

B. Discussions of Criminal Acts Against Sexual Self-Determination, From the Victimological Perspective

I. Why the Discussion Has Become Irrational

1. Taboos Impede the Collection of Personal Histories

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

Even following the so-called sexual revolution of the 1960s, sexuality is -- undoubtedly -- still subject to taboos. To some extent, the idiom itself perpetuates this. Talking about sexuality is still somewhat of a rarity; thus, even in 1974, Borneman was able to characterize his then-published German-language dictionary of sexuality and love as a "pioneering work." (F59)

But if despite this overwhelming reluctance we do manage to begin to speak of sexuality, various methods are then employed which are designed to silence any discussion of sexual subject matter.

In refined academic discourse, many of the terms derive from the Latin, such as "exhibitionism," "pedophilia," "vagina," "penis," "emission," and "coitus." The use of such strange, objectified terms creates a bifurcation between personal experience, and matters which are -- apparently -- worthy of discussion.

But when actual German words are used, it frequently is not apparent that it is the sexual facts of the case which are being referred to. Borneman established conclusively that when his sexuality-related slang words were taken out of their contexts, more than half were rendered unrecognizable as frankly sexual terms. In this way, "diving," "maiden-sticking," "jousting," "trying on for size," "sliding," "having a go," "blowing," and many other words are sometimes meant to stand for intercourse. Through their double-meanings, these terms function as a sort of camouflage for speech.

Many grown-ups remain mired in linguistic helplessness by clinging to childlike speech patterns; even into advanced ages, they continue to use words like "shelling," "pee-pee," and "rolling," thus excising the sexual facts of the case in order to make their manner of speech a 'proper' one.

Lastly, there are obscene and vulgar expressions which are only to be used among one's own inner circle. Words like "fucking," "humping," and "screwing" are

no doubt unequivocal; and yet, they are rarely either uttered or written. [F60]

All of this means that the possibility for any colloquial dialogue on sexual experiences is very limited. People simply do not speak of sexuality. For a lot of people, discussing their sexual experiences is just not a possibility, even within their own inner circle. [F61]

It is only through speaking about them, that a major portion of our collected experiences are able to be stamped onto our consciousness. And our consciousness is, in turn, conditioned by our rules regarding linguistic protocol. Thus, this inability to speak of the sexual realm is seen to be simultaneously both a symptom and a cause of our repressed and secretive sexuality.

2. The Importance of Sexuality

If even in a veiled way one experiences the importance that sexuality and the erotic have for individuals, and when one has contact with different sorts of people, [F62] then it will not be at all surprising to find how much interest, curiosity, and emotional investment are elicited when sexual subjects come up. The gutter press as well as the advertising business use these desires, with some success, to better market their merchandise. In our own time, even sex itself is sold. This is no longer restricted to actual prostitution, but also takes place at eros-centers, peep shows, sex shops, sex fairs, and, in recent years, even at ordinary mail-order companies. The permanence and scope of sexual desires are evidenced by the numerous alternatives designed to fulfill them. But these can only partially satisfy our needs.

3. Selective Perception and Over-Generalizations

Overall, the situation may be described as follows:

Everyone, no doubt, knows something about sexuality; and yet, relative few have much knowledge of the

experiences of their fellow men and women. Thus, many people take refuge in unexamined norms and ideas about morality. Frequently -- even in scientific discourse -- subjective prejudices in many ways unduly color and over-generalize what little is actually known; this usually occurs along the lines of the following:

- I have an opinion, a prejudice, regarding the facts of the matter. I have this opinion, despite having neither run it by others, nor having checked it out myself. (The sexual sphere affords the articulation of numerous prejudices.)
- I observe the environment through glasses colored by such pre-judgments.
- I take isolated cases and events to be representative of reality; after all, these are in accord with my own pre-judgments. I ignore other kinds of cases.
- Thereby, my pre-judgments are proven to be true.
- I cite these cases in order to bolster my own prejudices. ("I once had a case, where...")

4. The Sexual Perpetrator as Scapegoat for One's Own Unfulfilled Desires

The above-mentioned issues are problematic not just for sexuality in general, but particularly for those sexualities which deviate from the norm -- perhaps even to the point of constituting criminal sexuality; thus, any objective discussion is rendered even more difficult.

The presumption has been frequently expressed -- especially over the past sixty years -- that an erosion of norms has taken place in the sphere of sexual morality. On the other hand, though various polls of sexual behavior and adjustment indicate that a definite liberalization has indeed taken place, many of the traditional sexual norms have remained, with only slight, cosmetic adjustments having been made to them. [F63] The changes so far have seemingly been merely partial ones; it may take decades before they will evolve into a truly modern set of sexual norms. Published polls of sexual behavior -- scientific or [F64] pseudo-scientific -- have become more or less guiding principles for one's own behavior. People want to be normal. If a given poll finds that a statistical average of the population has intercourse three times a week, the citizens among the rest of the population get the idea that they should -- insofar as possible -- be in accord with this norm. At a

time when tolerance and individuality are spoken of in positive terms, this simultaneous pressure to be inconspicuous and average must seem downright absurd. [F65]

The relatively strong negative sanctions are reserved for deviate sexual behavior. Alexander and Staub's [F66] explanatory model makes it clear why the condemnation of deviate sexual behavior itself sometimes produces far more severe -- and absolutely terrifying -- behaviors.

People have various desires and urges, sexual and otherwise. When people must suppress a portion of their urges and desires so as to conform to established norms, it is advisable that they personally establish their own self-control mechanisms, in order to keep their secret desires in check. Many people might like to walk down the street in the nude, or take revenge on their tormentors; others would be glad to violently "take" a woman or rob a department store; still others have carefully hidden erotic and sexual desires which resemble those of the opposite gender. Proper, "decent" citizens should not even be aware of their own secret desires. People can easily control such impulses, if they will simply denounce them. Sometimes, people have a vague sense of a necessary and constant struggle against such secret desires. This struggle is a strenuous one, producing lasting feelings of guilt as their own imperfections are highlighted over and over again. When such people encounter others who have simply disregarded many of the above-mentioned prohibitions, their anxiety is greatly increased. They ~~are~~ become afraid that their own moral damn might burst. This fear is typically coupled with aggression towards the rule-breaker, who himself has taken liberties in order to satisfy his condemned urges and desires. Now, this hits them where they live, because they are reacting to their own inadequacies being quite sharply condemned, by the very person with whom they had previously equated their own "inner filthiness."

Jews formerly sent goats into the desert, onto which they had symbolically heaped their collective sins in the form of piles of kindling that had been bound together. These scapegoats were said to carry away people's sins, so that they might be forgiven by God. But having been relieved of one's sinful thoughts or actions, one's conscience would only grow more severe.

This so-called scapegoat theory actually helps to account for many of the over-reactions directed towards norm-violators. Alexander and Staub believe that people react to norm-violators with especially strong condemnations when the latter's behavior is associated with a particularly "shaky" taboo. Thus we have again and again seen cases in which upstanding citizens

who at one time opposed prostitution with particular ferocity are later on found out to be customers themselves. There are also well-known cases in which, though the condemnors have dared not actually become customers, they are nevertheless perpetually "afflicted" with the desire to visit a prostitute. Often, the condemnor is not even conscious of this conflict.

It is especially when such conflicts remain unconscious that discussions of deviate sexual behavior are made particularly difficult.

5. The Stereotype of the Sexual Perpetrator

Public and published opinions of the image of the sexual deviate generally contain some element along the lines of how the average citizen could not possibly feel that he or she has anything in common with this kind of character. Because what is in fact a gradation from "normal" to "abnormal" is not apparent in everyday life, there have developed within ourselves stereotypes of the sexual perpetrator, his actions, and their consequences.

One often supposes that:

Sexual perpetrators are sick monsters, frequently old and senile, always on the prowl for new victims for their perverse sexual pleasures. They rape women and children, and even kidnap them. The sexual perpetrator is the stranger, lying in wait for his victims in the forest or on an unlit street, brutally assaulting and then sexually abusing them there. Frequently he also lures or drags his victim into a car. Child-rapists who approach youth in a homosexual way are especially frightening. They ruin their victims for life, sometimes even turning them into criminals.

The consequences of such attacks are awful for the victims, and lead to the development of various illnesses.

Certainly the violated victims are often somewhat careless, and therefore frequently bear some responsibility. Provocative clothing, hitchhiking, and unsupervised children provide opportunities for the sexual perpetrator. A lack of concern about sexually stimulating or curious behavior can also get a perpetrator's attention.

Therefore, one clearly cannot warn children early enough -- or often enough -- about these fiends. Children and women should not -- insofar as possible -- leave the protective area of those familiar to them, and should never get into a stranger's car. Furthermore, the best piece of advice that could be given is that one should --

especially with regard to strange men -- have an attitude of caution and distrust. Potential victims should no longer be on the street after dark.

The fiends should be punished severely. The public must be protected from each and every one of them. If such men were ever released, they would pose a permanent danger to children and women.

Women in particular will certainly report a rape to the police simply to cover up a sexual contact which, though they had originally desired it, they now found to be disagreeable.

As far as public and published opinion is concerned: Even when attempts are made to correct the citizenry's mistaken images and opinions, they generally return to the same old, unsubstantiated prejudices mentioned above, which continue to be vigorously circulated. Thus, one is forced to conclude that psychosocial mechanisms are at work here, influencing and distorting rational thought processes.

II. Irrationality in Criminal Law Reform Discussions

Various esteemed experts have again and again called for criminal in general -- and sex laws in particular -- to be based on strictly rational principles, and have discussed the problem of criminal laws in the sexual arena being couched in terms of the protection of property. [F67] Thereby they themselves turned against the inexpert, emotionally-driven manner in which discussions of criminal law reform had been conducted. "There has been left... in the fight against various wrongs, a criminal law which has not been completely and logically thought through." And Hanack furthermore says of the sexual criminal law in particular: "A modern sexual ethic does not unfold upon the corset of the criminal law. On the contrary it impedes it -- if one wishes it to be guaranteed with the help of the moral law -- because with this too much is demanded of the criminal law, thus causing the latter to be brought into disrepute." [F68]

In reference to incest, Jager has coined a decision-model for the discussion of criminal law reform, which has as its first step: "To begin with, a decision needs to be made as to whether the criminal law is to be based upon morality, or protection. The 1962 draft was implicitly based upon the first of these two possibilities, while the alternative draft was based on the second. There are also different kinds of corresponding empirical questions: The concept of morality, insofar as it truly strives for an empirical foundation, must be validly based on social norms, whereas the protection-concept must attempt to evaluate and explain behavior in terms of its harmful effects." [F69]

Violent offenses and violations of moral standards have up to now been blended together in the German penal code; however, in the present volume, the distinction will be made between the criminological and sexological facts of the case. The definition of "Criminal Acts Against Sexual Self-Determination" (§§ 174 ff, Laws and Statutes of West Germany) as one including a component of harm is related to the assignment of perpetrator and victim roles. In rape cases this would seem

to be relatively clear and unproblematic, where of course from the criminological perspective, these are handled first and foremost as violent offenses. [F70]

But the handling of criminal sexual acts as official offenses yields to -- among other things -- the assignment of subjective roles, which are in essence officially dictated to their participants. Even people who do not personally feel damaged, by for example a nonviolent sexual contact, can therefore -- contrary to their wishes and feelings -- be declared by the German criminal law to be "victims." The following is an actual example of this:

A 64-year-old woman comes into a small municipal police station and reports to the officers on duty that, when she was about eighteen years old, an erect penis was exposed to her, by a person whom she recognized. Though the event had unsettled her, she had not wanted to report him; she did, however, wish that she had told someone at the time...

Unfortunately, here as well, the machinery of criminal prosecution swung into action. "And thus major proceedings are often initiated, which no one really wanted and no one could really foresee. And whereas now everyone must do their duty, the question as to whether the true sex crime took place in the home, or rather in the courtroom, gets overlooked." [F71] This happens again and again, even though, "from the very beginning, everyone gets penalized when the need to protect property rights is present and is pursued too vigorously, as if the criminal law were the only arena in which the need to protect property rights ever came up...Furthermore, this pursuit never permits questions to be asked as to whether the dangerous side-effects of criminal regulation might not outweigh its benefits." [F72]

The legislator wishes to protect potential victims of (sexual) violence, and furthermore, claims to be acting on behalf of (generally younger) victims, intending to protect them from moral corruption. The critique by emancipatory sexual ~~education~~ pedagogy [F73] states that, where a sexual contact is nonviolent in the legal sense, it may also be nonviolent in a broader -- for example, a psychological -- sense: In this nonviolent sphere, the sexual criminal law is seen as an instrument fostering asexual or de-sexualized communication, in order to maintain repressive structures. It has arranged itself in such a way that it is repressive merely with regard to the "perpetrator," but even moreso towards the "victim."

Schroeder himself asserted in a similarly critical context:

"Protection then becomes merely the negative freedom to not have to engage in sexual acts,

which, astonishingly, leaves out the other major component of a truly comprehensive right to sexual self-determination: the right to choose to participate in sexual activity." [F74]

III. The Sex Victim -- Current Questions

1. Scant Scientific Knowledge About the Sexual Victim

Historically, deviant sexual behavior has always been considered to be a problem. Thus, this problem is by no means a new one.

Until quite recently, however, the use of proper scientific methods in this field was uncommon. The scientific methods can even provide essential answers to subjects which have not yet become fully accepted as sciences. People would prefer this to remain a matter of speculation. Conditioned by the same internal emotional barriers mentioned above, experts in the sexual field frequently come to very contradictory conclusions. The layman is likely to respond to such a situation by simply shaking his head and assuming that, once again, science itself is not of one mind. He does not have the ability to check whether a given assertion was made by a charlatan, a credible scientist, or just an outraged citizen. [F75] Since the status of knowledge in the field of sex research is still relatively poor, self-styled experts are able to "sell" their own personal opinions with the aid of the thinnest of scientific veneers.

In addition, the merely occasional cooperation between department heads and sex research institutes that has occurred so far in this particularly important area has been woefully inadequate. Thus, those investigating the field of "deviant sexual behavior" are forced to quite explicitly rely on the cooperation of those working in such diverse fields as sex research and sexual pedagogy, criminology and victimology, criminalistics, law, sociology, psychology and psychopathology, medicine, social pedagogy, and theology. In practice however, many of those working in any one of these particular areas have essentially no contact with those working in the other fields. The representatives of the various disciplines are therefore inclined to deal with the subject of "deviant sexual behavior" by highlighting aspects peculiar to their own particular educational backgrounds and training. In this way, improper methods are used which omit the theoretical groundwork that needs to be done, and also lead to the making of unwarranted generalizations derived from research which has been conducted in other fields.

Here is an example: Because of alleged or verified punishable sexual contacts they have been involved in, children are taken to the hospital or put into a home. This might have been done at the direction of a doctor, a psychologist, or a social worker. When one then uses such a sample to investigate the proportion of sexual victims who experience harm, this can easily lead to a vicious circle. Naturally, they have now been placed among those sex victims deemed to have been particularly traumatized, physically and/or psychologically. To claim that this highly-victimised group is somehow representative of all victims of reported or sentenced sexual contacts is unacceptable. Generalizing such results to the 'dark number' of unreported cases is similarly impermissible.

2. Rape as a Current Problem

a) The Women's Movement and Male Privilege

Coming out of the women's movement as well as from within ourselves, the problem of rape has increasingly been a matter for public discussion. Women made it clear that here, an entire group of violently-perpetrated offenses had not been taken seriously, and that its victims suffer in many different ways. The manner in which women were treated after being raped -- by relatives, the police, the court, and the defense -- also came under heavy criticism. Furthermore, women also pointed out that much of the way in which the criminal law was written provided too little protection of their right to sexual self-determination. In this vein the married is not protected by the section which deals with rape (§ 177), and likewise, forced oral and anal sex acts are not considered by the German criminal law to constitute rape. Also, the ~~praktische~~ legal practice is frequently ~~orientiert~~ criticized for being oriented toward a male sense of sexual morality. Moreover, the police interrogation itself often does even further damage to the woman who has been raped. This has become so prevalent that many women who have become involved with the criminal justice system no longer have any confidence in it. Furthermore there is no doubt that -- notwithstanding the emancipation movement -- many women would still continue to advise rape victims not to make a report, because of the criminal justice system's well-known mistreatment of female witnesses. From a civil law standpoint, this is a very serious situation.

Many women, along with some scientists involved in this issue, see male chauvinist ideas as the cause of the shabby treatment received by women who are raped, [F76] such as for example:

- Women are, by their very nature, masochistic. They want to be taken roughly, and besides, pain is pleasurable for them. [F77]

- When women say "no," they usually mean "yes."
- In any case, most rape reports are not reliable.
- The discussion of rape has been forced into the limelight by frustrated, emancipated women.

b) Statistics on Sexual Violence

According to Police Criminal Statistics (PKS) [F78], in West Germany for the year 1980, 6,904 committed or attempted rapes, as well as an additional 3,565 committed or attempted incidents of sexual compulsion, were reported. This total of 10,469 cases, involving some 10,484 individual victims, constituted just under 0.3% of overall criminality for that year. In addition, acts involving the sexual abuse of children are also reported (though not separately). Based upon the available research, these sorts of cases likely constitute some 10-20% of violent sex offenses overall. This means that between approximately 1,300 and 2,650 sexually violent cases involving children are reported each year. Between 65% (sexual duress and abuse) and 72% (rape) of overall sex cases are eventually 'solved.'

More striking, though, is the frequency of potential victim-situations. [F79] On average, for every 100,000 West Germans, between five and six incidents of sexual duress or abuse, and between eleven and twelve rapes, are reported annually. In large cities, the frequencies for rape rise to double or triple the above figure: In Frankfurt/Mainz it is 19.8; in Stuttgart, 19.1; Hamburg is 20.6; Berlin 23.5; Bremen 23.9; and Mannheim 35.6. These cases were those reported between 1970 and 1980; 1.7% of all reported offenses were rapes, while an alarming 15.9% were sexual duress/abuse situations.

Thus altogether, approximately 13,000 victims of sexual violence are registered by the police annually. 'Dark number' research has found that for every case that is reported, between three and ten additional cases go unreported. Consequently, every year in West Germany, between approximately 40,000 and 130,000 people become victims of a violent or coerced sexual attack. [F80]

The scale of criminality can nevertheless be expressed in terms of the number of inhabitants within a given area who are (as per official reports) raped on an annual basis (so-called "degree of risk"). [F81] In 1977, whereas West Germany had only one rape per 9,129 inhabitants, the United States had one per every 3,261. [F82] Clearly, the (known!) risk of becoming a victim of rape is 2.8 times greater in the United States. Using known figures compiled by the police for the year 1977 (thus, the 'dark number' is of course not included!), the following "degrees of risk" have been calculated, which are based upon gender and age:

Table 1 [F83]

Criminality Scale and "Risk Degree" Comparison for Selected Criminal Acts in West Germany, by Victim Gender and Age Group, for the Year 1977:

Offense Description and Gender [F85]	Degree of Risk [F84], by Age at Victimization (in years)						
	0-5	6-13	14-17	18-20	21-59	>59	
Murder and Manslaughter	26,600 26,200	85,200 70,600	53,600 32,800	15,000 15,900	12,100 20,200	51,800 62,900	=m =f
Sex Offenses	239,800 76,400	71,300 6,600	13,000 600	23,200 700	296,400 3,600	570,200 30,700	=m =f
Rape (only)	916,800	22,800	1,000	1,000	4,900	44,900	=f
Robbery and Extortion	87,200 166,700	3,400 11,600	2,100 8,400	1,500 3,500	1,700 3,600	3,700 2,400	=m =f
Serious Bodily Injury	14,000 25,800	2,000 5,900	400 2,000	200 1,500	500 2,000	3,200 11,300	=m =f

(The text here actually states "500," which does not agree with the figure in the table [600]. Clearly, one of these must be a misprint.)

Therefore, young women between the ages of 14 and 20 were at greatest risk for sexual victimization. One in every 600 women (in the case of sex offenses in general) and one in every 1,000 women (in the case of actual rape) between the ages of 14

and 20 has cause to fear an attack against her right to sexual self-determination. If the 'dark numbers' of, respectively, 1:3 and 1:10 are added, then these figures would jump dramatically. In one year, between 1 in 166 and 1 in 50 women (in the case of sex offenses generally) and between 1 in 333 and 1 in 100 women (in the case of actual rape) between 14 and 20 years of age will become sexual victims.

One finds again and again, through conversations with women, that the degree of fear they have regarding sexual attacks is totally unrelated to the statistical risk that actually exists.

Certainly it cannot be ignored, that girls' and women's fear of rape is based not so much upon statistics, as on their own social settings. (See herein, pg. 472 ff.)

3. Relationship Between Victim and Perpetrator

Whenever we encounter people and situations which are unfamiliar to us, we proceed with caution. We presume that others can detect our total lack of experience, and fear that our insecurity could lead to criminals singling us out for victimization. As our anxiety over becoming a victim rises in such situations, we try to bring this under control by increasing our awareness of the surroundings. On the other hand, in a familiar environment we feel more secure, and are thus willing to take more risks.

Residents of country villages react cautiously and anxiously to the arrival of newcomers. They fear that the stranger might have bad intentions. By raising their level of awareness, they attempt to bring the situation under control.

Criminalists have known for some time that it is within one's own inner circle that one is most likely to become a victim, even of murder and other violent offenses.

These violent offenses generally originate from an emotionally-strained victim-perpetrator relationship. Murder motivated by jealousy is a typical example of this. People who are strangers to one another have comparatively little opportunity to develop a level of aggression which might lead to a violent act. Exceptions to this include serial murderers who randomly select and kill their victims, as well as soldiers who are working toward a common goal. Soldiers are supposed to -- and moreover, want to -- kill people who have been previously defined as enemies or aggressors. References to the declared enemy as being actual persons is impermissible. Leaders attempt to instill in their fighters an aggressiveness towards anonymously-depicted enemies even in the case of organized killing, because otherwise, it is feared they would develop scruples against killing the people or groups of people they were expected to.

Aside from these exceptional situations, it would appear that it is one's own familiar, inner circle which holds the greatest potential for inflicting serious violence.

Because sexual contacts have a strong affective dimension, it is obvious that punishable sexual contacts are, likewise, most likely to be perpetrated by someone familiar to -- and/or related to -- the victim. The only exception to this would be exhibitionistic encounters. This means that women, if they are to fear being raped, should fear it from men in their own inner circles. Thus the degree of relationship between victim and perpetrator would seem to be an essential variable in the study of this group of offenses.

Nevertheless, so-called explanatory and preventive publications again and again leave the impression that potential victims must be particularly wary of strangers, and should stay under the protection of family and friends. [F86] All criticism of such publications has up to now had little effect; one can only surmise that is itself an especially tragic example of selective perception on the part of agencies entrusted to handle these responsibilities.

4. Incest

a) Contradictory Goals of the Criminal Law

Astonishingly, § 173, which forbids intercourse between blood relatives, lineal descendants, and siblings, is not categorized among the criminal law prohibitions relating to the protection of the right to sexual self-determination, but rather, with the set of laws designed to protect the status of persons with marriage and the family. [F88] This is a surprising situation for several reasons.

A large portion of the population is of the opinion that the prohibition on so-called "inbreeding" or "incest" protects humanity from being overrun by negative hereditary traits. People often suppose that societies in which offspring result from the union of blood relatives must be full of "idiots," and that such societies work against the protection of the so-called "blood line." Maisch has also found this: "One of the more popular theories, which even today appears to enjoy strong support from a large section of the public, is that, 'in one way or another,' all peoples abhor incest or sexual relations with members of one's immediate family (= nuclear family). Moreover, the 'blood line' is frequently spoken of in a negative sense, referring to an instinctive aversion to incest. In this context, instinctive means that which is inherited and innate." [F89]

It is still asserted in all seriousness, for example, that 'due to intermarriage,' there are a lot of mentally ~~st~~ *handicapped* people in remote village communities.

It should become clear to the outsider that if the average I.Q. of such villagers differs at all from that of the overall population, it does so only as a result of random variation. More precise observation leaves the impression that such isolated societies generally possess a strong sense of mutual belonging, demonstrate distrust of and reserve regarding strangers, frequently speak a dialect which strikes the visitor as odd, possess absolutely no "worldly sophistication," and either impede or block any attempts at modernization. These characteristics then lead to the villagers being characterized by insecure, casually arrogant visitors as, among other things, "inbreds."

On the other hand it does accord with well-grounded science that in a community where intermarriage does exist, it is possible that dominant hereditary traits -- both negative and positive [F90] -- could be found interspersed throughout that community [F91]. Today it is also known that there are societies in which incestuous contacts have been and still are permitted or even institutionalized. These societies do not suffer from eugenic damage caused by their incestuous contacts.

On one hand, this knowledge is also lost on our criminal law, when for example incestuous sexual contact, which could not lead to the production of offspring are punished nevertheless:

- Any "contact between the penis and the vaginal wall" qualifies as a criminal act. [F92]
- Intercourse with a sexually immature daughter [F93] is likewise punishable.
- Also, even when the accused father and the declared victim (the daughter) use contraceptives, the intercourse still falls under the heading of incest.

On the other hand, converse situations exist, to which the incest paragraph is applied for purely eugenic ends:

- Even when the terms of a civil adoption has expired, any intercourse which might then occur between these former relatives would nevertheless still be considered to be incest. [F94]
- Any intercourse between parents and an adopted child would not be considered to be incest. [F95]
- Intercourse-like acts between relatives, such as oral and anal intercourse, likewise do not count as incestuous acts. [F96] Male victims are also not protected by the incest paragraphs.

On one hand, this comparison makes clear that the protection of property rights is no longer covered by -- and is now distinguished from -- the legal rights guaranteed by § 173 of the Laws and Statutes of West Germany. On the contrary, it is marriage, family, and victims' psychological integrity which are said to be protected. [F97] On the other hand, many provisions still do reflect the old way of thinking.

It should not be overlooked that many eugenic interpretations of § 173 are based on old legal decisions. [F98]

The problem of too many legal rights being phrased in terms of property protection was, naturally, also brought up by legislators (over and over) again during discussions on the fourth revision of the criminal law [F99], and thus the official reason (though this had no impact on popular beliefs) for the existence of the incest law had nothing to do with eugenics, but rather was intended to protect marriage, the family, and potential victims from the psychosocial effects of such acts.

The legislator seeks to protect the family from the emotional upheavals that such sexual contacts could unleash. Now, one might think that § 173 itself functions as a law protecting the family's right to sexual self-determination, as well as protecting family members from enormous social pressures such as jealousy and the abuse of power. Furthermore the incest prohibition is often seen as a counterbalance to parents' otherwise near-total control over their children.

When Schwarzer and Amendt wrote about pedophilia, [F100] unfortunately they uncritically lumped together pedophilia, incest, exhibitionism, and so-called "doctor games," thus exacerbating the problem of child incest victims' social subordination: Often it is the fathers themselves who employ psychological, physical, or economic means to render their own daughters compliant. Schwarzer and Amendt correctly conclude that effecting such compliance can cause anything from very subtle (but nonetheless real) damage, to very severe injuries. In the present volume, through the case example cited on pg. 29 ff, an attempt was made to describe the horrible, helpless conflict-situation in which incest victims can find themselves. Certainly such situations are not unique to incest; the characteristic most conspicuously common to acts of bodily rape, coercion, seduction, and the sexual abuse of children is that someone in a subordinate position has been taken advantage of. But there are already other, special criminal provisions which would cover all of these cases. It is also difficult to see why adoptive and foster children, as well as male victims, should be less protected than biological, female children. [F101] Furthermore, it is not realized that, whereas intercourse under duress is punishable, other, possibly similarly-traumatizing sexual acts are not covered by § 173.

Phenomenologically, incest (§ 173) is virtually indistinguishable from the sexual abuse of subordinates (§ 174). Sexual coercion (§ 178) and rape (§ 177) likewise overlap. The common feature is an abuse of power for the purpose of sexual satisfaction.

Though eugenics is certainly not the stated reason for the existence of § 173, many of the ways in which it has been interpreted make clear that this does seem to be its underlying purpose; furthermore, there is a widespread assumption of the public that the incest paragraph does help to protect the family and society.

Thus the existence of the incest paragraph can only be explained in terms of a wider conflict within and among society itself, in which a deeply-rooted taboo has been created in order to make sure that strongly-felt emotions are kept in check.

There is one additional paradox that needs to be pointed out here. On the one hand, according to the sexual criminal law, the married woman is less protected from rape (by her husband) than is the girlfriend, the fiancée, or the prostitute. On the other hand, a father's biological children are especially strongly protected against his advances (i.e., relative to adoptive and foster children). If these two factual situations are examined side-by-side, it then -- so say the critics -- becomes clear that whereas the daughter is sexually taboo to the father, the wife on the other hand is readily available to be used against her will. Given the special criminal law regulations concerning incest and rape (outside of marriage!), it was inevitable that some would draw such a conclusion.

In the Alternative Draft on criminal law reform, [102] it was suggested that the incest paragraphs be entirely eliminated. This elimination was not made in the fourth revision of the criminal law. Only incest between those related by marriage was struck; it was dropped down to a misdemeanor after an attempt was made at complete legalization. [F103]

b) The Disturbed, Violent Family and Forbidden Sexual Contacts

In the area of incest, from the criminological perspective, there would seem to be two possible types of relationships; in order to handle each of these situations properly, they must be distinguished from one another.

In the early days of criminology there was an assumption that the incest perpetrator was "constitutionally incestuous" [F104], and thus had a pathological sexual tendency towards incest.

Many authors saw the disintegration of incestuous families as the disastrous consequence of the sexual contacts that had taken place within them. According to this view, family break-up was a consequence of the incestuous contacts.

By contrast, Gerchow had observed as early as 1953 that in many cases where incestuous contacts were revealed, the family had already been under serious social stresses before such contacts ever began. [F105] Moreover he addressed a logical fallacy which is also observable in other criminological areas.

Therefore, sexual contact among relatives (generally, between father and daughter) is -- according to Gerchow -- not the cause but instead the consequence of a family having already -- in many ways -- become dysfunctional. For example, when the wife rejects his advances, the husband (father) will use the daughter as a sort of surrogate sex object. Alcohol abuse as well as indications of neglect are also commonly found in these families. Weinberg termed this constellation the promiscuous type ([>E] "promiscuous type" [<E]). [F106]

The problem area in these cases is likely to be a similar one across different families in which children and wives have been mistreated and/or raped. The case example on pg. 29 ff was intended to illustrate this.

The criminal law's meddling in such conflict-situations is problematic, because then the victim becomes additionally traumatized, and, the (typically) already-suffering wife then has to face additional difficulties of a social and economic nature. If the perpetrator is imprisoned and the child is placed in a home, this brings about secondary harm to the victim [F107] as well as additional burdens onto the mother and siblings, and furthermore impedes the perpetrator's re-socialization because his closest kin -- his family -- has been destroyed. Instead, in these cases it would seem that a therapeutic family intervention would be indicated, such as for example of the type practiced by Giaretto in California. [F108]

The promiscuous type is manifested in families in many socially conspicuous areas. These already environmentally conspicuous families also relatively easily produce incestuous contacts within their own social environments, as the result, for example, of family controversies. This is why such cases clearly constitute their own

category. [F109] Most studies make the methodological mistake of generalizing their data concerning one incest type to all types of incest-situations. [F110]

The second group, designated by Weinberg as the [>E] "endogamic type of incest," [<E] [F111] appears to be much more common than the first type. This second type only very rarely becomes conspicuous. These relationships play themselves out, unnoticed, within the isolated, intimate familial sphere; therefore, we must accept the fact that the overall incest 'dark number' must be very large indeed. Rosenfeld [F112] examined more than one hundred cases of such endogamous incestuous relationships, describing them as follows:

In these cases the use of force is rare; the sexual acts between father and daughter gradually evolve over a long period of time, going from superficial sexual touching all the way up to actual intercourse. [F113] The father feels that his wife has sexually discarded him, and at the same time is likely anxious about having extra-marital sexual contacts. The daughter, frequently the eldest of the siblings, takes on her mother's role and intimate duties. She hopes that in this way, the father will come to like her. The roles of mother and wife are unfilled, because the mother herself has discarded them. Perhaps at first the daughter accepted these roles because of the emotional and erotic warmth they allowed her to receive from her father.

Weiss et al. therefore speak of the [>E] "participant victim." [<E] [F114] They characterize such daughters as seductive, flirtive, looking for love, etc. Only later on, when the father pesters the daughter with his genitally- and orgasm-fixated desires, and in addition jealously monitors the daughter's outside contacts, does the relationship become, for the daughter, emotionally empty and burdensome. In individual cases of this type, it is difficult to judge at what point -- if any -- the father truly abuses his power and authority.

Up until now, the nature and dimensions of incestuous contacts between mothers and sons have remained almost completely unknown. [F115]

The sphere of incest is not very accessible to empirical victimological research. This is especially true of the second group. As with child maltreatment, the 'dark number' for incest is expected to be very large. It is true that, according to criminal statistics gathered by the police, this group does not comprise a substantial proportion of total offenses; however, the cases which do become known to the police are likely to be only the tip of the iceberg. Presumably, it is those victims who are suffering the most who are most likely to be listed among the reported cases.

An observation made by Gerchow in 1965 could be considered to typify the problems inherent in the investigation of incest:

"For the greater part of the past four to twelve years, we have repeatedly attempted to carry out research on these acts. The target group was children between eight and sixteen years of age. In the end, we have been unable to conduct this research. Some people, who are now 'happily married' young women, did not want to drag up this 'ancient history' all over again.

"Others were astonished at our request, even denying having ever been involved with such a case. Yet others could indeed recall there having been criminal proceedings -- especially inasmuch as these had an impact on their care and upbringing -- but nevertheless could no longer remember the particulars of what had actually occurred. Given the fact that young women reacted negatively to such interrogatories from the very beginning, it would seem safe to assume that these were conflicts which had not only negatively impacted on and traumatized their development, but had also -- even with the passage of time -- remained unresolved. It is not at all clear to what extent the disagreeable and ambivalent situations involved here could have been successfully suppressed from one's conscious mind." [F116]

5. Sexual Abuse of Subordinates

Many problems in the areas of incest, rape, and sexual coercion are analogous to the sexual abuse of subordinates.

Unlike the three offense types described above, most manifestations of this type of offense involve -- from the victimological perspective -- relatively harmless kinds of sexual contact. It is often reported that these punishable sexual acts cause no primary harm to their victims. What is meant here are cases in which, for example in the context of actual or apparent sexual exploration, childlike sex play occurs (of the "playing doctor" sort) in which sexual curiosity is satisfied, or where tutor and pupil have an unabashed love affair which does not leave out erotic and sexual contacts. These

The following case, reported by a Marburg women's organization in an educational magazine, should help to illustrate this:

"Sunday Morning Bed Games"

Following a second appeal, a married, working couple was fined approximately 10,000 Deutschmarks upon conviction on a charge of 'sexual abuse' involving their five-year-old daughter. The appeal has been dismissed.

Reason: On May 12th, 1977, a married couple in Aalen was sentenced to eight months imprisonment as well as a term of probation, and fined 3,000 Deutschmarks, for repeatedly sexually abusing their daughter. On September 8th, 1977, the superior court altered the sentence upon second appeal to a fine of 5,400 Deutschmarks. The judge affirmed the opinion of the Aalen district court. What happened?

Traumatizing Interrogation

On Sunday and holiday mornings, the girl, Silvia (5), would sneak into bed with her mother, Erika V. (26), a skilled hairdresser (and housewife), and her stepfather, Otto V. (32, a laborer). The parents, 'who preferred to sleep in the nude' (see grounds for the verdict), would then 'play around in bed' in much the same way other families do on Sunday mornings (pillow-fighting, rough-housing, etc.).

Moreover, Silvia was also said to have sometimes played a 'gear-shifting game' with her stepfather's penis.

As soon as the biological father heard about this, he immediately made a complaint about Otto and Erika V. Silvia, already deeply embroiled in an odyssey involving her mother, father, and grandparents resulting from her parents' divorce, was then, by a 'cloak and dagger operation' (foster mother's characterization), picked up by the youth authority and taken to a foster family. This is a stark example of destructive rage and self-inflicted injury. The child was repeatedly interrogated about the incriminating facts of the matter. Moreover the questions came one after another: Did the 'gear-shifting' game take place? What condition was Otto V.'s penis in? Did the father or mother 'encourage' this game? Had either/both of them 'made up' this game in the first place? Had they 'tried to stop' it? The issue as to how the game should actually be judged, despite being twice addressed in expert opinions solicited by the defense, is relegated to a mere footnote in the court's opinion:

'As far as the relevant criminal law is concerned, considering Silvia's established manipulations of her father's genitals, as well as the normativeness and quantity of the sexual acts, no further proof is required.'

sexual contacts are thus rather superficial by conventional standards; moreover there is no overt application of force, use of threats, or any other form of compulsion.

In his appeal motion, the couple's lawyer criticized the verdict on numerous grounds (biased evaluation of the evidence, it being left to outsiders to provide expert scientific opinions, unexamined assumptions regarding the presence of sexual intentions). Although the appeal in the Stuttgart Superior Court was heard without benefit of oral argument, because the affirmation of the verdict was based upon the appeal brief, the Court's appraisal of it does not constitute legal error.

Financial Catastrophe

Therefore, the verdict is a valid one. The "V" family now faces total fines and court costs amounting to at least 10,000 Deutschmarks. For a three-member family with a monthly net income of 1,300-1,400 Deutschmarks, this is a catastrophe.

Meanwhile, the decision of the youth authority to place Silvia in a foster home was successfully legally challenged. In a separate proceeding, Erika V. was finally awarded custody of her daughter Silvia.

The noble goals of the dispensement of justice, the protection of the family, the protection of children, and the protection of privacy have, in contrast, been perverted throughout this process: Family privacy was shattered by this interference, the child was traumatized by the interrogation, and the original surely harmless familial contacts became, because of a judge's ulterior motives, sexualized." [F117]

6. Children as Sexual Victims, as Well as Pedophilia, Move to the Forefront

a) Age Limits Relating to Sexual Victims as per the German Criminal Law

When one speaks of pedophilia, one is immediately confronted with the definitional problem: Regarding which cases does one speak of pedophilic acts having taken place? Usually, such definitional attempts are based upon the ages of the younger partners.

Thus Giese thought that pedophiles were defined not so much by the generation their younger partners came from as by their younger partners' actual ages: "The diagnosis of 'pedophilia' is therefore based on the preferred age difference, or more accurately, the age limit, with respect to up until what age the child or teenager is still found to be sexually desirable. The span extends from early or earliest childhood up until the onset of -- or even well into -- puberty (but not as far as adolescence)." [F118] Bernard has also based his definition of pedophilia on the ages of the younger partners: A pedophilic relationship is a contact lasting a longer or shorter period of time,

Given the courts' conclusion that 'no superior or district courts can be found to have previously rendered verdicts regarding masturbatory manipulations,' the opinions of the two courts are not likely to carry a great deal of weight.

and a girl or boy under sixteen years of age. [F119] Of course later on, Bernard recognized that such a definition served to legitimate the existing, controversial age limits: "I must admit that in earlier writings (1960), I had made distinctions between pedophilia, ephebophilia, and so on. Today on the other hand, I believe that all attempts at drawing distinctions are arbitrary, and depend on particular moral, political, and religious viewpoints...We actually had to strive to get away from drawing such distinctions, and to evaluate relationships between people using completely different criteria." [F120]

Of course the law decrees that sexual contacts with children are prohibited, and the legislator is oriented toward a fixed age limit of fourteen.

According to our penal code (§ 176), relations with children are forbidden because the legislator wishes to protect in a concrete way the "child's overall undisturbed development"... from... "premature sexual experiences." [F121] But the legislator is also effecting more abstract ends; though this law should indeed be used to prevent any actual psychological or physical injury, this need not have in fact occurred for a conviction to result in any given case (abstract jeopardizing offense). [F122]

Now when an international comparison is made, [F123] it so happens that the industrialized countries have established widely varying ages of consent. While in West Germany sexual contacts with children under fourteen are prohibited, the age drops to thirteen under Japanese law. [F124] In England, heterosexual contacts under 16, as well as homosexual contacts under 21, are punishable. This obviously shows that legislators in comparable countries have totally different conceptions of moral offenses involving young people.

In our own criminal law, there is the additional problem that age regulations for different sexual acts and relationship constellations either themselves differ significantly, or are simply unclear:

- § 173 - Intercourse between parents and sons or daughters is prohibited. If two siblings have intercourse with one another, and one of the two is of age, this latter person will be punished.
- § 174 - Sexual acts between educators and persons (males and females) under sixteen years of age, over whom they are in authority, are prohibited, as are sexual acts between superiors and biological and adoptive parents, and persons under eighteen years of age.
- § 175 - Sexual acts upon males under eighteen years of age are prohibited, provided that the perpetrator is male and of age.
- § 176 - Sexual acts with, upon, and against girls and boys under the age of fourteen are forbidden to youth and adults.
- § 180 - Girls and boys under sixteen years of age are protected against being procured for sex.
- § 182 - Intercourse between a man and a girl under sixteen years of age is prohibited. If "victim" and "perpetrator" marry, the act is no longer punishable.

Simply put, age limits in the German criminal law generally prohibit sexual acts with children, as well as actual intercourse with both children and young adolescents. Exceptions: Homosexual and incestuous contacts with older persons are also prohibited. Separate regulations exist for subordinates and others in need of special protections.

b) The Application of Strict Age Limits Provokes Criticism

The legislator is obliged to respond to some persuasive arguments that have been made against the laying down of strict age limits designed to protect the right to sexual self-determination.

For example, intending to gloss over standard sexual sphere criminality, an anonymous author in the alternative press pointed out in an ironic way the contradictions, inconsistencies, and inhumane consequences which have been built into the sexual criminal law of West Germany. [F125]

Moreover, the story of Axel (12 years old) and Horst (13) needs to be told: They had sex with each other, but, because they had not yet attained the age of criminal responsibility, they could not be prosecuted under the sexual criminal law. And yet, if as they both grow older they still love one another, and therefore engage in various activities, they will then, paradoxically, be subject to prosecution. Finally, even for an older boy and a same-age girl who become sexual partners, the dynamics of the relationship can be such that they are always in flux, with perpetrator and victim roles constantly shifting back and forth. There will then be periods in which the lovers will not have to worry, because the criminal law will not interfere with them. These stories are intended to illustrate not only "the involuntary comedy that is the criminal law," [F126] but also the fact that the consequences for those affected by it can be both serious and tragic.

aa) Old-Fashioned Ideas About Children's Psychological Development

In former times, the fields of pedagogy and developmental psychology clung to certain theories regarding the stages and phases of a child's development. [F127] These theories assumed that children developed according to a phylogenetically-determined roadmap consisting of stages or phases,

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

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

However, a simple example will make clear that this way of can lead to cause and effect becoming conflated. Since for a long time, children were first treated as if they were ready to learn when they had reached six years of age, it was correspondingly made to seem as if this were the age at which children were naturally and innately ready to begin learning. Meanwhile, one knows that children are able to learn to read even earlier, and furthermore, that considerable individual differences exist. The idea of child development

taking place in stages is also inapplicable to complex psychosocial interactions, such as group dynamics or particular sexual behaviors.

Meanwhile, many studies [F128] have now shown that such a view of human developmental stages is simply incorrect:

- The process of a child's development is a continuous one.
- To only a small extent is a child's development driven by internal laws; it is conditioned predominately by the child's own upbringing and experiences.
- The more complex and uncorrelated a behavior is, the less dependent it is on age; and the more dependent it is upon experience. [F129]
- The more developed children become, the less dependent their developmental status is on any purported mind-body connection. [F130] All of the psychological developments which are heavily dependent on the maturation of physical functionality appear to be completed as early as the end of the fourth year of life. [F131]
- Some researchers have also been able to show that the developmental stages, which were assumed to be tied to pre-determined age brackets (which earlier undertakings had attempted to prove), can actually occur in sequences different from those prescribed by the models. [F132]

Taken together, all of this means that we still make the mistake of conceptualizing children's development as something which occurs spontaneously along a continuum prescribed by internal mechanisms ("maturation"), and that this development is not likely to be damaged by outside influences. In addition, it is falsely assumed that psychological development is tied to particular ages, without there being any significant individual variations. For the most part, and firm connection between age and physical functions that does exist has been artificially -- that is, externally! -- concocted. This can be observed with particular clarity in the problem of puberty. Before puberty, human beings are commonly treated like asexual children (and thus do indeed largely conduct themselves in accordance with this prescribed image). In contrast, following puberty, people are considered to be sexual beings. The pubertization process is made difficult when young people are thus suddenly thrown into this new role, without having previously been allowed

to gather any detailed, 'real-world' knowledge about it. The stage-theorist would then say: "Yes, those are the developmental problems typical of the pubertal phase." But it will become clear that what is seen as an effect is, in actuality, a cause. [F133]

This has consequences for the establishment of age-limit protections, such as those that have been laid down in the sexual criminal law. But it would be quite inaccurate to say that a child's (sexual) development somehow takes place along a continuum ranging from "unharmd" to "severely harmed."

The same sexual act might be inconsequential for a five-year-old girl, traumatizing for a pubescent, and positive when engaged in by a thirteen-year-old. The nature of the experience depends -- as the author of the Alternative Draft has also emphasized -- almost entirely on the child's psychosocial situation, as well as on the reactions from within his or her own social environment. [F134] It is not self-evident that children who experience a home life which is characterized by and particularly strict sexual settings would be categorically protected against all forms of danger. Especially not when it is precisely these children who are most at risk of being secondarily harmed by the angry reactions of their horrified parents. It cannot be ruled out that the sexual criminal law in this area might actually be promoting risky behavior on the part of those who are responsible for children's upbringing.

bb) Individual Differences in Psycho-Sexual Development

A further problem lies in the fact that the onset of sexual maturity varies a great deal from person to person. A girl of sixteen could still be psychologically naive and physically childlike, have little interest in sexuality, and feel that any sexual experiences which might occur could only be a burden to her. Another girl might be a sexual early-bloomer, have significant life experience, and be involved in an intense love relationship.

According to our criminal law, victim-status would be denied to the sixteen-year-old girl if she were sexually assaulted by a

same-age peer, whereas the thirteen-year-old could be declared by others to be a victim for sleeping with her sixteen-year-old boyfriend.

cc) Sexual Acceleration

Individual pubertal onset (operationally defined as the observed moment of menarche or semenarche) would seem to be an obvious cutoff point for the sexual protection of children and youth. Here, because the time of first ejaculation is difficult to establish objectively, we will look more closely at the moment when menarche takes place in girls.

Table 2:

✕

Average Menarchal Age (Year; Month) Based on Various Studies Conducted at Different Times [F135]

Author (pub. yr.)	Region	Time Frame	Menarchal Age (at time)	Menarchal Age (in 1982 terms)
Ley (1938)	Mainz [city]	1937	13;6	12;0
Bober/Scholz (1944)	Germany	<1944	13;6	12;2
Grimm (1952)	Germany	1948	14;6	13;4
Müller-Luckmann (1963)	Lower Saxony		13;3	12;3
Tanner (1962)	USA	1955	12;10	12;0
Winter (1962)	W. Germany	1958	12;6	11;8
Steuer (1965)	Boblingen	1957-62	13;2	11;6
Blunck (1969)	W. Germany	1969	13;6 (est.)	13;2
Schraml (1972)	Central Europe	<1972	11;9 (est.)	11;5

Table 2 compares the findings of various studies regarding average ages of menarche in our area of the world. An American result is also presented, which shows that girls in decades past apparently

began menstruating there at somewhat younger ages than girls in western Europe. "Between 1830 and 1960 there has been a decrease in menarchal age, amounting to four or five months each decade." [F136] Following Kinsey [F137] and Muller-Luckmann, [F138] other studies have replicated their results, finding that, on average, American girls today experience menarche between the ages of 11 years, 6 months and 12 years, 7 months. [F139]

Similar figures were calculated for our own region. Therefore, we can conclude that on average, girls in our area today experience their first menstruation between the ages of 11 years, 6 months, and 13 years, 6 months.

Consequently, we must presume that the age of menarchal onset in the general population itself has, during the last century, declined an average of some four to five months every decade. If the legislator were able to observe, for example, that the average menarchal age in 1871 [F140] is somewhere between 15 and 17, then he would have to conclude that, today, the average girl has her first period sometime between when she is $11\frac{1}{2}$ and $13\frac{1}{2}$ years old. It is likely that the decline in age of pubertal onset has effected boys in an analogous way. Because this overall physical acceleration has only been tracked during the last one hundred years, the 1871 legislator would merely have been able to consider the situation as it existed at that time. The striking changes to come could not have been foreseen back then. The difference between physical and mental maturity will not be discussed here, simply because psychological maturity has never been objectively defined. When it is (often) said that in today's youth there is a gap between psychological and physical maturity, such statements remain purely speculative; they have never been empirically validated.

The criminal law's handling of such sexual contacts within the framework of fixed age limits often causes various types of harm to both the "victims" and the accused. Especially in those cases where through the rigid administration of such age limits the "victim" thereby gets structurally victimized [F141], such effects stand in contrast to the spirit of the law. In such cases, rather than protecting the child, the law instead turns him or her into a victim. Lautmann also criticizes this situation in his contribution on the subject of criminality without victims. [F142]

From the perspective of developmental psychology, this would be a problem only in those cases where an individual victim's developmental as well as psychological status was adjudged to have been compromised (by the damage caused by the act itself). This way of looking at things is certainly very rarely to be found in legal texts and commentaries, perhaps because it contradicts the original idea of the function of the law: the maintenance of formal standards and norms.

c) Innocence and Seduction

The existence of such age limits for the protection of children perpetuates ideas relating to children's innocence, purity, and overall happiness needing to remain unaffected and untouched. Often, adults cannot imagine that children's lives can be just as sad or happy, sorrowful or carefree, bad or good, as their own. This then leads to adults not being able to see children's lives as they really are. Frequently, adults will truly close their eyes completely to the reality of children's lives.

"We therefore speak of what childhood actually is, not of what lingers on in the minds of adults. One thing is clear: The childhood myth flourishes because it fulfills adult needs. In a culture of the alienated, the belief that everyone must have experienced a worry- and care-free time at some point in their lives, is one which is virtually impervious to challenge. It is unlikely that we expect such a time to take place in the future. Therefore, it must already be behind us. This is why the fog of sentimentality permeates absolutely all discussion of children and childhood. In the name of the child, everyone lives out his or her own private little daydream." [F143] Such daydreams are especially prevalent among the upper middle class. Entire industries profit from the social segregation and educational patronization resulting from children being kept in the child-role. There are toys, games, foods, books, comics, candies, radio and television programs, phonograph records, etc., which are produced specifically for children.

Today we scarcely even realize that childhood is a relatively recent invention, that until two or three hundred years ago, children were actually treated -- and depicted -- as little adults. The fine arts is just one of many fields in which this can be seen. Formerly, children were depicted as miniature versions of adults, whereas in the fine arts and popular pictorials of today, they are represented as caricatures of childishness. [F144] In the course of inantilization, the child became both denuded and enburdened. This went so far, that a belie that children had no sexuality at all became widespread. Particularly in the middle class, in the context of the romanticization of children, their dirty sexuality -- with all of its attendant problems -- was simply denied. It was really Sigmund Freud who was the first to rekindle the long-dormant discussion regarding the existence or non-existence of child sexuality. Freud had realized that children definitely did have sexual feelings, but that adults simply ignore them. In Freud's time this ignorance was especially widespread, and was tied to the particular brand of prudishness which was prevalent at the turn of the century.

"Our entire culture has generally been established for the purpose of the suppression of instinct," [145] Freud recognized. On one hand, this sublimation [F146] of sexual desire releases the power needed for civilizational progress, and yet, on the other hand, it is also the cause of various neuroses, of what Freud himself called the modern neurosis. [147]

In the daily process of work, working people are required to have a high degree of discipline. Sexual behavior -- so says popular opinion -- would certainly disturb this required discipline. In order for a workplace to function smoothly,

it is necessary that the meeting of sexual needs be limited to certain locations (such as the bedroom), and certain times (after work, on weekends as much as possible, generally at night). Our enormous industrial development and attendant cultural supremacy was -- according to Freud -- only possible because of the suppression of instinctual sexual desire.

Now, in the meantime, we have become skeptical of technical and industrial advances. We have been forced into the realization that economic advances are actually made at the expense of other quality-of-life issues. Increasingly we are confronted with the question: Does every technical and industrial advance automatically lead to an improvement in our life-situation? We increasingly see that uncontrolled rates of change have an effect on people; they become more sensitive to technocratic developments that do violence to them.

In the area of sexual sublimation, critics also bemoan [148] the fact that Freud did not differentiate between necessary and superfluous sorts of suppression. Thus Kentler calls for a precise differentiation between partial, socially necessary controls on instinctual drives, and superfluous suppression, which -- considering the level of productive power that has now been attained in our region -- could be dismantled, without unleashing the destructive, instinct-driven chaos many fear. The removal of "superfluous" manifestations of sexual repression "only jeopardizes the dominant hierarchical order, thereby promoting both the democratization of society and political maturity." [F149] Though these are probably goals that no one would openly reject, one nevertheless gets the impression that nothing along these lines is actually happening, that there are in fact groups of people who are deliberately -- by their fellow men -- kept in a state of dependence and political immaturity.

If reductions in unnecessary manifestations of instinctual repression are in fact undertaken, emancipatory desublimation will continue to overrun efforts designed to control or repress it, as Marcuse has characterized this conflict. [F150] What has been described, for example, as the new "sexual trend" or "sexual revolution" is in large part a merely apparent liberalization; repressive mechanisms which do not serve the interests of individual people remain in full effect, cutting across wide swaths. If for example a sexual practice is driven by certain notions of what constitutes proper performance, then it cannot be engaged in in a manner that is truly free; this is true even for unconventional situations (partnership constellations, promiscuity, other permutations). Such sexual situations simply bring with them new obligations. [F151] Symptoms of sickness are the consequence, as is confirmed again and again by today's sex therapists.

The terms we use to describe work, such as performance, competition, wages and benefits, dirt and sweat, are absent-mindedly carried over into other areas of life. Thus it is not at all surprising that the same terms are frequently used when talking about sexuality. Because this schema is seldom used to shape sexuality in a positive way, sex instead becomes something that takes place in a hurry and with a single-mindedness of purpose, within the narrow timeframes allotted to it. Sexuality frequently then becomes a lot like work, and consequently just as dirty and results-oriented. It is also not something for children and youth, the elderly, the sick, prisoners, the disabled, and all other groups of people not actively involved in productive work. Apparently, they are not worthy of it.

As with all social behavior, sexual behavior too must be learned. But left to ourselves, social learning in the sexual sphere becomes enormously more difficult; practically impossible even. This has become ideologically entrenched due to the concept of innocence, the existence of which is always asserted and yet never verified. This idea of sexual innocence suggests that children's sexual purity must continue to be protected. Therefore this requires:

- that ~~and~~ ^{our} children are too seldom able to have learning experiences in the sexual sphere, and,
- that simultaneously, from very early on, the above-mentioned "superfluous" sexual sublimation becomes deeply imbedded inside our children.

The cause of many of our social problems today, including those involving our youth, can be found here. People who to a large extent have needlessly become accustomed to "swallowing" their sexual needs, too readily become "pussyfooters," submitting to irrational exercises in power in other areas. Routinely experienced feelings of guilt, which are also part and parcel of the daily lives of those struggling with impermissible sexual desires, lead some people to underestimate their abilities and potentialities. Because of this, many children and youth come to believe that they will always be failures. When these repressive mechanisms are at work in the sexual sphere, they produce an entire generation of people who are unwilling, or unable, to challenge the status quo. If the suppression is sufficiently far-reaching, it can produce various forms of youth rebellion. This was likely a partial cause of recent generational conflicts.

And yet, it is obvious that our suppression and denial of children's sexuality has only achieved superficial "success." A reading of Borneman's collection of children's rhymes readily

confirms this. Children accommodate themselves to adult pressure, experiencing and practicing their sexuality in secret, as quasi "sexual co-conspirators." Obviously, middle-class children observe informal norms more strictly than do lower-class children. "As anyone familiar with ghetto schools is well aware, it is impossible to reign in child sexuality to any significant extent." [152] The secrecy

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

Thus, the idea of sexual seduction fits right into this overall point of view. Because children seem to be asexual and pure, they can easily be placed in great moral peril; therefore, children must be protected against being seduced into engaging in sex.

One may further observe that the dangers which allegedly lurk "out in there in the world" are used as a way of disciplining children. Warnings against "strange men" often serve as instruments for disciplining children; they are intended to elicit greater compliance with rules established related to children's upbringing.

All in all, this leads to many children -- usually girls -- growing up in an atmosphere of learning which is characterized by fear of sexual attack, rape, and sexual murder at the hands of strange men.

7. Exhibitionists -- Fear Instilled Through The Presentation of the Penis

The fear of strange situations and strange people is passed down from adults to children. This happens, for example, with the help of false impressions conveyed through sex education. The following is a pattern typical of such sexual enlightenment:

- It is inaccurately suggested to kids between the ages of six and eight that children are in great danger when they are "outside," "in darkness," "far from home," etc. In actuality, children are at greatest risk in those surroundings which are most familiar to them.
- Perhaps the danger has something to do with "forbidden things." The sexual component is frequently not spoken of at all; though this certainly has something to do with the reticence about sexual matters mentioned above, it is also a reflection of the "enlightener's" own ignorance. In general, they personally know very little about sexual criminality, instead simply projecting their own fears onto such educational efforts. The child therefore receives very little in the way of concrete, helpful information. Here the educational principle of thoroughness becomes

culpably violated. It is usually only hinted at, that there are certain men who make children put aside their familiar surroundings, take them away, and kill them.

- It is easily established that the child will react to this mysterious information with a great deal of anxiety, developing a mistrust of the outside world as well as of strange men.
- Meanwhile, horrific news stories exacerbate the fears of educators and children alike.
- Many educators consider so-called "danger education" or

"safety instructions" to be an essential part of sex education. It is thus not at all surprising when children come to believe that sexuality as a whole is a thoroughly alarming, criminal matter.

Thus it is asserted, for example, in the following recommendations promulgated by the director of a youth protection agency, regarding "danger education" youth protection efforts in the sexual sphere, that: "All educational efforts in this area must focus on the avoidance of dangerous situations, as well as on how one should behave when such situations do arise; and these must be carried out in such a way that other educational objectives are also served." [F153] And he says further: "Children who are accustomed to nudity and being caressed, and who all too boldly engage in sexual games and encounters, are no longer able to 'tell the difference between "the strange and the familiar",' and can thus easily be at risk of becoming sexually abused against their will...Education in merely the strict sense, without an emphasis on the freedom to make decisions, the connection between sexuality and overall personality, and sexuality's relationship to psychological bonds, can lead to an inability to master and control one's own urges. Mastery and control of one's urges must be learned and practiced." [F154] Further along, he speaks unreservedly of the goal of such educational practices: "It is always very difficult to break through pubertal young people's demonstrated belief in their own strength as well as their self-assurance, and convince them how easily they could become exposed to dangers they had heretofore never dreamt of." [F155] This "danger education" is quite obviously designed to prevent youth from becoming too bold and self-absorbed. And it is also supposed to deter them from engaging in sexual activity.

From the perspective of prevention, instilling fear of the stranger as perpetrator of violence is irresponsible, because as a group, these criminal perpetrators are precisely those who are least likely to do them harm. Children are thus warned about something which is relatively risk-free, whereas at the same time, they are made to feel perfectly safe in the very situations which pose the greatest risk to them.

When one examines the dimensions of reported sexual acts against as reflected in criminal statistics gathered by the police, one readily realizes that a major portion of reported acts do not involve coital or violent activities. The rape of children is -- fortunately -- relatively rare.

Upon further examination, it turns out that many reported acts against the right to sexual self-determination involve exhibitionism. The typical layperson presumes that sexual perpetrators constitute a homogeneous group, beginning as exhibitionists, but later becoming child-seducers and finally

rapists and sex murderers. It is also assumed that, due to his sexual excitement, the exhibitionist could become violent at any time.

Sexual scientists, on the other hand, express the view that because the exhibitionist is an inhibited person, he is usually harmless. It is certainly striking that very few works concerning exhibitionism exist [F156]; therefore, we know little about its causes, manifestations, and consequences. One gets the impression that this is a particularly forgettable group. It may also be the case that the merely sporadic attempts to study them reflect a lack of interest in this group of perpetrators.

When the female reacts with strength or self-confidence, or even in an actively sexual manner, the exhibitionist will become fearful and withdraw.

Although the exhibitionist is able to briefly self-generate a personal feeling of power through his act, this only works because there is so much fear of him amongst the general public. The only victims who are attractive to him are those who are fearful and easily startled. He himself is actually a caricature of 'macho' sexual ideology. In individual cases, it is generally unclear whether the victim becomes victimized -- if at all -- primarily, or secondarily. According to Galtung's definition as well, it is frequently unclear if victims' pre-existing pre-existing somatic or mental states are even affected by the exhibitionist. One often gets the impression that children who have a sexual upbringing characterized by especially strict sexual attitudes are more likely to grow up to be exhibitionists. These same children would certainly be at even greater risk of becoming exhibitionists if they themselves were to experience a traumatic exhibitionistic event.

At the same time, it is clear that both the positive and negative experiences children have throughout their sexual upbringing have a very substantial impact on whether they will be traumatized by the sight of an uncovered penis. Thus one can easily imagine how a thirteen-year-old girl who had never before seen a penis, and who moreover had gotten the idea that exhibitionists were inclined towards sexual murder, would be very shocked indeed if she were to encounter a man displaying his penis to her. Determining the true cause of such harm is not a simple matter. The problem is that some children may be harmed only as a result of the existence of these laws themselves, along with the social attitudes to which they are closely related.

If criminal acts against the right to sexual self-determination are to be analyzed properly, then the concept of 'violence' must be precisely defined. A concept of violence which is limited to the one laid down in the rape paragraphs

and related commentaries would have far-reaching, negative consequences for both actual and potential victims.

Yet also, if one employs a very broad concept of violence, the exhibitionist's behavior will always be seen in very problematic terms. The fact that exhibitionistic behavior is seen in such an ambivalent light has real consequences. This last sentence highlights a definitional problem that plagues the entire field. In 1975 Galtung said firmly: "Violence is present, whenever people are affected in such a way that their current physical or mental condition is inferior to their potential physical or mental condition." [F157]

Even when deviate sexual behavior is judged using this broader concept of violence, the problem of the difficulty involved in evaluating exhibitionistic behavior still remains. On one hand, he is obviously attempting to (superficially) compensate for his own sexual complex by startling girls or women. Their fearful reactions excite him. The fright this usually elicits in females apparently gives him a sense of strength and potency. But in reality, he is neither potent nor strong.

Trials of exhibitionists pose a further problem. It is well-known that in these proceedings, the defense will often claim that the accused had merely been urinating, and had not intended to display his penis to anyone. It is then often quite difficult for the court to get to the bottom of this, especially when the witnesses are unenlightened children who know neither how to recognize sexual desire nor what was really intended in the situation in question. It is surely detrimental to children if it is only due to the trial itself -- or by the ~~horrified~~ horrified reactions of parents -- that they are initially "educated" about sexuality. It is not good for these children to first learn about and come to grips with sexual behavior in the course of a criminal prosecution which itself is already a totally new experience for them. Moreover they learn that the accused's behavior, which they had perhaps originally considered to be of no consequence, is classified by parents, the police, and the court as dramatic, dangerous, and criminal. Many children have the experience that, all of a sudden, they find themselves standing in the middle of a sensation. At the same time, discussion of the actual nature of the sexual act is usually deficient, which can cause children to form a general impression of sexuality as something which is particularly dangerous, even when it involves situations that pose no peril whatsoever. This is an inauspicious beginning for a successful sexual socialization.

Many children -- as a result of their parents' behavior -- also get they feeling that they themselves had -- in one way or another -- misbehaved; because after all, they had somehow gotten mixed up in a situation involving an exhibitionist.

reported cases of exhibitionism and disorderly conduct. Only about 55% of these cases were cleared. [F158]

8. Special Problems

In points 1 through 7, the status of various current controversies were discussed. They were intended to ~~clarify~~ clarify the questions that need to be asked by the present study.

There are additional special problems in the area of "criminal acts against the right to sexual self-determination," even beyond those already discussed. These special problems relate to criminal acts regarding which there are relatively few reported incidents. Certainly when they are discussed in public, those discussing them quite often feel these are of very considerable importance. However because these cases are rarely reported, they will also comprise a small portion of the present study; therefore, any victimological statements regarding them are limited to these particular types of sexual offenses. Therefore, here, it will only be necessary to list them:

- sexual murder
- solicitation
- educator as sexual perpetrator
- seduction
- punishable homosexual contacts
- punishable pornography

These special problems require the asking of correspondingly special questions.

IV. Overall Research Objective

Section B addresses the status of current issues affecting the lives of many people on a daily basis. Moreover it became clear that a diffusion of opinions, attitudes, prejudices, and shortages of information regarding deviate sexuality is fostered to a greater or lesser extent in our daily lives,

- when children at school and in the home are confronted with counterfeit sex education,
- when sexual criminality is publicly reported,
- when ethical and political sexual norms are discussed,
- when people are treated more poorly the more they deviate from the norm, and,

Exhibitionistic acts are the second most common offense group among criminal acts against the right to sexual self-determination. In 1979 for example, there were 11,351

- when sexual victims experience environmental reactions which create emergencies that would not otherwise exist.

The present study will empirically investigate what a serious case truly looks like, and where the real dangers to sexual victims lie.

This study seeks to answer the following primary questions:

- 1) Which population groups are particularly vulnerable to becoming sexual victims?
- 2) What actually happens when a sexual offense is reported to the police? What role does the application of violence play in the sexual contact?
- 3) What is the typical sexual offense? Or are there various constellations?
- 4) How did the sexual act come about? How had the accused himself behaved? How had the victim acted? Where did the reported sexual contact take place?
- 5) How does the declared victim of the reported sexual contact view that contact several years after the report was made?
- 6) What was the situation like for the declared victim? What was the reaction of his or her environment? How had the representatives of the various authorities conducted themselves?
- 7) How many of the known victims feel themselves to have been harmed? Which cases involve psychological harm?
- 8) In cases where psychological damage was done, what -- in the opinion of the declared victim -- was its cause? Are there more so-called primary injuries, i.e., those sustained as a direct result of the criminal act itself, or more so-called secondary injuries, i.e., those originating only later, as the result of negative influences from within the victim's own environment?

FOOTNOTES

F59. Sex in the Vernacular: Germans' Vocabulary of the Obscene, Vol. 1, pg. 5.

F60. "One does not speak of it," calls out a character from a play by the group "Red Minds." Some of the group's scenes have been banned for calling into question commonly-accepted notions of sexual discussions with children. This is because children as well as adults would come to many of the local performances, where they too would hear these vulgar expressions. ("Depicting Conflict," in: Sexual Pedagogy, 1978, pg. 3 ff).

Oelze and Sell describe how insecure parents and children can become when the subject of sexuality comes up. (A mother: "The child embarrasses me when he speaks about it so frankly.") The authors were able to observe how schoolchildren would often, in great secrecy, engage in sexuality-related conversation. However these discussions were characterized by a lack of information and experience, a fact which dirty jokes are designed to obscure. (Oelze/Sell: "What One Speaks About," in: Pedagogical Extra, 10, 1978, pg. 32 f.) What kind of sex education schoolchildren actually want has, fortunately, been studied anew: "Contents and Atmosphere of Sex Education in ~~NY~~ High School: A Poll of Students in Nordrhein-Westfalen of Their Experiences, Grievances, and Desires," in: Kluge (Ed.): Research in Sexual Pedagogy, pg. 121 ff.

F61. Wendt: Goals and Norms in Sex Therapy, Sexual Advice, and Sexual Pedagogy, pg. 3.

F62. It is is sometimes said that for men, sex is "perpetually the number one subject."

F63. Amendt: Hachiche and Sexuality; Schlaegel et al.: "Relationships Between Boys and Girls," in: Sexual Medicine, 1975, pg. 381 ff; Walczak et al.: "Youthful Sexual Morality," in: Sexual Medicine, 1975, pg. 306 ff; Wolf: "Youth and Sexuality," in: Concerning Education, 1981, pg. 27 ff; critical of this is; Kentler: "Better Not at All Than With Bad Data," in: Concerning Education, 1981, pg. 33 ff; Sigusch/Schmidt: Changes in Youth Sexuality Between 1960 and 1970; Sigusch/Schmidt: Youth Sexuality.

F64. Kinsey et al.: Sexual Behavior in the Human Female; Kinsey et al.: Sexual Behavior in the Human Male; von Friedeburg: A Survey of the Intimate Sphere; Sigusch/Schmidt: Schoolchildren's Sexual Practices and Sexual Morality; Sigusch/Schmidt: Youth Sexuality; Sigusch/Schmidt: Changes in Youth Sexuality Between 1960 and 1970; Schmidt: "College Students' Sexuality: A Critique of Müller's Pseudo-Scientific Questioning About Sexual Behavior: Situational Hit-Parade: On the Purpose of So-Called Sexual Reports," in: Concrete Sexuality, 2, 1980, pg. 91 ff.

F65. On the limits and contradictions of sexual liberalization, see for example Kerscher: Education and Sexuality; Kerscher: "Sexuality and Society: Sexuality and Sexual Pedagogy Between Liberation and Limits," Sexual Pedagogy, 1978, pg. 11 ff;

Rhode-Dachser: New Path for Sexual Pedagogy? Some Thoughts On Seemingly Progressive Contemporary Educational Practice.

F66. Alexander/Staub: The Criminal and His Judge.

F67. For full details concerning this, see for example Hanack: On the Revision of the Sexual Criminal Law in West Germany: A Legal Opinion, pg. 32 ff.

F68. So says Hanack: ibid., pg. 43 f; also similarly put by Baurmann et al.: Draft for an Alternative Penal Code, Special Section.

F69. Jäger: "Changing the Criminal Law Through Criminology: Statement on the Establishment of Interdisciplinary Cooperation," in: Criminological Journal, 1976, pg. 98 ff.

F70. Thus in the United States, rape is categorized as a violent offense. "Research into the 'Dark Number' of Sexual Victimization Using Questionnaires," in: Kirchhoff/Sessar (Eds.): The Crime Victim, pg. 275.

F71. Korner: Older Persons' Sexual Indiscretions with Minors, pg. 5.

F72. Hanack: On the Revision of the Sexual Criminal Law in West Germany: A Legal Opinion, pg. 38. This is a problem related to pedophilia, which is also addressed by Schorsch: "Paralyzed by Sexual Fear: Irrational Criminal Law Harms Pedophiles and Traumatizes Children," Sexual Medicine, 1975, pg. 358 ff.

F73. See in particular Kerscher: Education and Sexuality.

F74. Schroeder: The New Sexual Criminal Law, pg. 17 f.

F75. One thinks for example of the numerous "validated scientific findings" which, until the middle of this century, claimed that "spinal cord tuberculosis" was a consequence of pleasuring oneself. In those days, educators considered the prevention of masturbation to be a modern science: psychological findings indicated that pleasuring oneself led to loneliness and other psychosocial conflicts.

Undoubtedly there are likewise more modern and enlightened statements, which also have no empirical basis. Here sexual repression uses seemingly enlightened modes of thinking to its own advantage. In this sense too Rhode-Dachser's paradigms are of crucial importance: New Path for Sexual Pedagogy? Some Thoughts on Seemingly Progressive Contemporary Educational Practice, pg. 6 f.

F76. Susan Brownmiller speaks of the myths and female-hostile cliches which she believes exist in men's minds. (Brownmiller: Against Our Will). A variety of such myths have been compiled

in Baurmann: "Violence in the Family," in: Trial Assistance, 1980, esp. pg. 354, and in Baurmann/Storzer: "Violence S.O.S.: A Model for Cooperation Between Various Institutions Working in the Sexual Offense Field," in: Degler (Ed.): Raped -- Women Report, esp. pg. 43 ff.

F77. The psychoanalysts Sigmund Freud and Helene Deutsch even furnished a seemingly scientific proof of this assumption. Concerning this, compare with Brownmiller's critique: Against Our Will, pg. 229 ff.

F78. Federal Police Bureau (Eds.): Police Criminal Statistics 1980, pg. 62 ff.

F79. Frequency = number of known cases for every 100,000 inhabitants. For more details concerning this see Federal Police Bureau (Eds.): Police Criminal Statistics 1980, pg. 7.

F80. Meanwhile, until now, there has indeed been very little research intensively investigating and assessing the 'dark number' as it relates to rape. (Concerning this, compare for example with explanatory models developed and results obtained by: Schwind et al.: Empirical Criminal Geographics; Kerner: Criminality Assessment and Domestic Safety, esp. pg. 160 ff; Stephan: The Stuttgart Victim Survey; Schwind et al.: Research Into the 'Dark Number' in Gottingen; Kerner: The Reality of Crime and Criminal Prosecution; Wehner: "Undiscovered Criminality: On the Concept of the 'Dark Number'," in: Criminal Statistics, 1968, pg. 497 ff.) Exceptions: Landis: [>E] "Experiences of 500 Children with Adult Sexual Deviation," in: Psychiatric Quarterly Supplement [<E], 1956, pg. 91 ff; Wehner: The Latency of Criminal Acts; Rennert: "Research Into the Risk to Youth -- and the 'Dark Number' -- of Criminal Sexual Acts," in: Psychiatry, Neurology, and Medicinal Psychology, 1965, pg. 361 ff; Kerner: The Reality of Crime and Criminal Prosecution; Kirchhoff/Kirchhoff: "Experienced Sex Offenses," in: Annals of Social Pedagogy, 1979, pg. 110 ff; Kirchhoff/Kirchhoff: "Research Into the 'Dark Number' of Sexual Victimization Using Questionnaires," in: Kirchhoff/Sessar (Eds.): The Crime Victim, pg. 275 ff; Fikentscher/Hinderer/Liebner/Rennert: "Considering Criminal Sexual Acts Against Children and Youth as Expressions of Latent Criminality," in: Criminalistics and Forensic Sciences, 1978, pg. 67 ff.)

F81. See Footnote 84.

F82. Federal Police Bureau (Eds.): Police Criminalistics 1980, pg. 67. Regarding the American proportion, see Kerner: Criminality Assessment and Domestic Safety, pg. 172.

F83. Kerner: ibid., pg. 169; raw data is from: Federal Police Bureau (Eds.): Police Criminalistics 1977, Table Appendix, Table 6: Kerner's Calculation of the "Degree of Risk."

F84. Degree of Risk = number of inhabitants per every one victim of a given offense type in a given year [i.e., looking at the very first entry, "26,600" means that one out of every 26,600 boys aged 0-5 became victims of murder or manslaughter in West Germany in 1977. Higher numbers mean lower risks of victimization].

F85. m = male; f = female.

F86. Most of the explanatory brochures, which are directed either to children or to their parents, contain these -- from the preventive perspective -- tragic errors, as for example: Anonymous: "Sex Education: Information for Parents: Moral Offenses"; Anonymous: "Karin and the Strange Man"; Federal Working Group for Youth Protection Inc. (Eds.): "Parents: Protect Your Children From Immoral Criminals"; Degen: "Warning Against False Friends"; [>E] Departement [sic] of Police, Montgomery County, Maryland (Eds.): "Sexual Assault: Anyone Can Be a Victim"; State Youth Authority of Free Hamburg (Eds.): "Have They Already Learned?"; Baden-Wurttemberg Interior Ministry (Eds.): "I'm Not Afraid"; Bremen State Police Bureau (Eds.): "Women at Night -- Take Care!"; Scholle: "Youth in Need"; Bruchsal State Youth Office (Eds.): "Parents Protect Your Children"; [>E] U.S. Department of Justice (Eds.): "Take a Bite Out of Crime: How to Protect Yourself Against Sexual Assault." [E]

Some of these publications are of course obsolete. However many are still in use, and to date, no attempt has been made to include in sex education the dangers that exist in intimate social settings.

F87. Among others: Amendt: "Answering Questions, Without Creating Mistrust," in: Brigitte, 1976, Issue 22, pg. 179; Anonymous: "Sex Crimes: Men in Trenchcoats," in: Der Spiegel, 1976, Issue 28, pg. 59 ff; Anonymous: "The Hostile Image of the Moral Degenerate," in: Concerning Education, 1976, Issue 8, pg. 6 f; B.K.: "The Moral Degenerate Must be Pushed Aside," in: South German Journal, November 27, 1978; Lempp: ~~XXX~~ "Fear of the Moral Degenerate," in: Stern, 1977, Issue 24, pg. 102; Lutzmann: "The Recent Hunt for the Moral Degenerate," in: Events, 1976, Issue 5, pg. 23 ff; Lempp: "Sex Offenses: The Moral Degenerate Stranger," in: Die Zeit, 1976, Issue 37, pg. 52; Peter: "A Lesson in Sexual Fear," in: [>E] International Man [E], 1976, Issue 10, pg. 16 f.

Schmidt/Amendt/Müller/Meyenburg: "Commentary: The Point of View of the Campaign: 'I'm Not Afraid'," in: Sexual Medicine, 1976, pg. 679 f; Störzer: "I'm Not Afraid," in: Criminalistics, 1976, pg. 398 f; Dose: "The 'By The Nape of the Neck Fairy Tale' and the Not So Dangerous 'Candy Uncle'," in: Pedagogical Extra, 10, 1980, pg. 59 ff.

F88. Beck (Ed.): Comparison of the Criminal Laws of West Germany, § 173 (pg. 195).

F89. Incest, pg. 30.

F90. Oddly however, they never speak of especially intelligent "inbred villagers" whom, according to such armchair theories, must also exist. To be sure, what makes all of this hang together is the well-known phenomenon in social psychology that one is inclined to rate one's own group as better, more intelligent, stronger, wealthier, more progressive, more enlightened, etc., while simultaneously discriminating against other, outside groups. The contents of current wisecracks about "East Frisians" are excellent examples of this.

"From an insight point of view, one must first of all interpret these stereotypes as typological hypotheses subject to rigorous validation procedures. If this is not done, and this grave shortcoming is not recognized for what it is, stereotypical opinions will produce their own peculiarly idiosyncratic findings, skewed in direct proportion to our emotional investment in the groups under discussion." (Hofstätter: Group Dynamics, pg. 100.)

F91. Compare with Gerchow: "Recent Results on the Sociological Significance of Psychological and Psychopathological Factors in Incest Perpetrators in the Period Following the War," in: Criminology Notes, 1955, pg. 169 f; Gerchow: "The Incest Situation," in: von Stockert (Ed.): The Sexually At-Risk Child, pg. 40 ff.

F92. See Federal Law Section 16, 175, cited in Dreher/Tröndle: Beck's Short Commentary on the Penal Code, pg. 730.

F93. See General Law 71, 130, cited in Dreher/Tröndle: ibid., pg. 730.

F94. "In Sections I, II, and III, the decisive factor is whether a legal marriage exists, so that on the one hand what matters is whether the civil adoption has expired (§ 9 through 11), but on the other hand, in spite of their legal validity, civil adoptions do not offer the protections which the establishment of a new family logically requires (compare with Chapter VII/2631 ff); yet engages in equivalent cases; § 174(I)(3)(a);" Dreher/Tröndle: ibid., pg. 729.

F95. Dreher/Tröndle, among others, have pointed out the contradictory application of the incest paragraph: ibid., pg. 729. Also compare with Footnote 94 in the present volume.

F96. The rape paragraphs have also been criticized for covering only the most intensive sexual acts. By 1965 Gerchow was already criticizing and proposing changes to the incest paragraphs, which he believed were too narrowly constructed. (Gerchow: The Incest Situation, pgs. 40 and 50.)

F97. Compare with Gerchow: The Incest Situation, pg. 50. "The legal rights which are violated by incest (by blood relatives) are marriage and the family, but also the psychological integrity of the abused partner (compare with Title 17; Chap. VI/1247; General Law 57, 140; Federal Law Section 3, 342; NJW 52, 671), which the Fourth Revision of the General Laws has established, following the 1962 E Model, paragraph 12." Dreher/Tröndle: supra, pg. 729.

F98. Compare with Dreher/Tröndle: supra, pg. 729 f.

F99. The authors of the Alternative Draft have laid out in detail many of the contradictory grounds for the existence of § 173 of the Laws and Statutes of West Germany (Baumann et al. (Ed.): Alternative Draft, pg. 59 f.). Compare also with Maisch: Incest, pg. 27 ff.

F100. Schwarzer/Amendt: "Alice Schwarzer in Conversation with Gunter Amendt: How Overt is Pedophilia?" in: Emma, 1980, Issue 4, pg. 26 ff.

F101. It is certainly questionable whether the criminal law would provide any protection for victims in such difficult social situations. With Kerstin's case (pg. 29 ff infra) it became clear that the real danger is that the criminal law also punishes victims, in numerous ways. Also see Gerchow: "Recent Results...", pg. 180; Rennert: "On the Problem of Incest," in: German Journal of Legal Medicine, 1958, pg. 50 ff; Gerchow: The Incest Situation, pg. 41 and esp. pg. 49.

F102. Baumann et al. (Eds.): Alternative Draft, pg. 59.

F103. Dreher/Tröndle: supra, pg. 729.

F104. Von Hentig: Eugenics and the Criminal Sciences, pg. 15; von Hentig/Viernstein: Research on Incest.

F105. Gerchow: "On the Causes of Negative Sexual Attitudes and Criminal Acts of Former Prisoners of War," in: German Journal of Legal Medicine, 1953, pg. 455; and again later: Gerchow: "Recent Results...", pp. 169-180; Rennert: supra, pg. 53; and clearly: Gerchow: The Incest Situation, pgs. 39 f, 46, and 49; also on this: Maisch: supra, pg. 158 ff; more recently: Vesterdal: [>E] "Etiological Factors and Long-Term Consequences," in: Fourth Criminological Colloquium: Criminological Aspects of the Ill-Treatment of Children [<E], 1979, pp. 73-75.

F106. Weinberg: Incest Behavior.

F107. Also see Gerchow: "Recent Results...", pg. 180.

F108. Baumann: "Violence in the Family," in: Trial Assistance, 1980, esp. pg. 355; Follath: "When I Touched Your Skin...", in: Stern, 1978, Issue 42, pg. 138 ff.

F109. Rennert: supra; Gerchow: The Incest Situation, pg. 44; even earlier: von Stransky: "On the Incest Problem," in: The Viennese Medical Scientist, 1933, pg. 1197 ff.

F110. Gerchow: "Recent Results...", pg. 181; Rennert: supra, pg. 52; Gerchow: The Incest Situation, pg. 44; Vesterdal: supra, pg. 73.

F111. "Endogamic (from the Latin) = by marriage, merely meaning being married so far as a given social system (i.e., primitive tribe, caste, etc.) is concerned." (Ahlheim: Duden's Dictionary of Foreign Words, pg. 189.)

Weinberg: supra; Vesterdal: supra, pg. 83.

F112. Rosenfeld: See Vesterdal: supra, pg. 73.

F113. Using cases that resulted in a conviction (!), Rennert ascertained that, on average, such relationships lasted 24½ months before any report was made. (Rennert: supra, pg. 55).

F114. Weiss: See Rosenfeld, in: Vesterdal: supra, pg. 74.

F115: This problem area was very compellingly depicted in the feature film "Murmur of the Heart."

F116. Gerchow: The Incest Situation, pg. 38.

F117. "A Marburg Women's Group: Sunday Morning Beg Games," in: Pedagogical Extra, 1978, Issue 3, pg. 8 f.

F118. Giese: "On Diagnosing Pedophilia," in: von Stockert (Ed.): Pedophilia and Its Problems for the Criminal Law, Stuttgart, Stuttgart, 1965, pg. 25.

F119. [The following is in Dutch, which in many ways is similar to German, and is thus largely intelligible to the German reader. Here, Baurmann has supplied German equivalents for the words which would not be understood by the German reader. I have omitted these, and have simply done a 'straight' translation of this passage:] "...a shorter or longer sexual relationship between an adult (a man or a woman) and a child or youth under sixteen...in which this age range...is clearly preferred." Bernard: "On the Child as a Complete Person," in: Bernard et al.: Sex with Children, The Hague, 1971, pg. 63. [End Dutch.] Schorsch was subsequently influenced by Wyss's definition of 'pedophilia,' which was likewise based on the age and generation of the younger partner. (The Criminal Sexual Perpetrator, pg. 151 f; Wyss: Lewdness with Children.)

F120. Bernard: Pedophilia, pg. 10.

F121. Dreher/Tröndle: Beck's Short Commentary on the Penal Code, Munich, 1978, pg. 746.

F122. Ibid.

F123. Detailed material concerning this has been collected by Bernard: Pedophilia, pg. 54 ff.

F124. Bernard concludes that the effective age of consent in Japan is twelve. Although it is true that the age of consent in the penal code is thirteen, in Japan, the year in which a child is born is, by custom, considered to be that child's first year of life. When one then learns that, to a large extent, Japanese criminal law had modeled itself on West German criminal law, then this perhaps coincidentally discrepant age of consent becomes rather more interesting.

F125. The author was probably not familiar with Jäger's witty and biting contribution to so-called textbook criminality (Jäger: "Glossing Over Textbook Criminality," in: Criminology and Criminal Law Reform Monthly, 1973, pg. 300 ff.) In contrast to Jäger, the anonymous author of a "comic" addressed the topic more seriously, criticizing the wide disparity in lawyers' training and experience, which can result in devastating consequences for those affected.

F126. Anonymous: "Am I Allowed to or Not? The Involuntary Comedy That Is the Sexual Criminal Law," in: Zitty, Issue 26, 1979, pg. 30. (See Appendix 1.)

F127. Early works: Tumlriz: Introduction to the Study of Youth, Leipzig, 1927; Bühler: Childhood and Youth, Leipzig, 1928; Bühler: The Human Life Course as Psychological Problem, Leipzig, 1933; Busemann: Introduction to the Study of Youth Pedagogy, Bonn, 1950; Kroh: Developmental Psychology as Applied to Primary School Children, Langensalza, 1944; Kroh: High School Psychology, Langensalza, 1944.

Remplein, whose work in the field of pedagogical training was extensive, applied some truly extreme examples of such theories: Human Mental Development During Childhood and Youth, Munich, Basel, 1966.

A comprehensive critique by Oerter: Modern Developmental Psychology.

F128. Compare with Oerter: supra, esp. pg. 45 ff.

F129. Ibid., pg. 46.

F130. "Despite intensive efforts undertaken to discover them, in ninety-four percent of the cases, no links could be found between differences in mental development and physical developmental stages." (Oerter: ibid., pg. 45.)

F131. Ibid., pg. 45 ff.

F132. Piaget believed he had discovered an operational way of thinking about children, beginning at age seven.

F133. Various examples analogous to this, drawn from developmental psychology: "In order to eliminate any confounding variables, Braine (1959) employed nonverbal tasks in his experimental design. It was under these conditions that the working hypotheses which he had developed over the previous two years had to be revised over the next three following years.

"Likewise, Mogar (1960) showed that Piaget's previous research had been based on inductive reasoning. In contrast to Piaget, Yost, Siegel, and Andrews (1963) found that the proportion of children's correct answers increased when they were able to make nonverbal decisions. Following Piaget, Inheider and Szeminska (1948) found that between $3\frac{1}{2}$ and 4 years of age, a child is only able to recognize topological spatial relationships. On the other hand, Lovell (1959) found that two-thirds of children in this age group were clearly past the stage of merely topological spatial conceptualizations." (Oerter: supra, pg. 336).

"According to Eller (1958), a remarkable relationship was found between the age of first menstruation and an interest in ($r = .36$), as well as understanding of ($r = .31$), mental states. Many new problems are associated with pubertal onset and the consequent new social relationships that must be attended to; it is in consequence of a demonstrated preoccupation with such problems that changes in behavior and attitude then begin to take place. Therefore, these are really the result of a learning process." (Oerter: ibid., pg. 46.)

F134. Baumann et al.: Alternative Draft..., supra, pg. 19.

F135. Ley, cited in Tanner: Human Growth and Maturity, Stuttgart, 1962; Roher/Scholz: "The Maturation Process in Teenagers," in: Journal of Ethnology, 1944, Issue 2; Grimm: cited in Tanner: supra; Müller-Luckmann: supra, pg. 47 ff; Tanner: supra; Steuer: Youth Maturation, Environment, and Ability, Stuttgart, 1965 (average values were tabulated for the author by Steuer); Blunck: cited in Wallis: "Somaticization and Pathology in Childhood Sexual Development," in: Therapy Week, July 23, 1969; Schraml: Introduction to Modern Developmental Psychology, Stuttgart, 1972.

For the research year 1966, through an analysis of expert opinions on the subject of psychological competency, among the many discoveries was that the average menarchal age was 12 years, 4 months. This average menarchal age for 84 girls who were known as sexual victims did not differ significantly from the average menarchal age for German girls in general at a comparable point in time. (Baumann: "Influence of the Degree of Relationship Between Young Sexual Victims and Perpetrators on Type and Seriousness of Offense." Unpublished work. Mainz, 1969.)

F136. Tanner: supra.

F137. Kinset et al.: Sexual Behavior in the Human Female, supra.

F138. Müller-Luckmann: supra.

F139. This latter figure is a conservative estimate; it assumes a per-decade decline of only four months. Most studies of menarchal age contain a methodological error that must be compensated for: If for example a group of eleven to sixteen-year-old girls is asked if they were already menstruating, and if so, when their first menstruation occurred, there will of course be some girls in the group who have never experienced a period. These girls who experience late menarche are usually excluded when calculating the mean, because their menarchal ages were not known at the time they were questioned. Therefore, many calculations underestimate the true mean age. Baurmann has developed a method for correcting this error mathematically. (Baurmann: Sexuality, Violence, and Psychological Sequelae, infra.) Naturally, retrospective studies (such as Kinsey et al.) are not subject to this flaw. Here, what is at best a memory deficit leads to unpredictable level of error. Certainly another way to compensate for the above-mentioned error is through the use of cross-sectional research: The average menarchal age is frequently quoted in association with the year of publication, rather than the year in which the research was actually conducted. Thus for example Müller-Luckmann's figure of 13 years, 3 months (supra), first published in 1962, is in fact based on research conducted between 1948 and 1955. At the time that was published, the average menarchal age in Lower Saxony had most likely already reached the level of 12 years, 11 months. It is assumed that in the meantime, the acceleration itself has either slowed down further or has even come to a standstill.

F140. The present penal code is a revised version of one that first adopted in Germany back in 1871.

F141. Concerning individual, institutional, and structural victimization, see: Baurmann: "Elder as (Criminality) Victim," in: Journal of Gerontology, 1981, pg. 245 ff.

In this sense (among others), such fixed age limits, as they relate to pedophilia, have been criticized by Schorsch, Schmidt, and Sigusch. (Schorsch/Schmidt/Sigusch: "Sexual Science Considerations for the Reform of the Sexual Criminal Law," in: Sigusch (Ed.): Outcomes in Sexual Medicine, esp. pg. 172 f.)

F142. Lautmann: infra.

F143. Firestone: infra.

F144. Concerning this, see Roman and Gothic portrayals, in which children were depicted as being like adults, only with

smaller bodies. To suppose this merely reflects clumsiness on the part of artists of the time is too simplistic. In contrast, our images portray children with an exaggerated sense of childishness (oversized head and eyes, very small pug noses, etc.). This can be established particularly clearly in the area of what is sometimes referred to as "department store kitsch." It is also very essential to our inquiry that even in children's books, this pattern is widespread. Adults apparently find them cute, therefore purchasing such books for their little ones.

F145. Freud: "Cultural" Sexual Morality and the Modern Neurosis, pg. 121.

F146. "Analytical study of the sexual instinct -- or more accurately, the sexual drives -- teaches us that the sexual instinct is composed of many components and partially innate urges, and in humans is probably more heavily learned than is generally the case in the more advanced species, and in any event is more constant, because unlike the species to which we are most closely related, the periodicity of the human sexual instinct has been almost completely eliminated. The extraordinary amount of powerful social efforts required to put it in order undoubtedly leads to the imprinting of particular peculiarities, the goals of which may have changed, but without any concomitant, substantial diminution of intensity occurring. One calls this ability to replace the originally sexual goal with another one, which is non-sexual and yet still related to it, sublimation." (Freud: "Cultural" Sexual Morality and the Modern Neurosis, pg. 121.)

F147. "One can safely say that the task of mastering an impulse as strong as the sex drive -- altering its course away from the pursuit of satisfaction -- is one which, for some people, demands enormous will-power. Mastery through sublimation, diverting the strong sexual urge away from sexual goals and towards higher cultural goals, can be attained by only a minority of persons, and even then, is very unlikely to occur during the prime of youth. Others generally become neurotic, or come to harm in some other way. Experience indicates that the majority of our society consists of persons who are not constitutionally equipped for abstinence. When even more lenient sexual restrictions can still lead to sickness, the demands of our present-day sexual morality can make one even sicker yet; we know of no better protection against threats to normal sexual tendencies -- themselves caused by faulty attitudes -- than personal self-satisfaction." (Freud: ibid., pg. 130.)

F148. See Marcuse: Instinct Structure and Society, esp. pg. 4; Reich: The Sexual Revolution: On the Nature of Human Self-Control; Kentler: "Repressive and Non-Repressive Forms of Youth Sexual Education," in: Kentler et al.: Toward a Revision of Sexual Pedagogy; Kerscher: Education and Sexuality, esp. pg. 24 ff.

- F149. Kentler: Toward a Revision of Sexual Pedagogy, pg. 40.
- F150. Marcuse: One-Dimensional Man, pg. 91 ff.
- F151. Adorno: "Sexual Taboos and Privileges Today," in: Adorno (Ed.): Interactions, pg. 100.
- F152. Firestone: Women's Liberation and the Sexual Revolution, pg. 21.
- F153. Furian: "Sexual Offense -- Prevention Through Education," in: Furian (Ed.): Controversies in Sex Education: Analysis -- Perspectives -- Help, 1978, pg. 188 f.
- F154. Furian: ibid., pg. 187 f.
- F155. Furian: ibid., pg. 193 f.
- F156. There is one recent, interesting work: Weihrach: "On the Criminal Prosecution of Exhibitionism -- Before and After the Fourth Revision of the Criminal Law in 1975," in: Hess/Storzer/Streng (Eds.): Sexuality and Social Control: Contributions to Sexual Criminology, 1978, pp. 83-89; Hobe: "Therapy, Punishment, and Protection: On Criminal Law Controls on Exhibitionism as Embodied in the Fourth Reform of the Criminal Law," in: Hess/Storzer/Streng (Eds.): ibid., pp. 69-82; Scharfenberg/Schirmer: "On the Question of Psychological Trauma Resulting from Exhibitionistic Acts: Initial Results of a Study," in: Szewczyk (Ed.): Criminality and Personality, 1972, pp. 91-96; Baumann et al.: "Does Exhibitionism Have to Be Punishable?," in: Nannen/Wasserman (Eds.): Instinctual Perpetrators: Men or Monsters?, 1969, pg. 25 f; Mohr/Turner/Jerry (Eds.): [E] Pedophilia and Exhibitionism: A Handbook [E]; Wille: "Exhibitionists," in: Criminology and Criminal Law Reform Monthly, 1972, pp. 218-222; Schmidt/Sigusch: On the Question of Prejudice Against Sexually Deviant Groups; Morgner: "Faulty Development Among Exhibitionists," in: Criminalistics and Forensic Sciences, 1977, pp. 105-108. A case of female exhibitionism is reported by: Hollender/Brown/Roback: [E] "Genital Exhibitionism in Women," in: American Journal of Psychiatry [E], 1977, pp. 436-438.

On the presumed upward spiral in the intensity of criminal sexual acts, see Footnote 202.

- F157. Galtung: Structural Violence, pg. 9 ff.
- F158. Federal Police Bureau (Eds.): Police Criminal Statistics 1980, pg. 62.