establish a relationship with women. His first attempt was evidently so clumsy and uninspired that the woman refused a date saying, "I don't go out with queers." This had a crushing effect upon his morale and he turned again to children who were more likely to accept him.

THE SOCIOSEXUALLY UNDERDEVELOPED / Roughly one male in ten of our sample of offenders vs. children could be classed as a case of underdeveloped sociosexuality. The men were usually young—under thirty—and had never had anything approximating the heterosexual experience normal for their age. They suffered more than other offenders vs. children from feelings of inferiority and shyness with women; at least two-thirds of them were thus handicapped. Sexual deprivation insofar as contact with women is concerned is the major characteristic of this variety of offender. Their sexual activity with children not infrequently had a duration measured in years, but since, as we have said, they were usually still young they cannot compete with the pedophiles in terms of duration of offense behavior.

One has the impression that some of the underdeveloped cases are simply continuations of prepubertal sex play, the growing

male keeping up his play with prepubertal girls while also making sporadic and abortive attempts to establish sexual relationships with older females. The other underdeveloped cases are those where the male followed the normal course of outgrowing sex play with children, but after some years of frustration in the adult realm reverted to prepubertal sexual partners.

A striking example of an underdeveloped case who simply continued prepubertal activity was a man who had an unusually gratifying and active prepubertal sex life with girls. Between age five and age fourteen, when he attained puberty, he had sex play on the average of once a week. Very young girls were firmly established in his mind as sexual beings, and from ages fourteen to seventeen he simply continued with them while adding a few as old as thirteen or fourteen to his list of petting partners. At seventeen he was apprehended and spent the next three years in confinement. On his release he reverted to his offense behavior after some moderate drinking and was incarcerated again.

An example of an underdeveloped case who tried to work out an adult adjustment but turned to children is seen in a rather atypically old male of forty-one. As in the preceding case, he had a gratifying prepubertal sex life with girls, but as a teenager found himself shy, nervous, and awkward with girls of his own age. Some of this may well have stemmed from the fact that he was scrawny, weak, and facially unattractive. His delayed puberty (attained at age sixteen) was probably detrimental to his sociosexual adjustment also. At seventeen, desperate for some heterosexual activity, he had coitus with a prostitute, but was too nervous and upset to reach orgasm. He rebelled against his possessive overprotective mother by playing truant and by committing petty thefts, which led to his being examined in a mental hospital and ultimately being sent to a reformatory. He escaped, became a hobo, and learned to steal and burglarize. At twenty he was caught and sent to prison. At twenty-two he emerged, facing the world without ever having petted with a female beyond the age of puberty, and with one lone experience with a prostitute which had been a partial failure. He was now labeled an "ex-con," and his teeth, which he had neglected after he became a hobo, were rotting out. Not surprisingly, he was unable to find any sexual companions and hence tried

prostitutes again—a total of four times—but never reached orgasm. He finally reverted to sex play with girls aged seven to twelve and was eventually sent to the penitentiary for this. After some years he was paroled, and while he refrained from contact with children, his attempts to establish relationships with women were not successful (except in one instance which lasted a year and a half) although he learned to reach orgasm. His efforts with adult females terminated disastrously in an attempted rape in which, in ironic keeping with his whole sexual history, the female subdued him.

AMORAL DELINQUENTS / Amoral delinquents are persons known by various names such as “psychopaths,” “sociopaths,” “sociotics,” etc., who function essentially without regard to the controls society imposes and who do not have a conscience in the usual sense. When sexually aroused they are apt to employ any convenient human or animal for gratification. A few use children and hence appear, although rarely, among the men convicted for offenses vs. children. On the basis of very few cases it appears that such men are not apt to repeat the offense behavior: it is typically a one-time impulsive act. Deprivation and inferiority feelings are usually absent.

An illustrative case is that of a man of thirty-eight with dull to normal intelligence. His history was one of unskilled labor interlaced with gambling and bootlegging. At the time of the offense he was living with his third wife. He planned to go on a trip, and his wife invited an eleven-year-old girl to stay with her for company during his absence. However, he changed his mind and remained at home, where he and his wife had a drinking party and gave alcohol to the child. All three went to bed and the husband had coitus with the girl while the wife held her. He had had no prior interest in girls of this age; the act was simply one of amoral opportunism without any feeling of wrongdoing.

SITUATIONAL CASES / This category is unsatisfactory in that it leaves unanswered the reasons for the offense behavior. In certain cases the individual was under stress, but why the stress led to (or was followed by) sexual activity with children is unknown. Perhaps one offender vs. children in a dozen could be

classified as situational. Such offenders have no conscious sexual interest in children, who may be any age; deprivation seems involved in only about half of the cases, and the same is true of feelings of inferiority and shyness. Generally the offense behavior is of brief duration, often occurring only once, although an occasional male will get caught in a gratifying pattern of behavior and continue it for several months.

While the situational variety of offenders vs. children is so diverse in content that no one history can serve as typical, the following case of a twenty-seven-year-old male could be matched by many. After a rather restrained premarital life this shy and dependent young man married a girl who was more aggressive than he. She held a job, spent money freely, and went out frequently without her husband, leaving him at home to care for their child. He was periodically unemployed and felt perpetually jealous and inferior; the marriage continued to deteriorate. In a moment of depression he tried suicide. Not long thereafter while he was alone at home watching television some neighborhood children came in. One, a girl of ten, sat next to him and, according to him, hugged him. He became sexually aroused (coitus with his wife had become scant) and ultimately he took her into the bedroom and attempted coitus.

Leaving the "sane" varieties of offenders vs. children, there remain those whose mental functioning was either temporarily or permanently impaired.

MENTAL DEFECTIVES / The mental defectives constitute the largest variety of offenders vs. children except for the pedophiles; perhaps as many as one-seventh to one-fifth of the offenders vs. children fall into this classification. While they are not immune from other problems, their offense behavior is due chiefly to their mental deficiency: they rate no higher than middle-grade moron, and quite a few have been in institutions for the feeble-minded. The great majority are not troubled by feelings of shyness or inferiority, nor does sexual deprivation seem an important factor, although about a third of the men have rather blank sociosexual histories—defectives often have low sex drive and expectations.

Their offense behavior sometimes appears to be the conse-

quence of lack of appreciation of or thought for social rules—a sort of unthinking simple-minded opportunism. In other instances one feels the offender was for all practical purposes an overgrown child indulging in prepubertal sex play. Data concerning duration of activity with children are hard to obtain, but in most instances such activity continues sporadically over a period of years. When the defectives become aged they tend to blend with the senile deteriorates.

They are apt to have very little sexual activity of any sort, and their petting with children seems as much a matter of seeking attention and affection as of seeking specifically sexual gratification. As an illustration, we have the case of a feeble-minded man of nearly sixty whose heterosexual activity with adults consisted solely of experiences with prostitutes plus one brief marriage. He had been fond of young children and babies for some time and took to petting little girls who came around the shack he inhabited as a railroad flagman. On the other hand, a similarly feeble-minded male in his thirties had had coitus with a hundred companions and several hundred prostitutes, supplementing this with substantial outlet from masturbation and nocturnal emissions. This ample sexual activity did not prevent him from approaching young boys and girls when he encountered them in parks and motion-picture theaters. One has the impression that he regarded any human of reasonable physical size as a sexual object.

PSYCHOTICS / There are a small number, perhaps one in twenty, of offenders vs. children who seem to have offended during a psychotic or severe neurotic period. Deprivation and shyness do not appear to have been important factors, and these men usually have seemingly adequate sociosexual relationships with adults. The duration of activity with children is highly variable, probably depending on the duration and recurrence of the psychosis.

DRUNKS / There are also a small number of males whose offense seems intimately connected with their having been seriously intoxicated. Some are chronic alcoholics. While many sex

offenders, and especially those who offend against children, claim drunkenness in exoneration, in very few cases does intoxication seem to do more than simply release pre-existing desires. Even in those very few "drunks" now under discussion, there is probably some unconscious pedophilia, or at least an unusual weakness of the age taboo, for the vast majority of alcoholics and seriously intoxicated persons do successfully discriminate as to the age of a potential sexual object.

A typical case is one of an unmarried man nearly forty, whose heterosexual life was quantitatively adequate. He was given to rather heavy drinking, especially during weekends. On one such weekend, while staying with friends, he exceeded his capacity and became so intoxicated that he had no recollection of entering the room of a nine-year-old girl and touching her genitalia. The girl protested and he left. Nothing in his prior history or in the institutional psychiatric examinations gave any forewarning of his behavior. The drunken cases typically have but one offense incident; repeated activity with children is rare.

SENILE DETERIORATES / The stereotype of the child molester is that of a senile old man whose second childhood includes a second round of sex play with children. Actually, such men are quite uncommon in the present sample—perhaps no more than one in twenty in a group of offenders vs. children. Among these men deprivation is a dominant feature, with impotence as a fairly common complication. Many of them are not old—some are in their forties—and many are not overly bright to begin with, so that moderate mental impairment resulting from age, disease, and often alcohol, has a more pronounced effect on them than it would on a more intelligent man. Judgment is weakened and taboos become blurred, so that these men yield readily in situations where easy sexual gratification is possible. They might with some validity be termed as situational offenders because of intellectual deterioration. Like the mental defectives, many of the senile deteriorates are lonely, and appreciate affection and attention from children. They differ from the defectives in that the deteriorates represent the ruins of a former adequate being, while the defectives never were ade-

quate. Generally the offense behavior is brief or a one-time thing, but individual cases may endure for some years.

A typical case is that of a barber in his sixties. He had had a very restrained premarital life, his fiancée and subsequent wife being his only nonprostitute sexual partner, and prior to marriage he did no more than hug and kiss her. This restraint presumably prevented extramarital coitus with other women in his old age when marital coitus declined and ended. Impotence began to trouble him in his fifties, and in the three years prior to his offense he had had no coitus. He began playing with little girls who came to his shop, giving them candy, twirling them in his barber's chair, and inducing them to masturbate him. As the prison psychologist stated, "This man is entering a period of laxity of judgment precipitated by senile breakdown." Like most elderly first offenders, he could not admit to himself or to others what had happened, and felt his life was ruined—a feeling not without justification.

Summary

The heterosexual offenders vs. children appear to be chiefly a group of older men who were unable to defer the gratification of their impulses until a socially more suitable situation could be arranged. This inability was in some cases a personality defect in an otherwise mentally normal man, but in other cases it seems the result of a varying degree of mental deficiency. The inability to defer gratification and to endure frustration is clearly indicated in numerous ways: rushing into marriage with brief previous acquaintance; devoting little time to precoital play; turning to children as sexual partners rather than waiting to work out the adult relationships they preferred; high masturbation frequencies by married men; a relatively heavy reliance on prostitutes; and a large ratio of child victims who were strangers rather than acquaintances or friends.

While some sex offenders are happily amoral, like certain carefree characters from Steinbeck's *Cannery Row*, the offenders vs. children were usually caught in a conflict between their morals and their behavior. In general they were moralistic and

conservative (note how they rate in restraints on premarital coitus and how few had premarital coitus with their future wives)¹ yet most maintained a sexual life normal for their socioeconomic status. This conflict was partly solved by their adopting the double standard and the "good girl vs. prostitute" concept. Many were extremely guilt-ridden as a result of their sexual activity with children (often the offenses required prior consumption of alcohol) and were more prone than most to deny their guilt. Others who could admit their offenses could not face reality wholly, and professed that the children encouraged the behavior. The combination of morality, sometimes intensified by a religious resurgence in prison, and their difficulty in facing unpleasant realities made the offenders vs. children hard to interview. The clinicians also found this same defense an impediment to psychotherapy.

The great majority of the offenders vs. children are not physically dangerous since they did not use force and since they seldom attempted coitus. Moreover, when their record included some other sex offense it was generally one vs. minors, or exhibition. Their nonsexual criminality lacked signs of aggression, usually consisting of breaches of peace, drunkenness, and other minor troubles more indicative of disorganization than hostility.

HOMOSEXUAL OFFENDERS VS. CHILDREN

Homosexual offenders vs. children are adult males who made homosexual overtures to, or had sexual contact with, boys under twelve. Since extremely few of the boys were relatives of the offender, it has not been considered worthwhile to establish a category of homosexual incest; this same situation obtains among all the homosexual-offender groups. Force or threat is also minimal in homosexual offenses and accordingly has not been made the basis for separate categories; we shall simply tabulate the instances in which force or threat are known.

Like the incest offender vs. children, the homosexual offender

¹ See Paul H. Gebhard, John H. Gagnon, Wardell B. Pomeroy, and Cornelia V. Christenson, *Sex Offenders: An Analysis of Types* (New York: Harper & Row, Publishers, Inc., 1965), pp. 62-65.—Eds.

vs. children has broken not one but two taboos, in this case the taboo against homosexuality as well as that against sexual contact with children. He is also the logical counterpart of the heterosexual offender vs. children; just as some heterosexual males may select or accept an unsuitably young female, so may the homosexually oriented male turn to an unsuitably young male.

While we shall later discuss the age preferences of the homosexual offender vs. children, it is worth mentioning now that few seem particularly interested in boys under twelve; our impression is that they seek out adolescent or young adult males, but if these are unavailable at the moment, they will turn toward preadolescents. If the homosexual offender vs. children is convicted of another kind of sex offense, it is most commonly a homosexual offense involving a boy aged twelve to fifteen. The homosexual offenders vs. children also show a relative predisposition toward heterosexual offenses with girls under sixteen. In brief, most of them are interested sexually in young people, preferably but not necessarily male, and their minimum age limit is quite elastic and can be stretched to suit the immediate circumstances.

There are numerous reasons why these offenders are attracted to young males, and some of these reasons may be touched upon here before a more detailed analysis. Some homosexually oriented males do not want an adult partner who would not only have his own ideas but could insist successfully upon following them. A selfish or insecure person does not find a satisfactory partner in someone of equal or greater dominance. Moreover, with an older partner there is less likelihood of being able to cast oneself in the ego-satisfying role of a teacher; in fact, an adult (i.e., experienced) partner may be in a position to make unflattering comparisons or to make demands upon one. Precisely this same sort of thing lies at the core of the desire of some heterosexual males for inexperienced or virginal females. There are also homosexually oriented males who prefer feminine physical attributes in their homosexual partners, a not uncommon preference in men who are not exclusively homosexual. A prepubescent boy is feminine in that he lacks adult male charac-

teristics such as body hair, masculine voice, and prominent musculature. The jokes and quips in our masculine folklore about the sexual desirability of fat little boys are based in part upon reality insofar as some males are concerned.

In still other instances one finds men who are interested primarily in reaching orgasm with any warm-blooded animal; they may prefer some specific sort of partner but are willing if necessary to utilize whatever is convenient, whether male, female, young, old, human or nonhuman. Males of such a broad range of acceptability are uncommon, but it is not rare to find males who, in special situations, can be almost equally polymorphous in their activity.

Disregard for age, sex, and species need not be regarded as biologically pathological; it is precisely what we see in various animals, particularly in certain monkeys. The polymorphous sex offender can be said to be operating at a primate level with the philosophy that necessity is the mother of improvisation. To return to the immediate subject, the homosexual offenders vs. children include more such polymorphic individuals than most other categories of sex offenders.

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Circumstances of the Offense

The average (median) homosexual offender vs. children was 30.6 years old at the time of offense, an age that clashes with the public's stereotype of the homosexual child molester as being a deteriorated old man. Relatively few were married at the time (16 per cent), over half had never married, and over one-fourth were separated, divorced, or widowed. Even so, these offenders were "more married" than the other homosexual-offender groups.

For half of them this was their first sex offense; for one-third, their second; and for about one man in ten it was his third.

The homosexual offenders vs. children rank third in the percentage who had a record of psychosis or neurosis. Six men, who among them account for nine offenses, had been institutionalized or otherwise treated for some psychopathology.

While no offenders were under the influence of drugs at the time of the offense, a rather large number—a quarter—were drunk and another 10 per cent were mildly intoxicated.

In only one case did another adult participate in the offense.

Of all the homosexual groups, these offenders vs. children had the fewest premeditated offenses: 84 per cent. Compared to other sex offenders, however, this is a moderate proportion.

In nearly half of the cases the offense occurred in a residence—often the joint residence of the offender and of the child. In nearly one-quarter of the cases it took place out-of-doors, about 12 per cent of the time in automobiles, and the remainder in miscellaneous places such as theaters, toilets, schools, etc. This distribution of locales is very like that for the heterosexual offenders vs. children.

The average boy was nearly ten at the time. In almost half of the cases the boys looked upon the offenders as friends,² in about a tenth of the instances they were related, in 9 per cent they were acquaintances only, and in almost one-third they were strangers.

While a few offenses were interrupted, so that one cannot be certain about what sexual techniques would have been used (indeed, nearly 3 per cent of the offenses had not reached the point of physical contact), it is clear that the commonest technique was masturbation (45 per cent) and the second commonest was fellation (38 per cent). Anal coitus is rather rare—4 per cent. The predominance of masturbation (usually done to, rather than by, the boy) over fellation and the rarity of anal coitus reflect the inexperience and indifference of these children. This is proven by our data concerning their participation, which was markedly less than in homosexual offenses against older boys and men. For 37 offenses adequate information about the boy's behavior existed in *both* the official records and the

² A British study based on 241 offenses against young boys aged five to seventeen pointed out that such homosexual offenses were typically committed "under circumstances where the child already had close contact with the offenders and therefore confidence of parents and child were well established, e.g., schools, churches, scouts, etc." See Donald Mulcock, "A Study of 100 Non-Selected Cases of Sexual Assaults on Children," *International Journal of Sexology*, VII (February, 1954), p. 126.

offender's report. Of these, 70 per cent agreed that the boy was either passive or encouraging (as against the 83 and 93 per cent figures for the other homosexual groups)³ and in 19 per cent there was agreement that the boy resisted. In another 8 per cent the record refers to resistance which the offender denied occurred, and in 3 per cent resistance seems to have followed initial acceptance. All in all, it appears that the boys resisted the sexual overtures, at some point in the activity, in between one-quarter and one-third of the offenses.

Such resistance was countered by physical force in 10 per cent of the offenses and by threat in an additional 4 per cent. Only mild to moderate physical force seems to have been employed, and only one case involved severe force. Similarly, one threat alone merited the label of "major threat." Comparison cannot be made with heterosexual offenses vs. children, since any use of real force would exclude an offense from this category and put it in the aggression category. We can, nevertheless, point out that the use of physical force, and particularly of severe force, is so rare in homosexual offenses against children that a separate category for force offenses was not warranted.

In all except 5 per cent of the cases the offenders' behavior was discreet enough to make discovery quite unlikely: everything depended upon the boys' keeping silent. Some 7 per cent of the boys were sufficiently offended or upset to report the matter to authorities. About two-thirds of the offenses came to official attention through friends or relatives who learned what had happened. The only other substantial cause of arrest came as a by-product of police activity: checking cars, watching loiterers around schools, investigating other crimes, etc.

While all homosexual offenders are inclined to admit their behavior freely, the homosexual offenders vs. children did so least often, undoubtedly because of the stigma attached to sexual behavior with children. Slightly over two-thirds made full confessions to the authorities and nearly three-quarters did so to us. Close to one-quarter flatly denied the offense to the

³ The "other homosexual groups" referred to are homosexual offenders vs. minors and homosexual offenders vs. adults: Gebhard *et al.*, *op. cit.*, pp. 298-357.—Eds.

authorities and slightly less than one-fifth denied it to us. Qualified admissions were understandably rare. A few said they had been so drunk or disturbed at the time of offense that they did not know what happened.

The final legal pleas made by the offenders agree rather closely with the confessions and denials made to our interviewers: 78 per cent pleaded guilty, 18 per cent not guilty, and 4 per cent made no plea and threw themselves on the mercy of the court.

Varieties of Offenders

By far the commonest variety of offender, comprising slightly over half of all our cases, is the pedophile. We include under this term not only males who prefer children, but also those who, while preferring older persons, nevertheless find children sexually desirable. The great majority of pedophiles were attracted only by male children, but a few seemed interested in both sexes. The fact that the pedophiles are so numerous is in keeping with our findings concerning the offenders vs. female children, where they also constituted the commonest variety.

A number of the pedophiles attempted to explain their attraction to young boys, and their explanations make it clear that the major factor is their inability to be at ease with adults. Some men made explicit statements to this effect, e.g., "I'm more comfortable with boys," while others expressed themselves less directly, saying that boys are less demanding and critical. A few of the men who were insecure with their peers phrased their explanations in terms of dominance, pointing out that they could feel superior when with boys and that boys were easier to influence than adults.

The second commonest explanation, given by perhaps one-quarter to one-fifth of the men, centered on the emotional and sexual responsiveness of the young. Boys were valued for their reported ability to express emotion and affection unreservedly, spontaneously, and often intensely. The inhibitions and cold calculations that often mar adult relationships are, they felt, less common among the young.

Finally, about one-eighth of the explanations concerned

physical attributes. Some of these were expressed positively—for example, that boys have smooth soft bodies—but more were negative, listing the unpleasant attributes of adults that boys lacked.

The great majority of the pedophile variety of offenders had had considerable previous homosexual experience; only three or four appeared to have had little.

While the pedophile offenders vary considerably, the following case could be duplicated in essence many times. This man, twenty-eight years old, had had a considerable amount of prepubertal sex play, chiefly homosexual. Perhaps in consequence his postpubertal masturbatory fantasy and his sex dreams centered chiefly on boys. His overt homosexual activity extended a year or so beyond puberty and then stopped, but he did have homosexual relations with adults a few times during his military service overseas. On his return at age twenty he had a moderate amount of homosexual activity with one male aged sixteen, and some heterosexual coitus as well. The latter was chiefly with a fourteen-year-old girl (note the pedophilic trend) whom he impregnated and married. For four years thereafter he had no homosexual contacts, but his married sexual relations deteriorated and the coital frequency dropped to about once a month. He had strong moral objections to extramarital coitus and reverted, instead, to homosexuality, seeking strange young males to whom he offered money. He ultimately had four homosexual contacts, one with a boy of eleven, which resulted in his conviction.

Some of the pedophile variety of offenders were sexual polymorphs—persons not especially concerned about the species, gender, or age of their sexual partners. One example was a man in his late thirties, of average intelligence but small education. Between age five and puberty he had had sexual contact with adult females, but had never achieved coitus because he was not aroused enough to maintain an adequate erection. He also had a small amount of contact with adult males. He had had numerous brief marriages—the first one at age eighteen—with females from two years his junior to twenty-one years his senior. All through his life he also had sporadic homosexual experi-

ences. While most of his heterosexual and homosexual contacts were with adults, he had also engaged in sexual practices with seven boys aged eight to fourteen and four girls aged eight to eleven, and was convicted twice for his behavior. The age of his ideal sexual partner, female or male, would be fifteen years.

A great percentage point gap separates the pedophile variety from the next commonest varieties, the mental defectives and the drunks each constituting about 10 per cent of the homosexual offenders vs. children. The mental defectives, it will be recalled, are also the second commonest variety of heterosexual offenders vs. children.

The mentally defective homosexual offenders vs. children reported extremely little homosexual experience; only one man had more than an incidental amount, and three denied any homosexual activity including the offense. Three young males aged sixteen to twenty-four, with IQs ranging from 46 to 64, had had extremely little contact with either sex, but the remaining mentally defective offenders had had at least a modicum of sociosexual life. The offenses of the "sexless" three were child-like not only in choice of object but in the behavior involved. The more experienced offenders also showed little evidence of being physically dangerous; only one, a man of thirty-five with an IQ in the 50s, used violence, slapping an older boy who refused him. On the other hand, there were some attempts at anal coitus which can be physically damaging to children.

As common as the mentally defective variety are the drunks. All but one of these nine men were confirmed alcoholics, and most had long records of arrests for drunkenness, disorderly conduct, and vagrancy. Unlike the pedophiles they were very apt to commit nonsexual crimes, over half having felony arrests, chiefly for larceny of one sort or another. They also are a more violent group. They seem, however, considerably less homosexual than the pedophiles: three denied any homosexual experience including the offense, three had little homosexuality in their histories, two had a substantial amount, and data are incomplete for one individual.

The next commonest variety, consisting of five individuals, was the situational variety. Four of the five were predominantly

homosexual males who under unusual circumstances had contact with boys whom they would ordinarily have avoided as too young. The fifth case—that of a male without previous homosexual activity or inclination—stemmed from marital stress, sexual deprivation, and emotional upset.

The remaining four classifiable cases were judged to be three amoral delinquents and one psychotic.

Summary

The early life of the homosexual offender vs. children was characterized by poor relationships with both parents, and a large proportion of broken homes. As though seeking some emotional gratification outside the home, many of these future offenders had prepubertal sex play, largely homosexual. In addition, a large number (nearly one-third) of the boys were sexually approached by adult males.

In adult life these offenders resemble the other homosexual offenders in emphasizing masturbation and in being quantitatively (and probably qualitatively) deficient in heterosexual activity. Even their frequency of marital coitus was rather low, and relatively few attempted extramarital coitus.

Their homosexuality far exceeds that of any group except the other homosexual offenders, and most of them were sexually interested in male (and even to some degree female) children and minors; other "reasons" for offense behavior (e.g., drunkenness, mental deficiency, etc.) are much less common, no one of them ever accounting for more than 10 per cent of the men.

In brief, we have here chiefly a group of males who are both homosexually and heterosexually oriented and who are either consciously sexually interested in children or at least willing to accept them as partners. This relative sexual flexibility as to gender and age (and some accept animals of other species) seems to place them in an ambiguous and stressful situation. They are, so to speak, neither fish nor fowl and have difficulty in sociosexual relationships.

PORNOGRAPHY

Ned Polsky

Pornography has been denounced and distributed, enjoyed by many but acknowledged by few, and subjected to study by jurists, theologians, men of letters and legionnaires of decency, psychoanalysts and psychologists, biographers and historians—and one sociologist. The sociologist is Ned Polsky: his contribution to an understanding of this phenomenon is given in full below.

Polsky is a bit of a maverick in American sociology. He belongs to no school; in fact, a school would only fence him in, and before his guards realized what was happening, he would be a fugitive. His criticisms are often directed toward those for whom one would expect Polsky to have some affinity, and in fact he has, but it does not make his barbs less trenchant. Perhaps it makes them more so.

A social actionist, deeply involved and concerned about social issues, Polsky is nevertheless a firm defender of value-free sociology. Not that there is a contradiction; but what is interesting is that he does not mind (or perhaps even relishes) the strange bedfellows with whom he finds himself in warm and not-so-warm embrace.

The selection reprinted here is taken from Polsky's book, *Hustlers, Beats, and Others*. The reading of that book is an introduction to Polskiology: who else would one expect to be involved in capturing the rhythm and beat, the pulse and shuffle,

Source: Ned Polsky, *Hustlers, Beats, and Others* (Chicago: Aldine Publishing Company, 1967), pp. 186–207. Copyright © 1967 by Ned Polsky. Reprinted by permission of the author and publisher.

of Greenwich Village hipsters, poolroom hustlers, denizens of the cool world, professional gunmen, and purveyors of pornography?

While others are debating whether pornography matters, what constitutes pornography, and what unconscious symbolism it purveys, Polsky asks the specifically *sociological* questions: what is the nature of a social structure that brings forth both pornography and its condemnation, and what is the function of the pornography in that social system?

He asks the questions, and he answers them. Not all will agree with his answers, nor with his various tangential polemics. But no one can fail to find here exciting *sociological* insights into a manifestation of sex mores.



Samuel Johnson once informed James Boswell that he could recite a complete chapter of a book called *The Natural History of Iceland*. The chapter was entitled "Concerning Snakes," and consisted in its entirety of the following: "There are no snakes to be met with throughout the whole island." I can be similarly brief concerning studies on the sociology of pornography: there are no such studies to be met with throughout the whole of sociology.

What we do have, first of all, is an abundance of offhand "sociologizing" about pornography, on the part of contemporary journalists, cultural historians, psychiatrists, literary critics, lawyers, and judges—especially if they are of liberal inclination and don't like censorship. This material isn't worth much. In fact its chief interest for sociologists, as I shall elaborate below, is that the sociological interpretations most often found in it are demonstrably wrong.

Secondly, we have some published data on consumers of pornography and their social backgrounds. The best material of this sort, as on most matters sexual, comes (as you might expect) from the Institute for Sex Research.¹

¹ Cf. Alfred Kinsey, Wardell Pomeroy, and Clyde Martin, *Sexual Behavior in the Human Male* (Philadelphia: W. B. Saunders, 1948), pp. 363, 510; and Kinsey, Pomeroy, Martin, and Paul Gebhard, *Sexual Behavior*

Thirdly, we have a particular sociological theory—I would call it a theory of the upper-middle range—that was not developed to explain the place of pornography in society but nevertheless serves, I think, to explain that place very well.

There are many special aspects of the sociology of pornography, and in what follows I shall not even mention most of them, much less pursue them. Instead, I shall try to spell out how that theory of the upper-middle range gives a sociological overview of pornography within which more specialized investigations might proceed.

I

In his study of prostitution Kingsley Davis demonstrated, with cogent reasoning and much evidence that I cannot rehearse here, the following main argument: (a) the goals of sexual behavior in man are not inherently social; but (b) societies need to hook sexuality onto social ends, particularly the ends of bearing and raising children, by restricting the morally legitimate expression of sex to the institution of the family; and (c) this conflict between sexual inclinations and social requirements is ameliorated by prostitution, which helps to maintain the family as an institution by acting as a safety valve for the expression of antisocial coitus—i.e., impersonal, transitory, non-familial coitus—that cannot be fully suppressed.² Davis thus sees the family and prostitution as complementary institutions, each requisite to the other.

I suggest that Davis's theory applies, *mutatis mutandis*, to pornography. Prostitution and pornography occur in every society large enough to have a reasonably complex division of labor; and although pornography develops in only a rudimentary way in preliterate societies (by means of erotic folktales and simple pictorial or sculptural devices), whenever a society has

in the Human Female (Philadelphia: W. B. Saunders, 1953), pp. 652–72. Note that most Kinsey findings on male use of pornography are presented in the volume on females, along with comparative data on females.

² Cf. Kingsley Davis, "Prostitution," in Robert Merton and Robert Nisbet (Eds.), *Contemporary Social Problems* (New York: Harcourt, Brace & World, 1961), pp. 262–88.

a fair degree of literacy and mass-communication technology then pornography becomes a major functional alternative to prostitution.

In saying that prostitution and pornography are, at least in modern societies, functional alternatives, I mean that they are different roads to the same desired social end. Both provide for the discharge of what society labels antisocial sex, i.e., impersonal, nonmarital sex: prostitution provides this via real intercourse with a real sex object, and pornography provides it via masturbatory, imagined intercourse with a fantasy object.

Although societies use both alternatives, the degree to which one is used in preference to the other seems to vary considerably from one society to the next, in ways and for reasons that remain to be investigated. There is also variation within a given society, of at least two kinds: First, there is variation in what is considered appropriate in different social situations; for example, a group of adolescent boys might collectively visit a prostitute but masturbate to pornography only singly and in private, with group contemplation of pornography serving merely to convey sex information or as the occasion for ribald humor. A second kind of variation has to do with what is considered appropriate in different subcultures. The main such variation in our own society, revealed by the Kinsey data, is that masturbating to pornographic books or pictures is largely a phenomenon of the better-educated classes; at the lower levels of our society, this is generally put down (as is long-term masturbation *per se*), and, conversely, prostitutes are visited much more often.

Prostitution, as Davis noted, presents a great paradox of social life: on the one hand it is so nearly a cultural universal that it seems to fill a need endemic to complex societies, but on the other hand the prostitute is, except in very special circumstances, generally and highly stigmatized. Davis's theory resolves the paradox, and does so in a way that applies equally to pornography: both prostitutes and pornographers are stigmatized because they provide for the socially illegitimate expression of sex, yet their very existence helps to make tolerable the institutionalizing of legitimate sex in the family.

An additional relation between the functioning and the stigmatizing of prostitutes and pornographers, a relation at once more general and more intimate than that given by Davis, may be inferred from the neo-Durkheimian theory of deviance recently proposed by Kai Erikson. He observes:

The only material found in a system for marking [moral] boundaries is the behavior of its participants; and the kinds of behavior which best perform this function are often deviant. . . . In this sense, transactions between deviant persons and agencies of social control are boundary-maintaining mechanisms. . . . Each time the group censures some act of deviation it sharpens the authority of the violated norm. . . . [Instances of publicity about deviants, as in the old public parading of them or in the modern newspaper] constitute our main source of information about the normative contours of society.³

In Erikson's view, then, one function of prostitutes and pornographers would lie precisely *in* the fact that they are stigmatized.

II

The use of pornography is by no means limited to its role as an adjunct to masturbation. For example, as already indicated, pornography may sometimes serve rather as a sex instruction manual. (Conversely, a sex instruction manual may serve as pornography.) And sometimes pornography, far from stimulating masturbation, may be used to stimulate real intercourse, as in, say, the case of whorehouse murals from Pompeii to the present. Granted all that, and other uses as well, people given to using pornography do so for the most part as a means of facilitating masturbation. This is the primary use of pornography. It is summed up in the classic description of pornographic books as "the books that one reads with one hand."

The consumption of pornography is a sort of halfway house between sexual intercourse and erotic response to purely private mental fantasies. Masturbation to pornography is more "social" than masturbation simply to inner pictures, i.e., por-

³ Kai Erikson, "Notes on the Sociology of Deviance," *Social Problems*, IX (Spring, 1962), pp. 307-14.

nography offers the masturbator erotic imagery that is external to himself, a quasi-real "other" to whom he can more "realistically" respond. That is why even lower-class males frequently use pornography for masturbatory release—and here the Kinsey findings need qualification—when they are deprived of their usual sexual outlets: people in jails are overwhelmingly from the lower class, and the masturbatory use of pornography is widespread in jails and a continual headache for any prison administrator who wants to make it one.⁴ Sociologists, however, in their fascination with the way prisoners turn toward homosexuality, seem to have neglected the prisoners' turn toward pornography.

As my reference to jailhouse pornography implies, a great deal of pornography exists unpublished, in the form of manuscript writing or drawing. Even outside the prison context, an enormous number—perhaps even the majority—of pornographic works are in manuscript.⁵ The important thing to realize about such manuscripts is that mostly they are produced neither for publication nor for circulation as manuscripts, but for self-enjoyment. Here we have a major difference between prostitution and pornography: hardly any man can, as it were, be his own prostitute (although many try, by attempting auto-fellation),⁶ but every man can be his own pornographer. Even a good deal of published pornography was written initially to aid the masturbation of the writer. For example, Jean Genet indicates that this was why he wrote *Our Lady of the Flowers*.⁷ And it is ap-

⁴ Cf. Charles Smith, "Prison Pornography," *Journal of Social Therapy*, I (1955), pp. 126–29, and Stanley B. Zuckerman, "Sex Literature in Prison," *ibid.*, pp. 129–31. I cite these articles merely to document the widespread prison use of pornography.

⁵ This seems to be the implication of a statement about quantities made in the Kinsey volume on females, *op. cit.*, p. 672. See also Wladimir Eliasberg, "Remarks on the Psychopathology of Pornography," *Journal of Criminal Psychopathology*, III (1942), pp. 715–20, although on other points, as note 18 below may indicate, Eliasberg is unreliable.

⁶ Kinsey *et al.* report in their volume on males, *op. cit.*, p. 510, that "a considerable portion" of males attempt auto-fellation, at least in early adolescence, but that it is anatomically impossible for all except two or three males in a thousand.

⁷ Cf. Jean Genet, *Our Lady of the Flowers* (New York: Bantam Books, 1964), e.g., pp. 59–61.

parently to this motivation that we owe the pornography produced by the most noted pornographer of them all, the Marquis de Sade. Here is a letter from Sade to his wife, written from prison in 1783—a date, note well, that is several years after Sade had begun writing nonpornographic works but before he had written any pornography.

I'll bet you thought you had a brilliant idea in imposing a revolting abstinence on me with regard to the sins of the flesh. Well, you were all mistaken. You brought my brain to the boiling point. You caused me to conjure up fanciful creatures which I shall have to bring into being.

Over the years that followed, most of them spent in jail, Sade devoted himself to setting down those fanciful creatures on paper. As Albert Camus put it, Sade "created a fiction in order to give himself the illusion of being."⁸

Of course Genet and Sade wrote most of their pornography while in prison. But especially when it comes to sexuality, society imprisons everyone in a number of ways; that is the starting point of Kingsley Davis's argument and mine—and also and originally and profoundly, though Davis is silent on the matter, of Sigmund Freud's. Let us now consider one of those ways—and here my point of departure is Freud rather than Davis—that seems especially germane to our subject.

III

Prostitution and pornography, as we have seen, allow the expression of antisocial sex—impersonal, transitory, nonfamilial sex. But both institutions also provide for antisocial sex in another, deeper sense—one that is merely mentioned in passing by Kingsley Davis but is nevertheless a key function of prostitution as well as of pornography: these institutions permit "polymorphous perverse" and other sexual behaviors so highly stigmatized as to be labeled deviant even within the intimacy of marriage and morally inhibited from expression therein.

⁸ I take the Sade and Camus quotations from Georges May, "Fiction Reader, Novel Writer," *Yale French Studies*, No. 35, "Sade" (December, 1965), p. 7.

In other words, sex is socialized by being placed in a double bind—the marital relationship on the one hand and a specified selection of possible sex acts on the other. It is important to see that the function of prostitution and pornography in alleviating the latter constraint is clearly distinct from their providing merely for coitus *per se* (real or imaginary) in an impersonal and transitory relationship.

No real house of prostitution has perhaps approached the logically ultimate one depicted in Genet's play *The Balcony*, where each client buys a custom-made social scene that conforms in all particulars to any wishful sexual fantasy he chooses to select. But many such houses, as well as freelance prostitutes, have specialized in catering to customers who wanted to indulge in sadism, masochism, orgies, intercourse with children, anal or oral intercourse, voyeurism, intercourse with the aid of mechanical contraptions, fetishism, and so on. Among one city's documented examples that come to mind are: London's Victorian houses of child prostitutes, including (a sub-specialty of the house) the providing of prepubescent virgins;⁹ the advertisements by London prostitutes, in their *Ladies Directory* of 1959–1960, offering themselves in rubber or leather clothing; and the many more advertisements, in the same periodical, by prostitutes offering "corrective treatment" and signing themselves with such sobriquets as "Ex-governess, strict disciplinarian" and "Miss Whyplash."¹⁰ In a study of 732 American clients of prostitutes (574 clients were married, 158 single), the motivation for patronage that the clients indicated most frequently (78 per cent of the clients) was that they "got something different" from a prostitute, and 10 per cent of these further volunteered the information that the difference was in the type of sexual act performed.¹¹ Other studies have shown that even the prosti-

⁹ Cf. W. T. Stead's series of articles, "Maiden Tribute of Modern Babylon," in issues of the *Pall Mall Gazette* for 1885.

¹⁰ Published monthly in Soho, the *Ladies Directory* was transparently disguised as a directory of "models" in an attempt to circumvent the new ban on open soliciting. At least nine issues appeared. The prosecution of its publisher is described in, e.g., the London *Evening Standard* of July 26, 1960.

¹¹ Cf. Charles Winick, "Clients' Perceptions of Prostitutes and of Themselves," *International Journal of Social Psychiatry*, VIII (1961–62), pp. 289–97.

tute having no desire to specialize must learn, and quite early in her career, that she will encounter a goodly share of customers presenting "kinky" or "freaky" sexual requests.¹² There is an enormous amount of this sort of material on prostitution (far more than I have mentioned), but, although most of it was available when Davis wrote, he ignores all of it.¹³

For our purpose, the point is this: as prostitution goes with respect to perversity, so goes pornography—only more so. Possibly the "more so" derives from the fact that "freaky" sexual interests, being much more highly stigmatized than simple non-marital coitus, lie closer to total repression or suppression and thus are more often banished strictly to fantasized interaction; possibly other factors account for the difference. In any event, it

¹² Cf. John Murtagh and Sara Harris, *Cast the First Stone* (New York: McGraw-Hill, 1957), pp. 180–86; James Bryan, "Apprenticeships in Prostitution," *Social Problems*, XII (Winter, 1965), pp. 287–97.

¹³ There are many other defects in Davis's account of prostitution. Most are matters of detail—e.g., Davis thinks the attempt to control pimps arises only with industrialized societies, though Pompeo Molmenti could have told him that in twelfth-century Venice "pimps were imprisoned, branded, tortured, and banished"—but one is crucial: Davis insists that *promiscuity* is the fundamental defining element of prostitution, with commercial and emotionally indifferent aspects of the role being distinctly secondary. But against this emphasis we can put the following considerations: (1) The typical prostitute undertakes intercourse for money or valuables. (2) Even the untypical prostitute, such as one whose prostitution is a religious duty, works for some remuneration, albeit largely for what the economist calls "psychic income." (3) Davis ignores the fact that nymphomaniacs, free souls, and others who literally "give it away" may be stigmatized by the society but are not generally classified as prostitutes either by law enforcers or by laymen (for example, cf. W. F. Whyte, "A Slum Sex Code," *American Journal of Sociology*, XLIX [July, 1943], pp. 24–31). (4) Davis also ignores the fact that, conversely, some women not promiscuous in the slightest degree, such as concubines, are usually regarded as special types of prostitutes, although they carry lesser stigma. (5) Davis finds support for his "promiscuity" thesis in the fact that the prostitute's stigma is lessened whenever promiscuity is lessened (as in the case of *geisha*, who were selective about customers); but with equal logic one can note that the prostitute's stigma is lessened whenever she is not "strictly commercial," even if she is highly promiscuous (as in the case of temple prostitutes). A definition of prostitution that would best fit all these points—while excluding the woman who "marries for money" as well as the girl who consents to intercourse only after a fancy dinner and is, as Kinsey remarks, "engaged in a more commercialized relationship than she would like to admit"—is the following: Prostitution is the granting of nonmarital sex *as a vocation*.

seems clear that although much pornography depicts sexual relations whose only deviance consists of their nonmarital status, an extraordinary amount of this material offers fantasy involvement in sex acts that society proscribes as "unnatural." The history of pornography provides endless examples, and in this regard it makes no difference whether one thinks of the "hard core" tradition from, say, the *Priapea* of ancient Rome to such current paperbacks as *Perverted Lust Slave*, or of the "art" tradition from, say, Petronius to *Histoire d'O*.

IV

From a sociological standpoint, our society's current distinction between "genuine" or "hard core" pornography and highly erotic art is specious in a more fundamental respect.

In recent years the U.S. federal courts have tended to second and extend the view—a view advanced by defense lawyers, literary critics, *et al.*—that certain extremely erotic books and films are not really pornographic because they show overall serious artistic intent and/or contain other redeeming social virtues, that is, because they seem not to be simply "dirt for dirt's sake." The courts in various ways have reaffirmed and amplified the doctrine, first set forth clearly in Judge John Woolsey's 1933 decision on Joyce's *Ulysses* and the 1934 confirming opinion of Augustus Hand, that highly realistic descriptions of sex cannot be judged pornographic in isolation, but must be viewed within the context of the work as a whole.¹⁴ And except for a handful of diehard clergymen, our social critics, literary scholars, journalists, and the like—our "sociologizers" about pornography—have fallen in line.¹⁵ But the sociologist, at any rate this sociologist, must disagree with such "contextual" arguments and maintain that a work like, say, Henry Miller's *Tropic of Cancer* is pornographic, whatever else it may be in addition.

¹⁴ Judge Woolsey's decision is most readily available in the front matter of the Modern Library edition of *Ulysses*.

¹⁵ Among many recent examples of this kind of reasoning, the best known is probably Eberhard and Phyllis Kronhausen, *Pornography and the Law* (New York: Ballantine Books, 1959).

Granted that in one type of sociological analysis—what is loosely called the “labeling” approach—pornography is neither more nor less than what the society’s decisive power groups say it is at any given time, and if our society now chooses officially to label *Tropic of Cancer* nonpornographic, that’s that.¹⁶ Such a conceptual framework does lead to many useful discoveries, along the lines indicated by W. I. Thomas’s famous dictum that if people define a situation as real, it is real in its consequences. But this mode of analysis has its limitations, as can be seen when we turn to another and equally legitimate mode, functional analysis, and define pornography in terms of what it actually does to or for society—what are its particular uses and effects on people, intended or otherwise.¹⁷

Pornography obviously has many functions; and some of these are not even sexual—e.g., the providing of paid work for pornography producers and sellers, as well as for their professional

¹⁶ The “labeling” viewpoint, associated with publications in recent years by Edwin Lemert, Howard Becker, John Kitsuse, *et al.*, is actually a re-invention of a viewpoint formulated and applied in sociology at least as far back as Wilhelm Lange-Eichbaum’s *The Problem of Genius* (1931), and in the sociology of deviance at least as far back as Frank Tannenbaum’s *Crime and the Community* (New York: Ginn and Co., 1938; see Tannenbaum on “the dramatization of evil”). As a “literary” insight into the workings of society its history goes back much further, e.g., the Spanish inquisitor Salazar Frias wrote in 1611 that “there were neither witches nor bewitched until they were written and talked about.” The topic is worthy of a Shandean postscript, but I forbear.

¹⁷ As other parts of this essay should indicate, I am hardly arguing for functionalist theory *against* labeling theory, and rather believe that the two theories apply at different levels of analysis and that both have great explanatory power. But unfortunately some “labelers,” in their initial zeal for the reinvented theory, fail to see its limitations. They have overly reified W. I. Thomas’s dictum, and are in danger of falling into the same trap W. Lloyd Warner fell into when he concluded that social class is “really” what people say it is.

Thomas’s insight is true, but only half the truth. The other half is that social life, though profoundly affected by the participants’ linguistic interpretation of it, is not identical with or completely determined by such interpretation. In other words, a real situation has some real consequences even if people *don’t* define it as real. That fact is often lost sight of by those who take a “labeling” stance. It is never lost sight of by functionalists; in fact, their recognition of it underlies two of the most useful analytic concepts of modern sociology, the concept of latent function and the concept of functional alternatives.

opponents. But as we have seen, pornography's main function at the societal level (as distinguished from the individual-psychological level) is to help preserve society's double institutionalization of legitimate sex—within marriage and within a specified few of the possible sex acts—by providing sexual depictions that literally drain off the other, socially illegitimate sexual desires of the beholder. Any sexual depiction (written, recorded, pictorial) that facilitates such masturbatory involvement is thus pornographic. And when pornography is defined in this way, it becomes clear that the courts and the literary critics are wrong, viz., their assumption that pornography and art are mutually exclusive is patently false. For in contemplating naturalistic erotic art, people can and do easily respond to the erotic qualities as such, in utter disregard of the "artistic context." The stock of every pornography store confirms this. Thus the user of written pornography, for example, gets his pornography from "hard core" literature or from erotic "art" literature; so far as he is concerned, the only significant difference is that in the latter he usually gets less for his money. (Hanan Selvin has reminded me that the strong erotic appeal, as such, of much erotic art, is also noted in Sir Kenneth Clark's *The Nude*.)

Let me suggest at this point that my readers think back to their early adolescence and recall the so-called "dirty books" that were used for adolescent masturbation. (Rather, I ask males among my readers to do this. As the Kinsey data reveal, only a small minority of females are sexually excited by pornography, much less masturbate to it, for reasons largely unknown.¹⁸) I think most will be able to recall not only "hard

¹⁸ Note that theories of the female "role" won't do to explain this, for even when men take on all the female role attributes they can, i.e., become hyper-effeminate homosexuals, they do not give up the male's interest in pornography (though of course the object changes and so their pornography consists of erotic depictions of males). And, conversely, when women take on as many male role attributes as they can, i.e., become tough "butch" lesbians, they do not typically lose the female's disinterest in pornography.

There are indeed many pornographic "lesbian" novels, but they are fakes. They are written by men and bought by men. (Both points have been made to me by Times Square pornography peddlers, and I have confirmed the latter from observation in their stores.) The genuine lesbian novel, whether the inartistic kind such as Radclyffe Hall's *The Well of Loneliness* or the

core" pornography, such as the little booklets containing pornographic versions of American comic strips, but also that there were so-called "dirty books" which were really for the most part "clean" and were read for their occasional "dirty pages," such as the books of Erskine Caldwell. At least, that was true not only for my own early adolescence but for that of most every other middle-class boy I knew at the time.

I know of no evidence to indicate that people erotically interested in naturalistic descriptions of sex—whatever their age—are seriously impeded by, or even give much thought to, the overall nonerotic context in which such descriptions might be embedded; and this applies to highly artistic works as well as any other. Can one seriously maintain, for example, that most of the Americans in Paris who smuggled back copies of *Lady Chatterley's Lover* and *Tropic of Cancer* did so out of interest in the "artistic" or "other social redeeming" qualities of these books rather than out of "prurient interest"? Or when it comes to the people—adolescent or adult—who masturbate to such books, can one seriously claim that they used these works for masturbatory purposes only so long as our society labeled them pornographic and stopped such masturbating when the label changed? Clearly we must modify W. I. Thomas's dictum, which is the "labeling" dictum writ small, to read that if people define a situation as real (erotic book X is nonpornographic), it is real in some of its consequences (erotic book X can be sold over the counter) but not in others (people don't stop masturbating to it).

And clearly society has always permitted the dissemination of some kinds of material that are functionally pornographic.

artistic kind such as Djuna Barnes's *Nightwood*, does not contain naturalistic description of sex but emphasizes the emotional-psychological aspect of sexual relationships. In this respect it is similar to the romantic literature that heterosexual women enjoy (on the latter, see the Kinsey volume on females, *op. cit.*, p. 670).

Apart from disinterest by females (heterosexual or homosexual) in pornography consumption, and the fact that "lesbian" pornography is actually produced by males for males, it has also been established beyond doubt that heterosexual pornography production by females is very rare. (Cf. Kinsey volume on females, *op. cit.*, p. 672.) Yet Wladimir Eliasberg, *op. cit.*, claims a striking feature of pornographic literature is that one cannot tell whether a man or woman is either the producer or consumer.

In our own society one of the major ways it currently does so, as previously indicated, is to nonlabel such material as pornographic if it is packaged between significant amounts of non-erotic material—as in, say, the pages of *Playboy*.

The social processes involved in deciding which pornography shall be permitted, and even some (though by no means all) of the selective criteria used, are roughly analogous to the way that—as Sutherland showed us—our society permits certain types of criminals, notably businessmen who commit crimes in their corporate capacities, to escape penological consequences and even public stigma.¹⁹ The recent case of *Eros* notwithstanding, the classier the pornography the more likely it is to be permitted.²⁰ What is big news about Ralph Ginzburg is precisely what is big news about those price-fixing G.E. officials: such people are rarely the kind who get rapped.

V

At the same time that society permits the dissemination of pornography, it officially denounces it. There is good reason for it to do both at once: from the desire to maintain a restrictive societal definition of “legitimate” sex, it naturally follows that pornography should be stigmatized and harassed yet tolerated as a safety valve, in the same way that, as Davis demonstrates, society stigmatizes and otherwise harasses prostitution but never really abolishes it.

And just as Davis indicates for prostitution, the stigma attached to pornography is lessened when pornography is tied to some other socially valued end, such as art or science. One important result is this: when the “situation” being defined by society is a naturalistic depiction of sex, the most real conse-

¹⁹ Cf. Edwin Sutherland, *White Collar Crime* (New York: Holt, Rinehart & Winston, 1949), especially pp. 42 ff. Of course there are also special selective factors operating at more mundane levels of pornography production. For example, in the recent case of a Michigan hard core pornographer who was not only fined \$19,000 but sentenced to ten years in prison, I assume the severity of the sentence was not unrelated to the title of his masterpiece: *The Sex Life of a Cop* (Cf. *New York Daily News*, April 7, 1966, p. 13, col. 1).

²⁰ On the case of *Eros* and its publisher, see, for example, *The New York Times*, March 27, 1966, p. 8E, cols. 1-2.

quence of a definition that labels it something other than pornographic is to increase its pornographic use in the society by reducing the inhibitions on acquiring it. This is obvious from the libraries of countless souls who avidly buy highly erotic works that society labels "art" or "literature" or "science" or "scholarship," but who take care not to buy "real" pornography.

And if the nonlabeling of an erotic depiction as pornographic actually increases its pornographic use in the society, *de*-labeling increases such usefulness still more. As any publisher can tell you (I speak as a former publisher), it is much better for sales to have an erotic book that was once labeled pornographic and then got *de*-labeled than to have one that never got labeled at all. Thus such works as *Lady Chatterley* or *Tropic of Cancer* are, functionally, among our society's most pornographic books of all.

All of this could, as Albert Cohen has suggested to me, simply indicate that many if not most Americans label *Playboy* or erotic art or sexual scholarship as "pornography" even if the courts and others don't. But such an interpretation depends on a dubious double hypothesis—that the courts have largely deluded themselves in claiming to follow community opinion and have also failed to mold opinion. It might still be truer than mine, and only empirical data we don't have yet can settle the question. However, I think it more reasonable to suppose this: If the behavior of people often contradicts their attitudes (and social research is forever stumbling against that one), then it can be just as discrepant with their labeling or definition of the situation, and, moreover, such discrepancy is widespread in areas of life involving socially encouraged hypocrisy and unawareness, as in the case of sex behavior.

An even clearer, and more fundamental, discrepancy between social reality and the social definition or labeling of the situation has to do with highly erotic depictions that make no claim to art or science and are not enwrapped in nonerotic contexts, depictions that society calls "hard core pornography" or "dirt for dirt's sake." Such a label means that the material is, in the words of Mr. Justice Brennan, "utterly without redeeming social importance." That definition of the situation is obviously upheld by the great majority of our society; it is entertained equally

by the courts, by assorted professional experts (such as literary critics and psychiatrists), and by the lay public. It is, nevertheless, mistaken. To the extent that society, in restricting morally legitimate sex to certain specified acts within marriage, cannot count fully on the mechanisms of repression and suppression, to that extent it must provide stigmatized safety-valve institutions such as prostitution and pornography.²¹ As Thomas Aquinas put it—he was explaining prostitution—“A cesspool is necessary to a palace if the whole palace is not to smell.”²²

VI

. . . There are many special aspects of the sociology of pornography. One involves a hypothesis I am currently testing and for which I have already found a bit of confirmation, namely, that organized crime is more and more associating itself with the production and distribution of hard core pornography, particularly but not exclusively the most profitable part of it, pornographic movies. This would represent a coming together of organized crime's traditional interest in providing illegal goods and services, with a change in American consumption patterns that is having fateful consequences for the technology of pornography: the great increase, over the past fifteen years, in private ownership of 8 mm. movie projectors.

Until roughly 1950, the pornographic movie business con-

²¹ The historical and comparative sociology of the part that “safety-valve” institutions play in social control has yet to be written. We do not even have an adequate general theory of these functions—merely scattered remarks about *panem et circenses*—although Freud has provided many psychological underpinnings for such a theory. Here I note only that in our society major historical changes in safety-valve mechanisms have involved other than sexual institutions; for example, there has been a decrease in displacement of secular goals onto an afterlife (a decline in “pie in the sky” or “opium of the people” functions of religion), and an increase in spectatorship for competitive sports as a means of draining off potential public violence.

²² This view of prostitution—which, shorn of its moralism, is the essence of Davis's sociological view—can be found in many writers besides St. Thomas, e.g., in Horace's *Satires* and Mary Wollstonecraft's *A Vindication of the Rights of Woman*. Of these functionalist explanations prior to Davis, the ablest are in Bernard Mandeville's “An Inquiry into the Origin of Moral Virtue” (his preface to the 1714 edition of *Fable of the Bees*) and his *A Modest Defence of Publick Stews* (1724).

sisted largely in renting films for showing at stag dinners and the like, but since then it has been increasingly, and is now overwhelmingly, a matter of outright sale of prints to individual customers.²³ Consequently, over the past decade and a half, the pornographic movie business has had one of the highest growth rates of any business in the United States (legal or illegal); and organized crime is now well aware of that fact if the general public is not. It is true that the pornographic movie industry, like the pornography industry generally, is still mostly in the hands of individual entrepreneurs; but if present trends continue, investment in this industry by organized crime may one day reach the takeoff point, that is, the stage where muscle is applied to make independents fall in line or get out.

There are other special hypotheses about the sociology of pornography that need investigating, dozens of them. What I have tried to do here is offer a general framework within which such investigations might be made.²⁴

²³ I am informed by pornography distributors in Soho, London, that a similar shift has taken place in England.

²⁴ *Addendum*: A detailed scholarly study of mid-Victorian sexuality and pornography, based on the Kinsey collection, was published after this went to press: Steven Marcus, *The Other Victorians* (New York: Basic Books, 1966). At various places in his book Marcus discusses the relation of pornography to Victorian society, and his concluding chapter is, in design and in the words of the publisher, "an essay propounding a general theory of pornography as a sociological [i.e., social] phenomenon." In this late note I cannot demonstrate, but only asseverate, that *The Other Victorians* is a prime instance of rubbishy "sociologizing" about pornography, "sociologizing" of the sort produced by that growing band of American literary critics who believe they are experts on society simply because they live in it.

One brief example: Marcus seems ignorant of statistical reasoning and, worse, of its possible relevance to his argument. Hence one cannot learn from his book that the Victorian era's tremendous upsurge in the growth rate of pornography publishing, which he finds so strange, was equaled and usually surpassed by increases in growth rates for every other kind of publishing. (Indeed, he even seems innocent of the distinction between growth and growth rate.) Nor can one learn that all this had some relation to England's having perfected, in the first decade of the nineteenth century, the Fourdrinier machine for cheap papermaking, nor the fact that, over the following decades, while England's population grew fourfold its *literate* population grew thirty-two-fold.

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