Sexual Anomalies and the Law

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STATISTICS CONCERNING the incidence of sexual offenses in the United States are difficult to find. The Federal Bureau of Investigation reports that in 1961 there were 7,143 arrests for forcible rape and 46,204 arrests for other sexual offenses including statutory rape. An interesting feature of these figures is that when the 46,204 arrests are broken down by race, 29,680 of the offenders were white and only 11,006 were negro. This is important because of the popular belief that most sexual offenders are negro.¹

The laws of the individual states in regard to sexual offenses vary widely. This makes it difficult to summarize what is known concerning such offenses. There is also little agreement among medical men who write on this subject. This is to some extent understandable because the problem is not the offense but the offender. It is with the person who committed the offense. Since no two individuals are alike, it is important to realize that when one speaks of a sexual offense, he is not describing a definite entity but is speaking of a person who has committed a sexual crime. An exhibitionist, for example, is a person and his sexual disturbance will be conditioned by his basic personality. As one reads through the voluminous literature on the subject of sex and the law, there are many areas which immediately attract attention:

1) Much of the terminology of the law is out-dated and confusing. This may lead to misunderstanding.

2) The laws as they are written do not seem to recognize that sexual crimes may be committed by individuals who are not sexual perverts.

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¹ FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES (1961). These arrests were in 2,776 cities of over 2,500 citizens with a total population of 85,158,360.
3) There seems to be little recognition that conditions such as pyromania, kleptomania, and similar conditions may be based on sexual pathology.

4) The courts tend to deal primarily with the sexual offense although this may be, and frequently is, only a surface manifestation of a more deep-seated disorder. These four points represent only a few of the problems with which a psychiatrist is confronted when he looks at sexual anomalies vis-à-vis the law.

Another disturbing element that becomes apparent as one reviews the literature is that many of the sex laws seem to have been promulgated in anger in response to a public demand which has been aroused by some particularly flagrant sexual crime. Many laws appear to have been written hurriedly. As a consequence, the full implication of the statute was not realized. The penalties imposed by such laws vary widely, some of the penalties being overly severe while others send too many offenders to mental hospitals. Judges and legislators often decide who should be sent to mental hospitals without consulting psychiatrists who might be considered more likely to understand the value and limitations of such a procedure. As a matter of fact, the mere commitment of an individual to a mental hospital may serve little purpose. Many psychiatrists feel that there are no available technics for the treatment of the sexual offender. Even if such technics were available there would not be enough psychiatrists, in most instances, to apply them. Many sexual offenders are sent to the hospital “to remain until cured.” This, in spite of the fact, that there are no criteria of cure. It is conceivable that under such laws the relatively harmless voyeur or exhibitionist could remain in the hospital for life for an offense whose penalty might otherwise be a few days in jail. The editors of The Mentally Disabled and the Law look at the problem in this way:

The reforms that have swept our penal institutions from the eighteenth to the twentieth century have left mental institutions substantially untouched. Physical restraints have departed from the prison but are still standard equipment in many mental institutions. The overcrowded conditions alleviated in prisons have remained to plague the mental institutions. There is doubt about the legality of sterilizing criminals, but sterilization, lobotomy, and electric shock treatment are permissible for sexual psychopaths. Substantial constitutional questions can be raised about the right of a criminal court to expose a defendant to the possibility of sterilization, lobotomy, and electric shock treatment.\(^2\)

One can hardly agree that our mental hospitals have not improved in the last two centuries. Even to one who is not a lawyer, however, the constitutional question which is raised sounds logical.

More study needs to be devoted to the sexual offender in academic circles so that more reasonable laws may be written. Public indignation and public guilt should not play any part in the writing of laws dealing with sexual offenses. As Bowman stated:

Exhibitionists and peeping Toms are looked upon as terrible sex criminals. Yet many of those upset at such types of behavior will go to night clubs to see nude women dancing in suggestive fashion. These same persons become indignant, however, if some individual is caught peeping through a window while a girl is undressing.\(^3\)

In addition to emotional attitudes on the part of the public and the courts, ignorance


\(^3\) DAVIDSON, FORENSIC PSYCHIATRY 109 (1952).
plays a part in the enactment of some of the sex statutes. For example, the frequencies of coitus have been the subject of review in some recent divorce cases. The judges were called upon to consider the reasonableness of the coital frequencies which the husband had demanded. In such cases, nearly daily coitus has been ruled to be unreasonable and cruel and sufficient grounds for securing a divorce. This is an example of the law’s failure to allow for the fact that such apparently high rates of coitus are maintained by a not inconsiderable portion of the population.4

Surprisingly few persons, including attorneys, are aware that the “crimes against nature” statutes can be extended to include married partners. The penalties for such acts may in some jurisdictions be exceeded only by the penalties for murder, kidnapping and rape. There are court decisions on the applicability of these sodomy statutes, one of which goes so far as to uphold the conviction of a man of soliciting his wife to commit sodomy.5

The Wolfenden Report—A Catholic Viewpoint

This is the name given to a proposal in Great Britain which recommended, in effect, that the law should make no effort to interfere in the purely private relations of adult homosexuals, male or female, where the element of seduction or duress is absent.6 While this report has failed of adoption, the issue raised is of interest to Catholics because their position on such questions is often requested. We are asked whether we as Catholics can accept the recommendations on the report. The briefest and most authoritative statement on this subject was published by the Archbishop of London in the December 2, 1957 issue of the Westminster Cathedral Chronicle. The statement is as follows:

In view of the inquiries which have reached Archbishop’s House following the publication of the report of the House Office Departmental Committee on Prostitution and Homosexuality, His Grace the Archbishop of Westminster has thought it useful to set forth the following principles which should be borne in mind when consideration is given to the proposals regarding homosexual acts between consenting adults:

The civil law takes cognizance primarily of public acts. Private acts as such are outside its scope.

However, there are certain private acts which have public consequences in so far as they affect the common good. These acts may rightly be subject to civil law.

It may be, however, that the civil law cannot effectively control such acts without doing more harm to the common good than the acts themselves would be. In that case it may be necessary in the interests of the common good to tolerate without approving such acts.

Applying these principles to the question of homosexual acts between consenting males:

1. As regards the moral law, Catholic moral teaching is:
   a. Homosexual acts are grievously sinful.
   b. That in view of the public con-

4 KINSEY, POMEROY, MARTIN & GEBHARD, SEXUAL BEHAVIOR IN THE HUMAN FEMALE 369 (1953).
5 Id. at 370.
sequences of these acts, e.g., the harm which would result to the common good if homosexual conduct became widespread or an accepted mode of conduct in the public mind, the civil law does not exceed its legitimate scope if it attempts to control them by making them crimes.

2. However, two questions of fact arise:
   a. If the law takes cognizance of private acts of homosexuality and makes them crimes, do worse evils follow for the common good?
   b. Since homosexual acts between consenting males are now crimes in law, would a change in the law harm the common good by seeming to condone homosexual conduct?

Ecclesiastical authority could rightly give a decision on this question of fact as well as on the question of the moral law, if the answers to questions of fact were overwhelmingly clear. As, however, various answers are possible in the opinion of prudent men, Catholics are free to make up their own minds on these two questions of fact.

**Definition of Terms**

So that the terms which shall be used may be clearly understood, I shall attempt to define them as they are used in this paper.

A *sexual offense* for purposes of this discussion will be considered to be any act not included in the definition of legal marriage (given below). This may be inexact in terms of the laws of some jurisdictions but it is the consensus of those authors available to me. It will be stressed as the discussion proceeds that many acts which are now offenses could be made legal without harm to the public good, e.g., consenting sexual acts between mentally competent adults. This would decrease the possibility of blackmail and eliminate the need of solicitation and force. The vast percentage of individuals who commit sex offenses which are punishable under our present laws are not engaged in behavior basically different from that usual in the population as a whole: such persons are not necessarily to be regarded as psychiatrically ill nor as a danger in the community. Sexual acts occurring outside of marriage which involve force or disparity of age should, of course, be regarded as illegal.

**Psychiatrically, those sexual offenses which are significant are those which, following a repetitive obsessional fantasy, lead to compulsive acts of forced sexual assault either on adults or children. These may be of the nature of an unresisted urge (irresistible impulse). Such a compulsive sexual act in most cases is a surface symptom of a more profound psychic disturbance. As a matter of fact, the symptom may be less significant than other psychopathological features of the total personality which can only be detected by a thorough examination. Too frequently, the more dramatic symptom gets attention because it shocks the public conscience.**

**Sexual perversions** (also called sex deviations, paraphilias, or psychosexual abnormalities) are methods of sex gratification, mainly or exclusively, without penile-vaginal intercourse. Perversion may occur by the individual’s selection of an abnormal sexual object or by engaging in abnormal relations with a usual sex object.

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7 **GROUP FOR THE ADVANCEMENT OF PSYCHIATRY, REPORT No. 9, PSYCHIATRICALLY DEVIATED SEX OFFENDERS (1950).**


9 **ELLIS & AARBANDEL, THE ENCYCLOPEDIA OF SEXUAL BEHAVIOR 802 (1961).**
Since the term perversion carries with it a connotation of serious basic psychopathology, it would be helpful in many cases to employ a term less suggestive of pathology. Sexual anomaly seems to be a more meaningful term. Behavior in the sexual sphere that deviates rather sharply from the average is not necessarily pathological. The term sexual anomaly is proposed as a substitute for sexual perversion, on the ground that evidence is lacking that perversions are intrinsically pathological and that a less condemnatory term is socially desirable. This term must be distinguished from sex anomaly which refers properly to anatomical deviation.\textsuperscript{10}

Classification of Sex Offenders

Many attempts have been made to classify sexual offenders into significant groups. Law enforcement officials seeking for a behavior classification frequently divide sexual offenders into (a) those who are a menace and (b) those who are only a nuisance.\textsuperscript{11} The sociologist and the psychiatrist are likely to divide the offenders into (a) traumatizing and (b) non-traumatizing.\textsuperscript{12}

Although both of these classifications have value, there is so much difference of opinion concerning which offenses belong in each that, except in a few categories, these groupings have little value. It takes little imagination to realize that what would be traumatizing for one individual would not be for another. A neurotic young adolescent girl might be strongly affected by an exhibitionist whereas a mature married woman might only laugh.

Another classification which has merit is that which divides offenses into those involving physical contact and those not involving physical contact. From the legal standpoint, this is a useful classification.

Sexual offenders do not represent discrete types of individuals. Not all things are black or white. This is a fundamental principle of classification. Nature rarely deals with discrete categories. It is the human mind which invents categories and tries to force the facts into manufactured groups. The world of people is a continuum in all its aspects. “We must bear this in mind because the sooner we realize this fact of human sexual behavior the sooner we shall reach a sound understanding of the realities of sex.”\textsuperscript{13}

Kinsey classified sex acts in regard to the outlet sought, \textit{i.e.}, he described six chief sources of orgasm in the male:

1. Masturbation
2. Nocturnal emissions
3. Heterosexual petting
4. Heterosexual intercourse
5. Homosexual relations
6. Intercourse with animals\textsuperscript{14}

Although this grouping includes the vast majority of sexual outlets, it has little use for our present purpose.

Psychiatrists are more inclined to seek the underlying pathology rather than the sexual act which shows on the surface. Psychiatrically, most sexual offenders may be classified in the following categories:

1. Mental defectives
2. Alcohols

\textsuperscript{10} \textit{English & English, A Comprehensive Dictionary of Psychological and Psychoanalytical Terms} 498 (1958).
\textsuperscript{11} \textit{Davidson, op. cit. supra} note 3, at 111.
\textsuperscript{12} \textit{Id.} at 112.
\textsuperscript{13} \textit{Kinsey, Pomeroy & Martin, Sexual Behavior in the Human Male} 638 (1948).
\textsuperscript{14} \textit{Id.} at 193.
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3) Sociopathic personalities (Psychopaths)
4) Psychoneurotics
5) Psychotics

From this listing it is apparent that the sexual offender may be one of a great variety of psychiatric syndromes. In reporting the sexual offender to the court, the psychiatrist should be expected to report the basic psychiatric difficulty. If, for example, a schizophrenic is accused of incest, the psychiatric report should list schizophrenia as the primary diagnosis and incest as a secondary one. This is desirable because the individual's responsibility for his offense depends upon his basic mental state, not upon his sexual offense.

For didactic purposes, it is helpful to realize that most sexual offenders have a more serious underlying disorder. In the courtroom, this is of primary importance because the proper handling of the patient depends on it. For an insight into sexual offenses, an understanding of the sexual pathology is important.

Concept of Sexuality

A better concept of sexual anomalies may be obtained if one understands how such disorders develop. The hypothesis for the development of sexuality as described by Freud and his followers is the best known and most easily understood. Freud was impressed by the frequency with which his patients' verbalizations had a sexual significance. The more he investigated these, the more he was led to the belief that neurotic manifestations were due to conflicts between sexual impulses and resistance to the acceptance of these impulses. Freud's study of the reasons for repression of sexuality led him back to very early childhood, and he concluded that early sexual traumata formed the basis of later neurotic disturbances. He published these findings in 1905 under the title *Three Contributions to the Theories of Sex*.15

The Freudian concept of sexuality, particularly his ideas on the oedipal situation, forms an important basis of present thought. It is, therefore, important to discuss this in some detail because it will lead to a better understanding of sexual anomalies. Freud separated the concept of sexuality from the close association it previously had with the genital organs. He felt that it included "all of those merely affectionate and friendly impulses to which usage applied the exceedingly ambiguous word 'love.'"

He considered pleasure as the goal of the sexual function and felt that this function exists from the beginning of life. These sexual feelings, he stated, are at first diffuse and their object is the subject's own body (autoerotic) as, for example, in masturbation. These feelings later become localized in certain erogenous zones, the first of these areas being the lips. He considered that the pleasure which the infant gets from sucking (oral stage) was sexual in nature. In adult life, this may lead to fellatio or cunnilingus. Later the erogenous zone shifts to the anus where the sensation arises first in the pleasure of giving feces (anal-erotic stage) and later in withholding feces (anal-sadistic stage). In adult life this feeling may persist and result, for example, in sodomy. The next shift is to the genitals where it is at first unorganized (phallic stage) but later develops into the adult or genital stage. Between the phallic stage and the genital

\(^{15}\) *Freud, Three Contributions to the Thesis of Sex* (2d ed. 1925).
phase is a latent period during which the child is interested in other children of the same sex. This is sometimes known as the "homosexual phase." It must be emphasized that this is a normal stage of development although a fixation at this level may lead to adult homosexuality.

To explain certain neuroses, Freud stated that the libido (the energy of the sexual instincts) does not move smoothly along with the course of development, but that, as a result of a traumatic emotional experience, it may become fixated at any level of development, or if the individual has progressed beyond a phase of development, he may regress to any previous level where pleasure was obtained. The stage of libido fixation determines the choice of the anomaly. This mechanism of fixation he used to explain the various sexual anomalies which he felt merely represented either fixation at, or regression to, the appropriate childhood level of sexuality.

It may then be understood that the sexual disturbances which are about to be described are due, according to this theory, to a fixation at an earlier level of sexual development. The anomaly is, therefore, due either to fixation or to regression to such an early level of development.

Permissible Sex Acts

Before discussing sexual anomalies, a consideration of sex acts which are legally permissible will help to keep this discussion oriented. In most states, only penile-vaginal sexual relations are permissible under the law. These must take place between a man and woman who are legally married to each other. To be legally married, the couple must be above the legal age for marriage; at the time of their marriage, they must have been free to marry each other; the act must be voluntary on the part of each; and it must be performed in private. In many jurisdictions, both partners must be of the same race since miscegenation is forbidden.

Any other sex act is illegal and as such is subject to punishment. Such a legalistic interpretation fails to take into account certain acts which are employed by many couples as sexually stimulating practices before intercourse. These practices are so common and, from the moral standpoint, so acceptable that one cannot find fault with them. These include such sexual play as oral stimulation of the genitals, anal intromission, spanking, biting, and so forth as long as these practices are acceptable to both partners and as long as the act ends properly with the ejaculation taking place in the vagina. Legally, however, most such acts are forbidden and punishable. The reality of the situation is that such practices are common between married couples. Although such acts are unlikely to come to judicial attention, the possibility that they will do so through pique or anger is always present. This happened in the case of a masochistic woman who could only achieve orgasm if she was spanked or slapped by her husband. He was unable to understand her sexual needs but she could easily provoke him to anger and thus get him to slap her. On one occasion, she provoked him too much and he knocked out two of her front teeth. She swore out a warrant for assault because it was too much for her narcissistic ego to have her self-image distorted by loss of her teeth. A judge issued a peace warrant. Now her sex pleasure is nil because her

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16 Cavanagh, Fundamental Pastoral Counseling 132 (1962).
husband is afraid to give her the sexual stimulus she needs.

Classification of Sexual Anomalies

In this grouping of sexual anomalies, it will be clear that not all of them should be classified as sexual offenses. None of them, however, are without legal significance. Those having greater significance will be discussed more fully. The list, while not exhaustive, is sufficiently comprehensive to encompass the experience of most attorneys.

1) Quantitative Disturbances of the Sex Drive

In this type of disturbance, the sex drive is increased or decreased in relation to the average:
   a) Impotence
   b) Premature ejaculation
   c) Frigidity
   d) Vaginismus
   e) Nymphomania (Erotomania)
   f) Priapism
   g) Satyriasis

2) Qualitative Disturbances of the Sex Drive

In this type of disturbance, the sexual arousal is the result of other than the usual stimulus.
   a) Voyeurism
   b) Exhibitionism
   c) Transvestitism
   d) Transsexualism
   e) Fetishism
   f) Sadism
   g) Masochism
   h) Coprophilia
   i) Necrophilia
   j) Coprophagia
   k) Necrosadism (Lust murder)
   l) Gerontosexuality
   m) Pygmalionism
   n) Frottage
   o) Illusionary Cohabitation

3) Sexual Disturbances which are against Society

In this group are included the offenses which interfere with the unity of marriage.
   a) Fornication
   b) Adultery
   c) Incest
   d) Seduction
   e) Rape
   f) Artificial insemination
   g) Triolism (Troilism)
   h) Abduction
   i) Prostitution

4) Sexual Acts Contra Naturam

In this type of disorder, the disturbance is such that it destroys the "natural order of the act."
   a) Fellatio
   b) Cunnilingus
   c) Sodomity (Buggery)
   d) Masturbation
   e) Bestiality
   f) Homosexual acts
   g) Pedophilia
   h) Artificial birth control

5) Anomalies in Which the Sexual Element is not in Consciousness

   a) Kleptomania
   b) Pyromania
   c) Others

Discussion

Quantitative Disturbances of the Sex Act

Impotence (Premature Ejaculation). Impotence is the inability of the male or female to perform the sex act completely. Impotence may be either (a) functional or (b) organic. In the male, impotence may appear in several guises. It, for example,
may be *erective impotence* (the inability to get an erection), *ejaculatory impotence* (the inability to expel seminal fluid), or *orgastic impotence* (the inability to achieve full orgasm). *Premature ejaculation*, as its name implies, signifies ejaculation even before intromission (or at least before either partner is ready). Impotence is a condition of great significance legally. This condition is not only important to the attorney who handles marriage problems but it is also significant to the attorney who practices criminal law. Many sexual offenses occur because the individual is seeking the stimulus necessary to overcome his impotence. The individual who has lost his potency frequently becomes obsessed with the idea that if he could receive a certain type of stimulus, he could then perform a sex act quite satisfactorily. He may have previously experienced such stimulation or (more likely) has enjoyed it in fantasy. This stimulus may vary from some simple form of stimulation such as pornographic pictures at one end of the scale to sadistic murder at the other.

Impotence may occur at any age, but it increases in frequency with advancing years. Not all bizarre forms of sexual acts are the result of impotence but it is sufficiently frequent to be thought of as a possible cause in every case. Some anomalous acts merely add zest to the performance; others actually make the act possible.

The impotent individual becomes increasingly dangerous socially to the degree that he is obsessed by the need of vicarious stimulation and the availability of such a stimulus to him.

In the female, impotence, if it occurs, is usually anatomical. In some cases which are becoming less frequent, vaginismus may be a cause of impotence.

*Priapism.* This condition is named after Priapus, the son of Venus and Mercury, who was the god of procreation. His statues represented him with an erect penis. Priapism is a pathologic erection of the penis unaccompanied by sexual desire. Priapus has been adopted as a common noun to mean the penis. This use is rare in psychiatry.

*Satyriasis.* This is a pathologic, compulsive, excessive degree of sexual desire in the male. It is similar to nymphomania in the female and, like that condition, seldom leads to conflict with the law. This is so because, although the desire is excessive, there is no qualitative disturbance in its aim so that usually satisfaction is easily found.

*Frigidity* (Sexual anhedonia, anaesthesia, anaphrodisism, dyspareunia). Frigidity in the female consists of varying degrees of loss of sexual desire, from complete indifference to complete revulsion. In the evaluation of frigidity, it is important to bear in mind that sexual orgasm is infrequent in women. It occurs in only twenty to forty per cent of American married women. There are, however, indications that in the new generation of married women, orgasm is more frequent. Such an absence of orgasm does not, of course, indicate lack of affection, desire, pleasurable erotic feelings or sexual arousal. This knowledge is important because many men and women feel that inability to achieve orgasm is an indication of lack of love, poor sexual technic (usually on the part of the husband), or of extramarital affairs. None of these is necessarily true. As a matter of fact, there have been and still are, occasionally, arguments as to whether orgasm is pathological. Oliven, for example, states:

There continues to be occasional contro-
versy as to whether frigidity is a pathologic condition at all. A few observers feel that orgasm is not an integral part of female sexuality, but a faculty which the individual women may or may not achieve; and that the “doctrine of universal copulatory orgasm” tends to stigmatize a proportion of normal women as sexually deficient or disordered. However, clinical consensus today favors the view that orgasm capacity is a normal part of female sexuality, and that its absence constitutes a significant finding, both as a symptom and as a potential pathogen.  

_Vaginismus._ Extreme degrees of frigidity occur, in which there is not only revulsion for the act but physical inability to perform it due to spasm of the abductor muscles of the thighs. This is called vaginismus. This may or may not be associated with feelings of aversion for the act or for the partner. Such a condition, if primary (occurring from the beginning of the marriage), may prevent consummation of the marriage. In secondary types it may prevent sexual relationships which had once been satisfactorily established. There is some indication that this condition is less frequent than it once was. 

Vaginismus, also called in its lesser degrees _dyspareunia_, is more likely to come to the attention of the domestic relations attorney than to that of the criminal lawyer. In some instances, however, where men have tried to have relations by physical force with a woman who suffered from vaginismus, and inflicted serious injury upon her, criminal action may ensue. In rare cases where muscular spasm occurs after the initiation of intercourse, a condition known as _penis captiva_ may result.  

_Nymphomania._ Nymphomania is excessive sexual desire in the female. It is usually psychogenic in origin, although I have seen at least two cases in which it was the result of the administration of hormones for a menstrual disturbance. This condition may lead to extramarital relations or masturbation because the average normal husband cannot satisfy the sexual demands of this type of individual. Some cases resemble the “Don Juan complex” in the male, since in both cases it is an overcompensation to prove the subject’s heterosexuality. Such a condition seldom leads to conflict with the law although it may lead to chronic compulsive promiscuity. 

_Erotic Transference._ Erotic transference is a frequent hazard of lawyers, clergymen, and physicians. It is popularly known as “falling in love.” Dalbiez feels that when an “unsatisfied woman with heavy arrears of both sensuality and sentiment to dispose of meets a confidant, she almost inevitably falls in love with him.” He adds that: 

All those whose duty calls upon them to receive intimate revelations — confessors, physicians, or lawyers — run the risk of becoming objects of passion to the neurotic women who confide in them. The same misadventure naturally threatens psychoanalysts. It is, indeed, the common risk run by all those whose office binds them to professional secrecy.  

The erotic transference may have serious and embarrassing consequences when certain emotionally disturbed women fall “in love with their doctor or lawyer.” The characteristics of this form of erotism (which is always extensive, progressive, and aggressive), and which may pass from

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18 Id. at 365.
19 Dalbiez, Psychoanalytical Method and the Doctrine of Freud 213-14 (1941).
love to hate, with the risk of murder, have been frequently described. In the course of professional experience, it is necessary to set the limit on the affective transference when it threatens to develop in the direction of erotomania and become dangerous.20

Erotomania. Because of the importance of erotic transference and to add emphasis to this importance, I would like to include in this section a brief description of Psychoses Passionelle or pure erotomania, which was first described by Clerambault.21 In his description, he stated that the subject of this disorder was usually a married woman who claimed that a man was in love with her. This man was usually of a higher social status than the subject such as that of a lawyer, a physician or a clergyman. Although the subject states that she is unable to reciprocate because of fear, her attitude affects every aspect of her existence. She interprets all his acts as evidence of his love. Erotomania resembles an erotic transference closely enough to be mistaken for it. It is, however, a more serious hazard to the lawyer. It is a more serious threat and less easily handled than a transference reaction. Erotomania may occur without any encouragement from its subject.22 This case brings out many elements of erotomania; it also reveals strong masochistic elements:

This patient was an attractive 25 year-old white married female. Her manner was seductive, and she was quite sensitive to the response her coy and provocative manner was receiving. After a quarrel with her husband she became bitter towards him and complained loudly that he had cut her off from sex and that she was living an isolated life. That isolation was not complete, however, was evidenced by the fact that she became pregnant.

At this point she began to devote her attention to her obstetrician. Almost from the beginning she projected her own masochistic stimulation to the physician. She felt that the sight of her blood caused him to "have sexual orgasm." For this reason she felt he did not do a blood test, and that he was sexually stimulated when she asked him to circumcise the baby. On one occasion when she was to be examined, she deliberately cut her finger on a venetian blind to see his reaction. She gleefully reported that as he fixed her finger, he was "having orgasms" over her blood.

She stated quite frankly: "I am a lonely little girl who needs affection, and I like my doctor. I've called him on the phone and told him I was sick when I wasn't. I told him exactly how I felt. It is not unusual for a woman to get a crush on her obstetrician."

"I am in love with my doctor, or I think I am. I am separated from my husband. I went to a lawyer about my husband and he is also bad off. He gets me by myself. He has to talk to me by the hour and all he wants to do is talk about sex. I told him I had no sex to waste." Here the projection is to another confidential advisor. "I have called the doctor and I have taunted him by writing him notes in Italian. I have sent him a piece of recording of an opera, and a bottle of liquor and a big dry center piece. Should I go back to see him, or should I stay away? I must admit I have a crush on my obstetrician."

One of the real dangers of such a person is her use of either veiled insinuations or outright lies to support her position. For example, the patient admitted later that the following statement was not true.

My uncle is a police inspector, and he said that this doctor had been inviting a

20 Id. at 214.
21 CLERAMBAULT, OUVRE PSYCHIATRIQUE (1942).
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girl to his apartment. He disrobed her completely and he cut her, or she cut him and then the police walked in.

Qualitative Disturbances of the Sex Drive

Voyeurism (Scopophilia). This condition is that generally referred to as Peeping or Peeping Tomism. Looking or staring at a woman is an almost universal characteristic of adult males. Under ordinary circumstances, it can hardly be regarded as pathological. Insistence on viewing the partner's body as part of sex play should not be considered voyeurism. The voyeur seeks his view by stealth and usually as an end in itself. In many cases it is a compulsive act.

In young children, peeping is frequent but is usually the result of curiosity. This is frequently manifested in the “doctor game” played by many young children. In the course of the game, the children take turns being the “doctor” and performing physical examinations on the “patient.”

The child has a natural curiosity about the bodily structure of others. Forcible repression of this tendency may lead in adult life to an intense sense of shame or horror when exposed to such sights. The normal adult sublimation of this tendency is in art, anatomy, or in certain forms of amusement as well as in normal sexual intercourse.

As a rule, voyeurism is a nuisance offense. In only rare instances is this type of individual likely to approach his subject. In a few cases, such as an occasional mental defective or sociopathic personality, the voyeurism may be a prelude to assault. Voyeurism is an offense of males; the interest is exclusively in females. Some peepers are specialized and may be interested only in women at stool, or in children, or in watching couples having intercourse (mixoscopia).

The average voyeur establishes a route where he may expect the shades to be up, or where he can see in windows or where holes have been bored for purposes of observation. When he sees what he is looking for, he is sexually aroused and may spontaneously ejaculate or masturbate.

Exhibitionism. This is also a nuisance offense in which the subject, usually a male, exposes his genital organs, usually with the penis erect to a group of individuals who are as a rule strangers. In the female, the breasts are part of the genital system and may also be exposed. According to some authors, the tendency of the female is to exhibit her whole body.

Children are natural exhibitionists and their apparent lack of modesty in running around nude is to be considered normal. This usually stops around the age of four or five and before this time, children of opposite sexes may be allowed to mingle in the nude and to bathe together. Any severe repression of this tendency may result in an excessive sense of shame. The normal sublimation of exhibitionism is pleasure in being looked at, as in the case of actors, models and public speakers. The legal term “indecent exposure” is not an exact synonym of exhibitionism, but contains all of its elements. These individuals tend to be over-conscientious and rigidly moralistic in their personality. They may be married but usually have an unsatisfactory sex life. Although exhibitionists are not very aggressive, when they expose themselves they intend to be seen and intend to “shock” their victims. There is a

23 OLIVEN, op. cit. supra note 17, at 403.
24 ENGLISH & FINCH, INTRODUCTION TO PSYCHIATRY 273 (1954).
25 Ibid.
rather constant tendency on the part of the exhibitionist to return to the same spot, more or less at the same time, and to the same group. Homosexual individuals may also have this same tendency. Age is not a constant factor although most of the cases tend to occur later in life.

In most cases, the subject will experience pronounced restlessness and tension before he goes to "look for an opportunity." In the exhibitionist group there is a compulsive and sexualized need to look and to be looked at. In most cases they are fearful of indulging in a normal sexual experience so that the exposure tends to displace or rule out this type of experience. In some cases, the exposure may serve as an adequate sexual experience; others will masturbate or have a spontaneous ejaculation at the time of the exposure.

Some authors divide exhibitionists into three types (a) visual—the type described above, (b) verbal—those who speak to women in obscene language, e.g., those who call and make lewd remarks on the telephone, (c) ideal—those who have an intense interest in showing lewd pictures or books.

There may be many different etiological factors in exhibitionism. For example, Naville and Duboise-Ferriere suggest that it can be caused by hypersexuality, hyposexuality, feeble-mindedness, chronic psychosis, epilepsy, constitutional psychopathy, delirium, nudism, or accidental factors. There are many who agree with the suggestion of Rickles that it occurs mainly in timid men who are dominated by an assertive wife or mother. In almost every case, this element is found to some extent. Exhibitionism is the seeking of love and resembles the love dances of savages and even the behavior of male animals to attract females. Arieff and Rotman believe that it is the most common sexual offense (thirty-five per cent of all sexual offenses). As a rule it responds to psychotherapy and environmental manipulation. As in other anomalies, exhibitionism is abnormal only when it takes extreme, fixated or compulsive forms.

Transvestitism. In this condition, sexual satisfaction is derived from the wearing of the apparel of the other sex or leading their kind of life. Most of these individuals are homosexually oriented although they may not engage in homosexual acts. Their sexual satisfaction may be complete as a result of their way of life and no other sexual outlet is necessary. Transvestites may be of either sex. They should be distinguished from female impersonators who may wear women’s clothing for the purposes of night club performances or as homosexual prostitutes.

Transexualism. In this more advanced state of transvestitism, the male sexual organs are removed and an artificial vulva is created by plastic surgery. There is a homosexual background in all such cases. In this country, this condition is relatively infrequent.

Fetishism. According to Krafft-Ebing, the fetishist is always a man. In this anomaly the sexual interest is displaced

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26 Oliven, op. cit. supra note 17, at 404.
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from the whole body to some part of it. For example, the sexual interest may be only in a woman's shoe or crippled joint. It may extend to more normal aspects of the body such as a lock of hair, or in a symbolic way, by touching a woman's breast or other parts of her body. The fetish may be an article of clothing (frequently underclothing) which serves as a stimulus to sexual arousal. This may be followed by masturbatory activity. Most of these individuals are afraid of sexual relations in the usual way so a substitute is picked. In this way the fetishist is able to avoid the anxiety which would occur if he were to attempt normal relations.

Although this would appear at first glance to be a relatively benign anomaly, it may lead to serious mutilation and even murder if the fetish is part of the sexual anatomy of the woman.

Sadism. Cruelty is a normal characteristic of children to some degree. We have all seen children pull the wings from flies or throw a cat off the roof to see how he will land. Any sudden and severe attempt to suppress this tendency may result in a fear of one's self in competition with others and a reluctance to try to control a situation through fear of hurting others. The normal adult sublimation is in competition, in the struggle for existence, and in such medical specialties as surgery. The adult equivalents are sadism and masochism. Naturally one cannot permit a child to display overt cruelty in his play, but on the other hand, one should not respond to his childish cruelty with cruel methods of suppression.

In sadism, sexual pleasure even to orgasm is derived from the infliction of pain or humiliation upon a person of the other sex, or upon a person of the same sex if the subject of the disturbance is a homosexual. Such feelings may occur only in fantasy or lead only to masturbation. It becomes a legal concern when put into action against unwilling subjects whether they be adults or children.

Sadistic acts may vary from subtle humiliation to degrading acts, from mild spanking to lust-murder. In their milder degrees, such acts may serve as a source of sexual stimulation to married couples as a preliminary to the sex act. The man may make his wife kneel before him, or spank her if she refuses. Biting and pinching are not unusual. These sexual stimulating acts are morally correct and should be legally acceptable if they are agreeable to both parties and if the act culminates with ejaculation taking place in the vagina.

Sadistic acts become perverse when the cruelty replaces the sex act; when the sadistic act becomes an end in itself. In such cases, the man may actually physically injure the woman. It is almost always the male who performs the act; sadism is rare in women. Alcohol may release such reactions.

A typical situation apparently based on a sadistic type of reaction is the unmotivated attack headlined recently in our local papers. A young girl walking home from the movies or from work is followed by a man who may or may not have been drinking. Since he knows that she will become alarmed if he does so, he may follow closely so as to enjoy her anxiety when she realizes she is being followed. He has usually chosen an area in which few people are in the street. As the passers-by become less frequent he may attempt to accompany her, but whether he does so or not, or whether she refuses him or not, he will attack her with blows, knife
slashes, or kicks of various degrees of severity. Occasionally the girl is seriously injured. The attack, which seems unprovoked, is for the purpose of relieving the assailant's sadistic tension.

As sadism becomes more severe, the violence of the acts becomes greater. More severe beatings of the sexual partner, frequently associated with elaborate rituals, may be insisted upon. In such cases, some degree of impotence may be a factor. Scratching, biting, and sticking needles into the body are not infrequent. These may occur with or without coitus.

Murder associated with sadistic acts is an extension of these practices. The sadistic murderer may accidently kill his sexual partner as a result of allowing his sex play to get out of hand but her death is more likely to occur as a necessary condition to his sexual arousal. This type of murderer is frequently a quiet, apparently well-behaved man of indefinite age. He is usually quite particular in regard to his personal cleanliness. The background of such individuals is rich in neurotic traits.

The typical lust murder is characterized by periodic outbreaks. Cutting and stabbing, particularly of the breasts and genitalia, occur as do sucking, licking, or mouthing the wounds. Biting the skin or drinking the blood may also occur. Erection and ejaculation may be followed by violation of the dying or injured victim. . . . The behavior is accompanied by intense sexual pleasure and excitement, and the pervert usually behaves normally until the next outbreak.31

There may be dismemberment and mutilations of the female body. In some cases, the sexual parts of the body are amputated and saved for later erotic acts. This may be the primary purpose of the murder. In some cases, the body parts may be eaten (anthropophagia).32

For a long period before the murder, the sadistic killer has an increasing sense of sexual tension. He anticipates, plans his deed in fantasy; he may recognize the "wrongness" of his intended act but the urge may persist. He may be leading an active sex life but the insistent urge to sadistic murder persists.33

Masochism. This condition is the contrary of sadism. The subject in this case desires to be humiliated, degraded or hurt by a member of the other sex as a means of sexual stimulation. This anomaly derives its name from Leopold von Sacher Masoch (1836-1895), an Austrian novelist, whose characters indulged in variegated sex activity during which they derived sexual pleasure from being cruelly treated.

Krafft-Ebing defined masochism as:

A peculiar perversion of the psychical vita sexualis in which the individual affected, in sexual feeling and thought, is controlled by the idea of being completely and unconditionally subject to the will of a person of the opposite sex, of being treated by this person as by a master, humiliated and abused. This idea is colored by sexual feeling; the masochist lives in fancies in which he creates situations of this kind, and he often attempts to realize them.34

Masochism occurs in two types (a) the ideal in which the desires are strictly psychic and begin and end in fantasy, (b) the active type in which there is a desire to carry the process into actual practice. The

31 Ellis & Abarbanel, op. cit. supra note 29, at 806.
34 Krafft-Ebing, Psychopathia Sexualis 115 (1908).
extreme of this state is the masochistic suicide. This is the result of self-inflicted practices which are carried too far and get beyond the subject's voluntary control.

The following case is fairly typical of mild masochism:

In the last few years this patient had difficulty in becoming aroused enough to have an orgasm easily. She experimented to seek satisfactory means of stimulation. Her husband described this as follows: "Often during these preliminaries she would bite me. I would then slap her buttocks hard and this would immediately excite her."

“One evening when we were coming home from a party I remember breaking off a switch from a bush in the yard and telling her that I was going to switch her bare bottom with it. Almost as soon as we got into the house she could hardly wait to go to bed. At other times I would take a belt and slap my hand with it or slap the bed along side her. She seemed to become worked up very rapidly. I have whacked her with a belt several times. Never too hard, but occasionally she has cried out that it wasn't hard enough. Several times she has said while we were in the bedroom prior to marital relations, 'You want to beat me, don't you.' If I said 'Yes,' she would cringe away and pretend to be afraid. If I grabbed her and paddled her backside with my hand she would be excited in a few moments."

Coprophilia. In this condition the sexual stimulus is displaced from the woman to her excrement. The feces then becomes a cause of sexual stimulation. Similar displacement may occur to any bodily excretion. Watching the excretory act may also serve as a sexual stimulus.

Coprophagia. In this anomaly, due to a displacement, the eating of the woman's feces serves as a sexual stimulus. In a similar way, there may be a desire to eat or drink other secretions or excretions as a source of sexual satisfaction.

Necrophilia. Necrophilia is a desire to have sexual relations with a dead body. It is uncommon.

Gerontosexuality. In this condition a young person desires sexual relations with an old man or woman. In some cases, it may be difficult to decide whether the interest of a young boy or girl is the old man or woman or his money. If, however, he prefers relations per se with the older person, it is probably an anomaly.

Pygmalionism. This is a relatively uncommon anomaly in which the individual develops a sexual interest in statues. This may manifest itself clinically (a) by masturbating and ejaculating on the statue or (b) by having a woman pretend to be a statue and then arousing her to life by appropriate sexual stimuli. It may be that some cases of necrophilia belong in this category.

Frottage. A frotteur is an individual who gains sexual satisfaction by rubbing against women in crowds, streetcars or busses. It is a nuisance offense.

Illusionary Cohabitation. This condition is so common that in most cases it should probably not be considered an abnormality. It consists of looking at a clothed woman and imaging her naked. If, however, such a use of the imagination leads to mental or even actual masturbation, it assumes the significance of an anomaly. This condition is unlikely to come to the attention of the law.

Sexual Disturbances which are Against Marriage

Fornication. This is an act of intercourse between two persons, neither of whom is married. The significance of this condition from the standpoint of our pres-
ent discussion is that in most jurisdictions, it is a violation of the penal code. This is another act which, when performed between consenting adults, should be made legal.

**Adultery.** This is an act of sexual intercourse between two persons, at least one of whom is married. Adultery is a violation of the penal code in most jurisdictions. It is a statute infrequently invoked and then usually out of spite or pique. As with fornication, consenting acts between adults should be legalized. Such a change would have no effect on its frequency and it would, to a large extent, remove the possibility of blackmail.

**Incest.** Incest is sexual intercourse with an individual related within forbidden degrees (depending on the local statute) of blood relationship. It usually takes place between mother and son, father and daughter, brother and sister and among cousins. Although incest is frequently mentioned by psychiatric patients, it seldom occurs as a real act. The concept of the oedipal situation is based on incest. The oedipal teaching of psychoanalysis has caused much discussion, e.g., Freud wrote:

None of the discoveries of psychoanalytical research has evoked such embittered contradiction, such furious opposition, and also such entertaining acrobatics of criticism, as this indication of the incestuous impulses of childhood which survive in the unconscious.\(^3\)

From the legal standpoint, this comment of Stekel's is important:

Boys wander at night to mother's and girls to father's bed. Noctambulism is frequent among brothers and sisters, and I have had cases under observation where lengthy incestuous relations took place, and where the recollection of the events occurring during the night was completely absent in the morning.\(^3\)

Although complete incest is unusual in psychiatric patients, sexual petting and fondling by both parents of their children is not unusual. This is a frequent source of sexual conflict in the child in later life. As uncomplicated a crime as incest would seem to be, confusions, disparities and unnecessary complexities exist within the incest statutes of the various states.

**Seduction.** In "King John," Shakespeare, in these lines, describes the essence of seduction:

King Richard Coeur-de-Lion was thy father:

By long and vehement suit I was seduced

To make room for him in my husband's bed.

Heaven lay not my transgression to my charge!

Thou art the issue of my dear offense,

Which was so strongly urged, past my defence.\(^3\)

The words "long and vehement suit" constitute the difference between rape and seduction. This condition has no special psychiatric interest.

**Rape.** The legal and medical literature differ widely in regard to the terminology used for rape. The term itself is common to both disciplines and is understood by both in the same way. Other terms sound strange to medical ears and are quite likely to be misunderstood. Perkins discusses these terms:

The ancient term for the act (sexual intercourse) itself was "carnal knowledge"  

36 ROBINSON, ENCYCLOPAEDIA SEXUALIS (1936).  
37 Shakespeare, King John, Act I, Scene I. Words spoken by Lady Faulconbridge, Mother of the Bastard.
and this is found in some of the recent
cases and existing statutes. The phrase
"sexual intercourse," more common to-
day apart from legal literature, is also
found in recent cases and existing statutes.
Either term, when the reference is to
rape, is sometimes coupled with the word
"ravish." And unlawful intercourse with
a girl under the age of consent is often
characterized as "carnal knowledge and
abuse."³⁸

It would be best if we could all speak the
modern language. Rape is unlawful sexual
intercourse with a female person without
her consent.³⁹

Psychiatrically, several aspects of rape
are of interest. Accusations of rape, for
example, should be carefully scrutinized
because they frequently represent the ful-
fillment of a fantasy. Young girls with
hysterical personalities are especially prone
to make such false accusations. Other
questions frequently asked of psychiatrists
are: whether a woman can be raped while
she is asleep; could a woman awakened at
night have intercourse with another man
believing it was her husband; can a woman
be physically overpowered by a man suf-
ficiently to permit rape? These questions
could only be answered after an examina-
tion of the individual patient.

Artificial Insemination. The medical and
eugenic problems in artificial insemination
are mild compared to the legal difficulties.
According to both French and English
law, a wife who becomes artificially inse-
minated by a donor (either by consent of her
husband or without his consent) is guilty
of adultery.⁴⁰ In the United States, the
question of donor insemination has not yet
been directly the subject of decision by the
courts.⁴¹ It is possible that in the United
States it would also legally constitute adul-
tery. Semour, Koerner and Guttmacher
suggest procedures to obviate the difficul-
ties of adultery and illegitimacy. Guttt-
macher suggests that delivery of the woman
be performed by some doctor other than the
one who performed the insemination.
This is suggested so that the doctor who de-
livers the child could honestly say that, so far as he knows, the husband of the woman is the father of her child. Guttmacher recognizes that lying is involved here but he insists that it is a permissible lie. I wonder, then, arguing from the permissibility to falsify birth records in these circumstances, if Guttmacher would say that it is also permissible for the poor to print their own counterfeit money whenever they feel the pinch of circumstances.42

Triolism. This is a condition in which a man shares his wife or girl friend with another man. The husband may compel his wife to have sexual relations with another man while he watches. This condition has rather obvious psychiatric implications. Its legal implications are clear.

Abduction. As a rule abduction has no particular psychiatric significance.

Sexual Acts Which Are Contra Naturam

The reason these acts are considered as contra naturam is explained in this way by St. Thomas:

Wherever there occurs a special kind of deformity whereby the venereal act is rendered unbecoming, there is a determinate species of lust. This may occur in two ways: First, through being contrary to right reason, and this is common to all lustful vices; secondly, because, in addition, it is contrary to the natural order of the venereal act as becoming to the human race: and this is called the unnatural vice. This may happen in several ways. First, by procuring pollution, without any copulation, for the sake of venereal pleasure. This pertains to the sin of uncleanness which some call effeminacy. Secondly, by copulation with a

ejaculate usually being swallowed. Oral stimulation of this type by the woman is a relatively common act between married couples, but if the ejaculation does not take place in the oral cavity, it is not fellatio properly speaking. Fellatio is a common practice among homosexuals as well as heterosexual individuals.

*Cunnilingus.* This is a practice in which the vulva is orally stimulated by the male partner. The woman may be stimulated to orgasm. The pleasure to the man may be such that he will achieve his orgasm as a result of his act. More frequently, however, cunnilingus is merely a source of stimulation to both parties and will be followed by some other type of relationship.

*Sodomy.* This term is probably derived from Sodom, an ancient Palestinian city which was destroyed according to Genesis, XVIII and XIX, because of the prevalence there of unnatural sex relations. The term is today most commonly used to designate *coitus per anum,* performed between homosexual partners. It may, however, take place between heterosexual partners. If it is performed with a person of the same sex, it is known by the moralists as perfect sodomy; when it occurs between persons of opposite sex—imperfect sodomy. In some modern texts the term is used for coitus of humans with animals. A better and more commonly used term for this activity is bestiality.

*Masturbation.* Masturbation refers to all forms of sexual self-gratification. The impulse to such an act may occur as a result of psychic stimuli, either homosexual or heterosexual, or local physical stimulation of the genital parts. It occurs in both sexes at all ages. Masturbation is not uncommon in small children. Many writers believe that the practice is universal, but there is no proof of this. It is more frequent in boys than girls. In small infants, the process should not be called masturbation because it has nothing specifically to do with sex but is merely a part of the child's exploration of his body. He finds a part which is pleasurable when touched and consequently he tends to touch it repeatedly because of the pleasure involved. Forcible attempts at repression of masturbation may lead to thumb-sucking, nailbiting, tics, or other neurotic disorders, among which might be the development of compulsive masturbation. Masturbation is more frequent in women after middle life and in males during adolescence.

Masturbation may be solitary or be performed with one or more partners. The latter form is referred to as mutual masturbation. It is probably the most common sexual practice employed between female homosexuals.

*Bestiality.* This term refers to sexual intercourse between humans and animals. Although the condition is not frequent, it is not rare. Most commonly it is practised by boys and young men in remote areas, not so much because of a preference for animals but because of a lack of human association. In urban communities, it is seldom practised by men but relations or attempted relations between middle-aged women and their pets are not rare.

*Homosexuality.* Before attempting to define homosexuality, it is important to realize that until recently, practically nothing was known of the state of being a homosexual although there was knowledge of homosexual acts. This naturally lead to the concept that sodomy was an

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exclusively homosexual act and that all homosexual individuals were perverts. Homosexuals, also called inverts, may be perverted but they are not necessarily so. A pervert is an individual, homosexual or heterosexual, who finds his complete sexual satisfaction in a manner which frustrates the primary purpose of the sex act. It is important to realize that perversion refers to complete satisfaction, not merely the use of such methods of stimulation for sexual arousal. A homosexual or invert, therefore, is not a pervert unless he performs perverse acts. It is important to accept the concept that sexual inversion is a way of thinking and feeling, not merely a way of acting. The performance of homosexual acts is not in itself evidence of inversion. Homosexuality, it must be noted, is not an entity in itself but is merely a symptom of some underlying disorder, probably a neurosis. Salzman expresses this same thought:

A definition in terms of behavior is preferable, since homosexuality is a symptom of underlying personality distortion and not of a single integrated psychiatric syndrome.\(^{47}\)

The condition, however, is sufficiently clear-cut that it may be defined and described per se.

In homosexuality, there is a deviation of the sex feelings away from their proper heterosexual object to a sexual object of the same sex. Homosexuality may be defined, therefore, as a state in which the sexual object is a person of the same sex and in which there is a concomitant aversion or abhorrence to sexual relations with members of the opposite sex.


This aversion and abhorrence should not be understood to mean a total absence of ability to have heterosexual relations on the part of all homosexuals. It is not uncommon to see an individual who is known to be a homosexual pushing a baby carriage. Even in the presence of disgust and revulsion, one may carry out an unpleasant task, and although with practice it may become more tolerable, it practically never becomes acceptable. In the case of the homosexual, the task may become more acceptable by fantasizing an homosexual companion. Disgust and aversion for sexual contacts will persist, especially in the male homosexual, as long as he is an invert.

Oliven emphasized these feelings of aversion:

These men are attracted exclusively toward men. Erotic situations involving an attractive woman leave them indifferent or even fill them with repugnance or vague fear.\(^{48}\)

The term homosexuality is often used indiscriminately to include such nonsexual concepts as dependency, aggression, competition, domination, and submission. The term should, however, be restricted only to behavior which has orgiastic satisfaction as its object.\(^{49}\)

Anomaly, in *The Invert*, gives this definition:

A homosexual person (or invert) is one who, though apparently physically normal, is entirely unsusceptible to the sexual and emotional attraction of his, or her, own sex.\(^{50}\)


\(^{50}\) Anomaly, *The Invert and His Social Adjustment* 6 (1948).
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It is important, therefore, to make a clear distinction between the state of being a homosexual and the way of acting like a homosexual. There is no legal imputability to the state of being a homosexual, but there is a definite legal imputability to acting like a homosexual.

Oliven emphasizes other aspects of the homosexual state:

This is a chronic, usually lifelong disorder of the total personality, although in a number of cases its only apparent manifestation is the abnormal direction of the sex drive. Homosexuality is basically a medical (probably chiefly psychiatric) problem. But because of its relative incurability, the fairly frequent tendency of these patients to seduce others, and because of the almost instinctive animosity the homosexual inspires in many normal people, in practice it has remained rather more a social than a strictly medical problem.\textsuperscript{51}

Homosexuals are usually classified as:

1. True homosexuals, also called Psycho-sexual homosexuals.
2. Pseudohomosexual or Bisexuals.
3. Constitutional homosexuals.

True homosexuality or psychosexual homosexuality is the condition defined above. These individuals have no sexual interest in members of the opposite sex. They may, however, seek them out as intellectual or social companions. This condition is usually considered to be acquired in early life and to be psychogenic in nature. It is this condition with which we are concerned when discussing the homosexual state.

Pseudohomosexuality, sometimes erroneously called bisexuality, is a condition in which the individual so affected is sexually interested in members of both sexes. It occurs usually when he is isolated from the preferred sex and because of a strong, poorly discriminating sex drive, he will sexually accept the same sex. This is most likely to occur in prisons, in isolated military posts and similar situations. This is not true homosexuality and resembles it only in its externals. Such individuals usually prefer the heterosexual object. The term bisexual is derived from the biological fact that the urogenital tracts of the two sexes derive from a common embryonic origin. Because the embryo contained cell material from the glands of both sexes, it was originally called hermaphroditic.

This unfortunate description opened the door to indiscriminate speculations on man's bisexuality and appeared to offer a scientific basis for the explanation of homosexuality. Krafft-Ebing (1840-1903) adopted this idea and introduced it into psychiatry. In 1905 when Freud published his Contributions to the Theory of Sex, he followed the lead of Krafft-Ebing. He later changed some of his ideas and as late as 1933, he stated that he had merely "carried over the notion of bisexuality into mental life."\textsuperscript{52} This biological concept has withered away and is seldom seriously considered as representative of the genesis of homosexuality.

Constitutional homosexuality is a term which was used by those who felt that the condition was inborn and consequently unchangeable. There is no scientific proof of this theory.

Pedophilia. There is confusion not only in the law but in psychiatric terminology

\textsuperscript{51} OLIVEN, op. cit. supra note 48, at 430.

\textsuperscript{52} FREUD, NEW INTRODUCTORY LECTURES ON PSYCHOANALYSIS (1933).
concerning the meaning of the word pedophilia. A more popular term has been pederasty. The latter term, however, is associated with sodomy in the thinking of both professions. Since this is not true, the term is better discarded. Pedophilia should be understood to mean a sexual anomaly relating to children. A satisfactory definition is that given by Oliven:

Pedophilia is a collective term for any type of abnormal interest in a child on the part of an adult, whether in a nature of infatuation, molestation, abuse or a pathologic desire to inflict pain. Much overlapping of motives and personality disorders can be found among the abusers of children.\(^\text{53}\)

Pedophilia may be classified as Compulsive pedophilia (pedophilia erotica) and Symptomatic pedophilia (pedophilia sexualis).

(1) **Compulsive pedophilia** is a chronic disorder occurring most frequently in men. It manifests itself in a compulsive abnormal fondness for younger children. It may be divided further into two types: (a) Tender and (b) Aggressive.

The tender type of compulsive pedophilia is almost always directed toward young boys by an adult male who may be married although he frequently has difficulty in relating to women with whom, however, he is capable of being fond. His heterosexual drive may be quite deficient but he is usually not completely impotent. Masturbation in such individuals is frequent.

In some of these deviates the impression prevails that they are vastly “attached to themselves” (narcissism), or rather to their own childhood image of themselves. For instance, they may shave repeatedly all their pubic hair, admire or even kiss their mirror image. Most of these men masturbate a great deal.\(^\text{54}\)

The **aggressive type** of compulsive pedophilia is more frequently directed against children of the other sex. In this type, instead of tenderness the subject is cruder, crueler and more aggressive. He may physically harm the child and may occasionally panic and kill although this is accidental rather than intentional. Not all the conduct of the aggressive pedophilic is cruel. It may vary from intimate fondling and playfulspanking to attempts to have the child masturbate him, to masturbating against the child’s body, or to rape attempts.

Both types are a serious danger in the community. Chronic alcoholics are frequent in this group. In such cases, latent homosexuality may be activated. Neither type tends to change from one sex to the other in succeeding instances.

Both types must be distinguished from *Dorian Love* in which the aggressor is a homosexual who prefers relations with an adolescent male.

(2) **Symptomatic pedophilia** may occur at any age past adolescence and in about ten per cent of the cases, it occurs in women. This condition differs from compulsive pedophilia in that it is symptomatic of some underlying condition such as mental deficiency or organic brain disease. These individuals are at least as much a danger in the community as the compulsive pedophilic and less susceptible to treatment.

**Artificial Birth Control.** So much has been written about the fact that artificial birth control is against the natural law...
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that no further comment will be made here. In Connecticut, the sale and advertisement of birth control devices is still illegal.

Prostitution. This condition is included here only for the sake of completeness. The legal and psychiatric implications of prostitution are too extensive for a brief treatment.

Anomalies in Which the Sexual Element is not in Consciousness

There are many conditions, of which pyromania and kleptomania have been mentioned, in which the sexual factor is not clearly in consciousness. It may, in fact, be completely unconscious. Space does not permit a lengthy discussion of this subject but an example may help. A young man developed a compulsive desire to set fires to the extent of over several million dollars before he was caught. He had discovered that the jumping flames, the excitement of the firefighting, and the sense of power he experienced were sexually exciting. He would set the fire, go off a safe distance and watch the excitement. As the excitement increased, he would ejaculate spontaneously.

Recidivism in Sex Offenders

The sexual psychopath laws are based on a number of assumptions, many of which are not proven. One of the principle assumptions is that there is a high degree of recidivism in sexual offenders. It seems to be assumed not only that the sex offender is more dangerous than other offenders, but that he has higher rates of recidivism than other criminals. Statistics are incomplete in regard to recidivism but those available do not support this view.

Pacht et al., reporting on their experience with the Wisconsin Sex Crimes Law, state:

Of 1,605 male offenders examined under this law over a nine year period, only 783 were found to be in need of specialized treatment. Parole experience with this group has been excellent. Of the 475 individuals granted parole through May 31, 1960, only 81 have violated that parole—a rate (17 per cent) considerable lower than that found with parole granted to the general prison population. It is particularly noteworthy that only 43, or 9 per cent of the total paroled, violated their parole by commission of a further sex offense. For individuals who have been discharged following a period of institutional treatment and parole supervision, the results are even more outstanding. Through May 31, 1960, 414 individuals were discharged from departmental control: only 29, or 7 per cent of this group, committed a new offense following discharge.

The Illinois Commission Report concludes: "Not more than about 5% of convicted sex offenders are dangerous." Paul W. Tappan reported:

There are very few aggressive and dangerous sex offenders in the criminal population. Most of the deviates are mild and submissive, more an annoyance than a menace to the community.

He concluded:

Our sex offenders are among the least recidivous of all types of criminals. They do not characteristically repeat as do our burglars, arsonists, and thugs.

In addition, other studies have concluded that the danger represented by sex offenders is overemphasized.

56 Illinois Comm'n on Sex Offenders, Report to the Sixty-Eighth General Assembly 11 (1953).
58 Id. at 336.
Closely related to recidivism is the theory that sex deviates progress from minor sex crimes to major sex crimes of force and violence. The studies undertaken have proved that such is not the case. For example, Guttmacher and Weihofen stated "it is believed that sex offenders regularly progress from minor sex offenses such as exhibitionism to major offenses like forced rape. Such a graduation is almost unknown."

All students of the subject do not agree on the findings recorded above. Davidson, for example, states that "both the dynamics of sex psychopathy and the actual statistics seem to contradict that optimism (that the sex offender is not a repeater). Davidson does not, however, present any convincing figures.

My own experience has been that, in offenses involving physical contact with another person, the rate of repetition is low. In those offenses not involving bodily contact, the repeat rate is quite high. Progression from a mild anomaly to a more serious one has not happened in my experience.

Responsibility of the Sexual Offender

Some psychiatrists are reluctant to admit that anyone is "normal," i.e., "responsible," on the theory that no one is free of some personality distortion. They apparently feel that since the act which has been committed is foreign to their own personality, that it is abnormal. This is certainly not true. It is especially not true of sexual disorders. It is also true that in many cases the sex offender should be considered responsible because his offense represents absence of control over normal temptations and normal sexual desire.

I find it hard to accept the concept of sexual psychopathy. This concept seems to presume responsibility in all areas of conduct except the sexual. Many of the statutes include the words "not insane." For example, the "sexual psychopath" is defined in the following terms in the District of Columbia Code:

"Sexual psychopath" means a person, not insane, who by a course of repeated misconduct in sexual matters had evidenced such lack of power to control his sexual impulses as to be dangerous to other persons because he is likely to attack or otherwise inflict injury, loss, pain, or other evil on the object of his desires.

(Emphasis added.)

In the District of Columbia, "insanity" is defined as:

A condition in which an individual is incapable of managing his own affairs, and is not a fit person to go at large or to go unrestrained, and if permitted to remain at liberty in the District of Columbia, the rights of persons and property will be jeopardized or the preservation of public peace imperiled and the commission of crime rendered probable.

If we substitute this meaning for the word "insane" in the above definition, the latter portion seems redundant. The Code implies that the sexual aspect of personality can be isolated from the rest. This is impossible. A man is a psychosomatic unit. He functions as a whole. The basic problem here is that the sexual manifestation is isolated from the rest of the personality.

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60 Id. n.51.
SEXUAL ANOMALIES

The individual should not be judged on the basis of symptoms.

If we can accept the statement made above that, psychiatically, "those offenses which are significant are those which, following a repetitive obsessional fantasy, lead to compulsive acts of forced sexual assault either on adults or children," then the problem of responsibility is greatly clarified. A few terms need definition:

Repetitive means frequently repeated.

Obsessional is derived from obsession which "is an overpowering, persistent, and irrational idea accompanied by feelings of tension and fear." Such an obsession may, of course, vary in degrees of severity.

Fantasy or daydreaming is "the act or state of dwelling amid people or scenes created by the imagination."

Compulsive is derived from compulsion which "is an overpowering, unreasonable urge to perform certain actions and is associated with the development of tension or anxiety if the act is not performed."

Forced means against the wish or will of the individual attacked.

In evaluating responsibility, therefore, the above factors must be considered.

The question of "irresistible impulse" would certainly arise if these conditions are present. Each case must be considered on its own merits and there will quite likely be differences of opinion between psychiatrists. This will result because the degree of compulsion will be a matter of the judgment of each psychiatrist.

The definition of irresistible impulse (better called an unresisted urge) which appears to me best is:

An unresisted urge is one which, because of mental illness, so far causes the individual to lose his power of choice in regard to particular acts that in spite of the fact that he may recognize an act as wrong, he feels so impelled to act that he is unable to adhere to what he considers right.

Put in philosophical terms, this could be expressed as follows: An unresisted urge is one which has developed so excessively at the expense of the other psychic powers that in comparison to this urge, the other powers exert negligible influence upon reason when it is called upon to make a judgment. This urge occupies the focal point of consciousness. Because it occupies this central point, it becomes the basis upon which the intellect represents an object or some course of activity as desirable to the will.

In other words, this urge has developed to such a degree that its occupancy of the whole field of consciousness for the individual precludes the entrance into consciousness of other notions which might tend to represent the urge as undesirable. Since the urge is presented to the will only as something desirable to fulfill, the individual wills to satisfy the urge. This occurs not as an isolated temporary mental illness, but as part of a continuing illness which both antedates and succeeds this particular act. Instances of acts of short duration are more likely to be the result of sudden passion or anger and are not properly considered under this title.

There are three rules under which the

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66 Id. at 122.
67 Id. at 265.
responsibility of the sexual offender may be considered.

1) The M'Naghten Rule
2) The Proposed American Law Institute Rule
3) The Durham Rule

In applying any of these rules, it is important that it be applied to the basic personality disturbance of the individual. It should not be applied to a symptom. Just as a diagnosis of "hallucinations" would not be considered an adequate diagnosis, neither is exhibitionism nor voyeurism. The responsibility of the individual depends on

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70 "[A]s these two questions appear to us to be more conveniently answered together, we submit our opinion to be that the jury ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing the act, the accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong." M'Naghten's Case, 10 Cl. & Fin. 200, 203, 208, 8 Eng. Rep. 718, 720, 723 (H.L. 1843).

71 "(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of a mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. (2) The terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct." Model Penal Code, Appendix A, §4.01 (Tent. Draft No. 4, 1955). Substantially the same formula has been adopted by the Governor's Conference on the Defense of Insanity of the State of New York and by H.R. 7052, 87th Cong., 1st Sess. (1961), introduced in Congress by Representative Davis of Georgia.


his primary diagnosis. There will usually be no problem in applying either the M'Naghten or the A.L.I. Rules to sexual offenders except for the inevitable difference of opinions between psychiatrists. The Durham Rule presents a different problem.

The Durham Rule. The use of the Durham Rule in sex offenses leads to even more confusion than in other types of criminal cases. Under this rule, the individual is not guilty if his crime was the product of mental illness or defect. As this rule has been interpreted by the courts in the District of Columbia, the only area in which it has been accepted, almost any type of psychiatric disorder would result in a finding of not guilty. If, as seems to be the tendency, the sexual symptom is accepted as a diagnosis, then no one having a sexual problem would be considered responsible. If, for example, pedophilia is accepted as a basic diagnosis rather than a symptom, then under the Durham Rule such an individual would always be "not guilty by reason of mental illness" in all his offenses against children. This is so because it is obvious that if pedophilia is the diagnosis, then it is equally obvious that the crime against the child is the "product of his illness." Thus, also, the homosexual would be "not guilty" because any homosexual offense would be the product of his illness. On the contrary, the homosexual is as responsible as the heterosexual individual for equivalent offenses.

Conclusions. (1) The sexual offender will in many cases be legally responsible. (2) His responsibility will depend on his basic disorder, not his sexual offense. (3) His responsibility will also depend on the degree of compulsiveness involved in his condition. (4) The M'Naghten and the American Law Institute Rules may be
applied without difficulty. Under the Durham Rule, the problem will be much more complicated because of its failure to define adequately "cause." This is one of the fatal defects of the Durham Rule which has undoubtedly contributed to keeping it from being adopted by all jurisdictions except the District of Columbia. (5) Many problems would be avoided if the laws could be changed to permit consenting sexual acts between competent adults.

Enforcement of many of the present sex laws is impossible. The report of the Group for the Advancement of Psychiatry, for example, comments:

Moreover, if they were strictly enforced we should be indeed witness to a colossal travesty reaching all levels of American society. Absolute law enforcement would perforce touch about 95% of the total male population. In contrast to the universality of illegal sexual behavior actually only a meager number of persons falls into the law enforcement net to suffer inordinate punishment for the conduct of many. In one category alone recent statistical studies bring to light that 6 million homosexual acts take place each year for every 20 convictions. In the area of extra-marital copulation the frequency to conviction ratio is nearly 30 to 40 million to 300.  

**Conclusion**

An attempt has been made to present in brief outline form the classification and basic psychopathology of sexual anomalies. It is suggested that legal and psychiatric terminology be brought up to date. This would include adopting the term sexual anomaly as a substitute for sexual perversion because it is more meaningful. It is also suggested that consenting sexual acts between competent adults be legalized. This would bring the law into conformity with the modern knowledge of sex. Most sexual offenders are a nuisance rather than a danger to the community. The recidivism rate is low in offenses involving physical contact but high in noncontact offenses. An enlightened and progressive approach to these problems and the development of an enthusiastic communication between the law and psychiatry can only lead to the betterment of society—the end which gives to each science its meaning.

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73 Group for the Advancement of Psychiatry, Report No. 9, Psychiatrically Deviated Sex Offenders (1950).