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AN EVALUATION OF THE HOMOSEXUAL OFFENDER

BERNARD C. GLUECK, JR., M.D.*

INTRODUCTION

The rapid development of the behavioral sciences in the past 100 years has resulted in the introduction of many new approaches to the problems posed by the individuals in a society who deviate from the generally accepted standards of that society. For many centuries the problem presented by the group of asocial or antisocial individuals, usually referred to as criminals, was the concern of the legal profession. Thus, the regulations that govern our society were formulated, over a long period of time, by men trained primarily in the technique of the law, such as the rules governing evidence, procedural matters, etc. Until recently, little consideration was given to the problem of motivation in human behavior, especially as this term is currently used by social scientists, such as the psychiatrist, psychologist, or sociologist. A basic assumption in the development of laws, particularly those referring to criminal activity, was that every individual was able to make a conscious choice between right and wrong, and thus deliberately decide whether he would perform in a socially acceptable fashion, or violate the regulations of society, that is, break the law. The philosophy stemming from this concept of human behavior was one of control through threat of punishment. The assumption was that the person who logically reasons between alternate paths of action will weigh the consequences of his act, and will be deterred from wrongdoing by the consequences society threatens for wrongdoing; that is, he will be suitably punished.

A major challenge to this basic assumption developed during the latter part of the nineteenth century and the first half of the twentieth century. This was the formulation of various theories regarding the motivations of human behavior, including the concept of a portion of the mind, usually called the unconscious or subconscious, which was continuously active without the individual being aware of this activity. Explanations of behavior arising from this concept placed heavy emphasis upon motivations for behavior which had nothing to do with the immediate reality situation, which were not amenable to conscious, logical reasoning, and which were, therefore, beyond the individual's control in the sense that earlier

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concepts of behavior implied ability to control one's acts. That some awareness of these possibilities had existed in the administration of the law, starting in the fifteenth and sixteenth centuries,¹ is shown by the increasing number of exceptions to the general proposition that a man was always responsible for his acts. Children and idiots were among the first to be evaluated outside of the standard legal concepts about behavior. In Anglo-American jurisprudence, the M'Naghten rules occupy a terminal position in a series of legal tests of responsibility first developed in the fourteenth century in England, when insanity became a defense to a crime.²

In the 113 years since the M'Naghten rules were framed, there has been a continuing concern about the kind and amount of illness that would constitute an adequate exception from the traditional concept of responsibility for one's actions. In general, the legal profession has been concerned with the possible consequences to society of enlarging the loopholes in the concept of responsibility, so that eventually perhaps no one would be held accountable for his actions (and therefore punished for them) The usual proposition here is that if we do not make individuals pay some sort of penalty for their wrongdoing, the deterrent effect of our laws upon other individuals in the society will be weakened or lost, with disastrous consequences to the society The social scientist, as for example the psychiatrist, is frequently placed in the position of taking an opposite stand, namely, that every human act, having some element of unconscious motivation, is beyond the control of the individual, and that the concept of social or criminal responsibility does not apply I believe that lawyers and psychiatrists are equally guilty in the production of this confusion and unnecessary conflict, in that both professions have used the psychiatrist in the past as a partisan witness, usually where insanity has been claimed as the defense for some major crime. When this situation arises, the present legal formulas do not allow the psychiatrist to make the contribution that he is uniquely trained to do as an expert in the field of human behavior, especially in the area of conscious and unconscious motivation. This has resulted in the psychiatrist being accused of a lack of social conscience, that in his attempt to explain patterns of behavior, largely on the basis of unconscious motivation, he weakens the entire social control mechanism, which is the law, by making it impossible for society to punish anyone offending against it.

1. Group for the Advancement of Psychiatry Report No. 26, Criminal Responsibility and Psychiatric Expert Testimony (1954)

2. *Ibid.*

An increasing acceptance on the part of the public of the concept of conscious and unconscious motivation forces both the lawyer and the psychiatrist into a consideration of motives for so-called "senseless crimes"—that is crimes that do not appear to have a direct motive of economic gain. Since most sexual offenses come within this category, there has been increasing psychiatric concern with, and study of, the sexual offender. In this article I will attempt an evaluation of general legal concepts about a group of sexual offenses, the homosexual offenses, with some specific reference to the handling of this problem by the State of Minnesota. I will also try to give a picture of some current psychiatric attitudes about the problems of the homosexual offender, in the hope that an improved understanding of the motivations for this type of behavior may lead to more adequate handling of the social problem presented.

A REVIEW OF CURRENT PRACTICES

In a recent article, Dr. Karl Bowman³ states that "No state specifies homosexuality as a crime by that name. Every state, however, prohibits a number of homosexual acts, usually under the name of sodomy or crimes against nature." He goes on to point out that of all of the laws regarding sexual offenses, sodomy laws are the most confused and vague, and except for forcible rape, have the highest penalties. Mutual consent between adults is no defense, nor is intended privacy if the act is inadvertently discovered. In addition the term "sodomy" is used with extreme looseness and many modifications of the usual rules of criminal procedure have been allowed by different courts on the moralistic basis of "the degrading nature of the crime." Bowman points out that it has been generally held that the offense need not be described with the same particularity required in other criminal charges, that the indictment need not define the crime with great particularity or certainty, nor detail the separate elements, that it need not allege the exact date or time of commission of the crime, but should sufficiently inform the accused of the charge against him, stating the manner of commission if the crime may be committed in a number of ways. The difficulties posed in a defense against this sort of indictment appear to be quite obvious.

In general, the defendant is supposedly innocent, and it is the State's burden to prove his guilt, and the essential elements of the crime, which usually include the fact that penetration has occurred

3. Bowman and Engle, *Psychiatric Evaluation of the Laws of Homosexuality*, 29 Temp. L. Q. 273 (1956).

into some orifice of the body. The deed must be proved beyond a reasonable doubt, but essential elements may be established by circumstantial evidence. Testimony by a police eyewitness, a feigned accomplice, or an unwilling victim with a clear, convincing story generally needs no corroboration. The testimony of a willing accomplice, or a volunteer, requires corroboration by sufficient evidence.

A special problem posed by the accusation of adults by children has been of concern to the courts. The questions raised are: Is the child a reliable witness? Should the child be exposed to the public in a court action? How much is the child responsible for the events leading up to the commission of the offense? Very few attempts have been made to evaluate the personalities of the child "victims" of sex offenses until recent years.⁴

Further evidence of the confusion that exists in the area of homosexual law is revealed by the inconsistencies in the present day statutory penalties for sodomy.⁵ Forty-six states make sodomy a felony and the other two have omnibus statutes to cover it. Only Minnesota, New York and Washington specify the prohibited acts.⁶ A recent change in New York law penalizes at the felony level the use of force or relations with minors.⁷ Other acts are considered misdemeanors. Maximum penalties for sodomy vary from a life sentence to a fine. Three states, Colorado, Georgia and Nevada, provide a life sentence, which is mandatory in Georgia unless clemency is recommended. Two states, Connecticut and North Carolina, set thirty and sixty years respectively. At least nine states have twenty years maximum imprisonment, including the State of Minnesota. Eight states have a fifteen year maximum sentence and seventeen set ten years as the maximum. In at least six jurisdictions the penalty is increased if sodomy is committed on a child. Here again limits vary considerably, with two states setting the upper age limit at 14 and 15 years of age, three jurisdictions setting 16 years, and one 18 years, as the legal definition of childhood. In 29 states minimum sentences are set at from one to seven years, while a few states provide a minimum penalty of a fine, *e.g.*, in Indianapolis a man of 36, convicted of sodomy with a boy of 17, was fined \$100 as his only punishment.⁸

4. See a report on child victims in the San Francisco area, contained in California Sex Deviation Research Report (1954).

5. Cory, *The Homosexual in America* app. B (1951); Sherwin, *Sex and the Statutory Law* 34-38, 82 (1949); Bensing, *A Comparative Study of American Sex Statutes*, 42 *Crim. L., C. & P. S.* 57 (1951).

6. Bowman and Engle, *supra* note 3.

7. N.Y. Pen. Law § 690.

8. Bensing, *Sex Law Enforcement in Indianapolis*, 4 *Western Res. L. Rev.* 33, 36 (1952).

Sodomy laws and penalties are modified from time to time, frequently in opposite directions; for example, in 1950 New York reduced from a felony to a misdemeanor the offense of a sexual act in private between consenting adult males, while two years later California increased the penalties from ten to twenty years imprisonment for homosexual offenses. Since that time California has brought sodomy under the indeterminate sentence, with a range of one year to life.⁹ The special "sexual psychopath" laws further complicate the problem since most of these laws carry some kind of indeterminate sentence. At least twenty states now have this type of legislation.¹⁰ This legislation, often under civil law, provides an indefinite term of treatment, as if for mental illness, for sex offenders found to be sex psychopaths or convicted of certain sex offenses. In some states these laws apply to persons accused or merely suspected of sexual offenses (State of New Jersey).¹¹ Problems arising from these special laws, and defects in them have been discussed quite widely. The confusion produced by difficulties in diagnosis and terminology, which cause sharp disagreement about the application of these laws, has made many courts reluctant to use them.¹² Sexual psychopathy is frequently equated with homosexuality, and the male homosexual offender tends to bear the brunt of prosecutions under these laws. The persistent exhibitionist and voyeur are also usually involved. The current difficulties that exist in attempting to apply the treatment provisions of these laws will be discussed later.

Although the criminal statutes and special sex legislation apply in theory to both male and female homosexuals, Kinsey¹³ states that the laws in five states, Connecticut, Georgia, Kentucky, South Carolina, and Wisconsin, apparently do not apply to female homosexuality. In four others, Arkansas, Colorado, Iowa, and Nebraska, the legal status is not clearly defined. The wordings of statutes of other states make application to either sex possible, but law enforcement against female homosexuals rarely occurs. Kinsey claims that he could not find a single case among several hundred sodomy opinions reported in the United States up to 1952 in which a female was convicted for homosexual activity.¹⁴

9. Cal. Pen. Code Ann. § 286 (West 1955).

10. Bowman and Engle, *supra* note 3.

11. N. J. Stat. Ann. § 2A:164 (1953).

12. Bowman and Rose, *A Criticism of Current Usage of the Term "Sexual Psychopath,"* 109 Am. J. Psychiat. 177 (1952).

13. Kinsey, Pomeroy, Martin and Gebhart, *Sexual Behavior in the Human Female* 484 (1953).

14. *Ibid.*

An additional complication of most sodomy statutes and court interpretations arises from the fact that the sodomy laws may easily involve situations that do not concern homosexuals, and thus put many heterosexuals in the position of criminals. Prior to the publication of Kinsey's researches few people realized either the extent of private deviate sexual acts between consenting adults, or the fact that these were criminal acts.¹⁵ Ploscowe¹⁶ reports that he found many heterosexual couples practice sodomistic acts, some in the effort to increase sexual pleasure, others as a means of controlling birth, and still others as a forepleasure in order to help achieve mutual orgasm.

There are three important areas of social activity that could be adversely affected by the sodomy laws. First, the laws put many younger individuals, high school and college youths, engaging in sexual play or experimentation, under the same penalties as the homosexual offender who carries out his sexual activity with young children.¹⁷ Second, many authors advocate, in medical, sociological and psychological texts, sexual activity between married couples that is expressly prohibited by sodomy laws as part of the total sexual act.¹⁸ While such cases seldom result in prosecution, the participants may be open to blackmail and extortion, as for example in a divorce action.

The third area concerns the present emphasis on sexual conformity in the armed forces and among federal employees. In both groups, homosexuality and other deviate sexual practices are regarded as immoral conduct, making the employee or inductee unfit for service. An extreme expression of this opinion was contained in a Senate subcommittee report issued in 1950.¹⁹ The general contention is that the homosexual is a poor security risk because he is less stable and less well adjusted, and because he tends to congregate and gossip with his fellows. In reality, no facts exist to indicate

15. Note, 17 U. Chi. L. Rev. 162 (1949).

16. Ploscowe, *Sex and the Law* 202 (1951).

17. Kinsey, Pomeroy, Martin and Gebhart, *Sexual Behavior in the Human Female* 261 (1953).

18. Brown and Kempton, *Sex Questions and Answers* 239 (1950), Caprio, *The Sexually Adequate Female* 177 (1953), Fromme, *The Psychologist Looks at Sex and Marriage* 101 (1950), Hamilton, *Research in Marriage* 206 (1929), Kinsey, Pomeroy, Martin and Gebhart, *Sexual Behavior in the Human Female* 370 (1953), Levy and Monroe, *The Happy Family* 124 (1946), Pilpel and Zavin, *Your Marriage and the Law* 220 (1952), Stone and Stone, *A Marriage Manual* 215 (rev. ed. 1952), Sherwin, *Sodomy, A Medical-Legal Emigma*, 5 *International Journal of Sexology* 10, 12 (1951).

19. Subcommittee on Investigations of the Senate Committee on Expenditures in the Executive Departments, *Employment of Homosexuals and Other Perverts in Government*, S. Doc. No. 241, 81st Cong., 2d Sess. (1950).

which group among the different groups with social problems presents the greatest security risk. A thoughtful appraisal of this problem is contained in the report of the Group for the Advancement of Psychiatry, on homosexuality.²⁰

PUBLIC ATTITUDES

There are an increasing number of reports that would seem to indicate a change in the opinions of the public about sexual matters in general and sexual offenses in particular. In spite of the hue and cry raised in the public press whenever a particularly revolting sex offense occurs, public opinion polls of various types show a change in the older conventional sexual mores, with a more lenient interpretation of the kind of behavior to be labelled sexual delinquency or criminality. Doctors Porterfield and Salley conclude, for example, that sexual delinquency should not be defined, except in terms of actual cruelty and violation of person.²¹ Woodward²² also reports that an increasing number of people questioned on the problem of the handling of the sexual offender favored sending him to a hospital instead of to jail. When a similar study was done with lawyers, physicians, teachers and clergymen, lawyers were found to be the most conservative. They seemed to have considerably less faith in a psychiatric approach to these problems, and tended to resort to repressive methods in dealing with juvenile delinquency and anti-social behavior in general. Woodward interpreted his findings as indicating a popular loss of faith in purely repressive punitive techniques, especially in dealing with juveniles, with lawyers constituting a minor, but very important, stronghold of reaction against modern ideas of handling delinquency. The importance of these attitudes lies in the fact that most legislators are lawyers, so that the conservative attitudes mentioned are carried over into the legislatures.²³

The impact of recent investigations concerned with the sexual activity of twentieth century man, has been reflected in the thinking of the clergy about these matters. Dr. Kelly urges full sexual expression in the marital pair, without specifying the type of sexual activity.²⁴ Heltner sees the imperative need for a re-examination of

20. Group for the Advancement of Psychiatry Report No. 30, Report on Homosexuality (1955).

21. Porterfield and Salley, *Current Folkways of Sexual Behavior*, 52 *Am. J. Sociol.* 209 (1946).

22. Woodward, *Changing Ideas on Mental Illness and Its Treatment*, 16 *Am. Sociol. Rev.* 443 (1951).

23. Harper, Book Review, 63 *Yale L. J.* 895 (1954).

24. Kelly, *The Catholic Book of Marriage* 95 (1951).

basic attitudes toward sex on the part of devout Christians.²⁵ The lack of adequate sexual education, and the importance of a poor sexual adjustment as a source of marital difficulties is emphasized by Vander Veldt and Odenwald.²⁶

CURRENT PSYCHIATRIC CONCEPTS ABOUT HOMOSEXUALITY

While no clear agreement exists among various authorities in the field of psychiatry and psychoanalysis regarding the cause of homosexual behavior, a number of general propositions have been developed that have fairly wide acceptance. We must initially distinguish between homosexuality and homosexual behavior, since these are not synonymous. In psychiatry today, the term homosexuality is ordinarily used to indicate persistent emotional and physical attraction to members of the same sex. This is interpreted as evidence of an abnormal personality development. Homosexual behavior, on the other hand, must be considered in the light of the circumstances in which it occurs. There is considerable evidence to indicate that sexual play between individuals of the same sex is common in young children and so frequent during adolescence that it can be considered a phase of normal sexual development. Even in adults, homosexual behavior need not be a manifestation of homosexuality as defined above. Many examples exist of individuals, who are isolated from members of the opposite sex over a long period of time, and seek some type of sexual expression with members of their own sex. Isolated homosexual acts occur in individuals who are prompted by curiosity, by the desire for a "thrill," or when under the influence of alcohol. Such acts, without the elements of persistence and preference, should not be considered as homosexuality. However, the sodomy laws as currently written make no distinction between persistent acts and a single act, the circumstances of the act, and the age of the participants.

The development, in the past fifty years, of a voluminous literature on the workings of the unconscious portion of the mind, which includes many references to sexual behavior and development, would seem to indicate that some remnants of the homoerotic experiences of childhood and adolescence persist in every adult. These are usually repressed that is, they are in the unconscious portion of the mind, and are not within the immediate awareness of the average individual. Some individuals, however, appear to fail to develop beyond a given level of psychosexual maturation, and may

25. Heltner, *Sex Ethics and the Kinsey Report* 206 (1953)

26. Vander Veldt and Odenwald, *Psychiatry and Catholicism* 375 (1952)

thus remain arrested at, or fixed at a level of sexual adjustment that is less mature than the complete heterosexual level usually considered normal for the adult in our culture. Another important psychological concept is the concept of regression. This involves the returning to, or falling back upon, earlier patterns of behavior in times of psychological stress. Utilization of this concept gives as an explanation for some types of homosexual behavior, the fact that the individual in a situation of severe or long continued stress may revert to earlier levels of adjustment in which the general emotional climate was a secure and supporting one. Part of this regression to an earlier level of behavior may include regression in the area of sexual behavior, with the reappearance of sexual patterns, for example homosexual activity, that were appropriate to that level of development. A third explanation of homosexual behavior involves the concept of strong and persisting fears of some kind of damage to the individual, specifically damage to the genital apparatus, as a result of sexual activity with the opposite sex. In men this is usually manifested as fear of some damage to the penis as a consequence of contact with, and penetration of, the female genitalia during the sexual act. In women this is usually fear of damage to the genitals as a result of penetration by the male. The intensity and persistence of these fears either makes an adult heterosexual relationship an impossibility or makes the individual susceptible to occasional homosexual acts when the tension and anxiety from heterosexual activity becomes too great.

All these formulations would indicate that a pattern of homosexual behavior may be extremely variable, that an individual may commit a single homosexual act and never repeat this, that he may have periods of time when he is active homosexually alternating with periods when he is heterosexually active, or that he may be persistently homosexually oriented in his psychosexual adjustment. Again, attention should be drawn to the fact that current sodomy laws, especially as they relate to homosexual activity, fail completely to take into account the variability of expression of homosexual behavior. The practical fact of the matter would seem to be that most of the sodomy laws, and the special sex psychopath laws, are designed primarily for the control of the persistent homosexual offender, especially the individual who uses either force or persuasion and who chooses a minor as the object of his sexual approach.

Any attempt to evaluate this problem is complicated by the fact that we have no accurate statistics as to the numbers of individuals

homosexually active in the community at any one time and especially, we do not have figures to indicate the subdivisions within this general area of sexual activity, for example, the number of consenting adult homosexual partners, the number of homosexual approaches made to chance adult contacts, the number of approaches made to adolescent objects and the number of approaches made with pre-pubertal children.

Another area of importance in this problem is the question of the individual's control of his actions. The general philosophy of social control through threat of punishment, discussed at the beginning of this paper, appears to have serious deficiencies when the problems of motivation of behavior and the control of behavior are examined in the light of current dynamic psychiatric thinking. In general, current theories of behavior indicate that all behavior is motivated toward some goal, that it therefore has a purposive character, but that the control of these motivations and of the expression of the pattern of behavior may or may not be readily available to the individual, since it is assumed that much of this activity goes on at unconscious levels. Until very recently, any behavior that appeared to involve the sex organs or some type of sexual activity was presumed to be motivated by a need for sexual expression and gratification. In the case of the male, this was usually interpreted as the desire for orgasmic pleasure satisfaction. More recently, however, theories have been evolved which would seem to indicate that behavior that involves the sexual apparatus, and that may involve some sexual gratification or overt expression of sexual activity, is not necessarily initially motivated by a desire for sexual satisfaction. An example of this sort of situation is seen in the older man who feels grossly inadequate in his adjustment with other adults, but who does feel relatively comfortable and happy when he is with children. Very often this individual may find himself in a situation that initially has no sexual motivation, but is entirely motivated by a desire for some sort of interpersonal satisfaction. However, in the course of his contact with children, or when the control and judgment faculties are weakened by alcohol, sexual excitement and arousal may develop as an additional pattern, frequently viewed by the individual as an unwanted complication, with the result that some type of prohibited sexual act occurs.

Current theories of the development of the control mechanism stress the importance of unconscious factors in the development of suitable controls and may give us some answer as to why control fails in some individuals. The general theory here holds that the

child learns largely from the parents, or parent surrogates, such as nurses, teachers, grandparents, etc., through a multitudinous series of experiences the things that he should and should not do. Over a period of years this develops into the very complex structure of conditioned experiences that we call conscience, or super-ego. Just how and why defects in the formation of conscience occur is not completely understood. I would like, however, to discuss some recent studies on sexual offenders in the light of the points raised in the preceding paragraphs.

CURRENT RESEARCH INFORMATION

In 1948 the State of New York established a research project studying sex delinquency as part of a concerted effort within the state to develop a more adequate program for handling sexual offenders. As a result of the material presented in the first report on the project in March of 1950,²⁷ a change was made by the 1950 New York State Legislature in the laws covering sexual offenses. Briefly, the change was concerned with the introduction of an optional indeterminate sentence of one day to natural life for the sex felon, with the stipulation that the men so sentenced were to be considered for parole when a psychiatrist felt they were ready to make a more satisfactory adjustment in the community. The underlying hope here was that suitable treatment would be available for these men, making it possible to rehabilitate them. I will comment on this point later when discussing treatment.

The sex offender research was continued, and a final report was prepared in July of 1955,²⁸ which presented voluminous data on the entire life history of the sexual offenders studied as well as an intensive evaluation of their present personalities and psychological functioning. This information was gathered by a psychiatric team composed of psychiatrists, psychologists, and psychiatric social workers, all of whom had three or more years of previous experience working with prisoners. This is an important qualification since the techniques of interviewing and testing men in a state prison differ in certain important respects from those used in the usual psychiatric clinic or hospital. Three separate psychiatric evaluations were made on each man studied, in addition to a battery of psychological tests. These separate evaluations and appraisals amounted

27. Report on 102 Sex Offenders at Sing Sing Prison (1950), as submitted to the Governor of New York.

28. Report of the New York State Sex Delinquency Research Committee (1955).

to approximately fifty hours for each individual. The information was accumulated in a series of rating scales dealing with the entire life history of the man, his personality patterns and his social activity, present offense, and evaluations of unconscious conflicts and motivations.

Two important areas of personality functioning are pertinent to our present discussion. One has to do with the mechanisms of conscience formation and the type of control exercised by the man's conscience. The second has to do with the amount of psychopathology, that is mental illness, found in the sex offender group. Both of these points are obviously pertinent to the questions raised in the beginning of this article about the entire concept of social control through the use of punishment, with its implications of a rational choice of action.

In any appraisal of the activities of the members of a society who behave in an antisocial fashion, the frame of reference used by the investigators will be of critical importance in determining the results. Since the research personnel involved in this study had primarily a psychiatric or psychological orientation, the theoretic formulations utilized centered around disturbances in the personality dynamics of the men studied, rather than focusing on social, economic or moralistic issues. Concepts of the dynamics of personality functioning, developed from the general theories of psychoanalysis and dynamic psychology, were therefore the main frame of reference in the sex offender study. That there is some disturbance of conscience function, particularly a failure of the restraining activities of the conscience, seems immediately evident when an individual commits an offense. This is emphasized when the individual repeats his antisocial activities even after detection and punishment.

Current theories of the mechanisms of conscience formation emphasize the culturally determined prohibitions and requirements imposed upon the child by the parents or the parent substitutes. "These parental rules, while varying in different societies, must be, and are enforced everywhere by reward (pleasure) and punishment (pain)"²⁹ If this is so, then the first point of vulnerability in the process of conscience development would appear to be the parental attitudes. If these conform to the accepted mores of the culture, the child is exposed to culturally acceptable standards. If, however, the parents deviate for whatever reason, from the cultural norms, the child may be exposed to an inadequate or deviant set of standards.

29. Rado, *Emergency Behavior*, in *Anxiety* 162 (Hoch & Zubin ed. 1950).

Even though he may go through the complicated process of conscience formation quite successfully, he may end up by demonstrating antisocial behavior patterns resulting from faulty standards. In the sex offender study, this particular factor did not seem to be an important causative element since the parental standards, at least as consciously expressed or as demonstrated in their daily activities, were generally on the conforming, rigidly conservative side. This evaluation, of course, suffered from the possibilities of retrospective distortion and falsification on the part of the prisoner informant, as well as the problem presented by a sharp contrast between the overt behavior of the parents, which conformed to the culture, and the covert attitudes, which were frequently quite nonconforming or definitely antisocial. Overtly, however, 74% of the fathers and 91% of the mothers of the homosexual offenders studied were never involved in antisocial activities, while 72% of the fathers and 86% of the mothers were definitely condemnatory of antisocial behavior in their expressed attitudes. Overt criminal activity or condoning attitudes toward antisocial behavior existed in less than 10% of the mothers and fathers in the group.

In studying the family constellation of the men, the extensive social disturbance and actual mental illness in the siblings was very impressive. Eighty-eight percent of the men studied had one or more siblings. Twenty-three percent of these siblings had criminal records, 22% were alcoholics and 35% had a definite history of emotional disturbances. Only 37% of the siblings were rated as apparently normal. In comparison to the siblings, the offenders showed other evidences of inadequacy in their over-all patterns of adjustment, 44% being rated on a lower socio-economic level than their siblings, and 50% being isolated from all or most of their sibling group, either having left the family group, or avoiding close personal contact if living at home. Only two of the men studied had all of their siblings involved in criminal activities. Thus, it would appear that the general socio-economic climate of the home, while it plays a definite part in the developmental environment of the offender, is not the critical factor, since a sizable percentage of individuals from the same families, and certainly many other individuals from the same general socio-economic levels, develop into adequately conforming individuals who are able to make important contributions to the culture.

The above findings led to an investigation of the dynamics of the individual homosexual offender, especially the early developmental stages. If the commission of any antisocial act implies a weakening

of, or a lack of development of, the necessary "moral self-restraint"³⁰ that a society expects of its members, an examination of these mechanisms of moral self-restraint, which are the mechanisms of conscience, is in order. General behavior theory assumes that the mechanisms of conscience originate in the child's relationship to his parents. An appraisal of the disciplinary patterns in the parents or major parental substitutes of the homosexual offenders showed that in spite of the relatively close daily contact with both fathers and mothers, these men were at best only partially accepted by the parents. Less than one quarter of the fathers and mothers were rated as generally accepting of the offender, while half of the fathers and a third of the mothers were rated as primarily rejecting. This tendency of the parents to be generally rejecting toward the offender is further emphasized by the indifferent or hostile attitude shown by 38% of the fathers and 18% of the mothers, with no physical demonstration of affection apparent in 55% of the fathers and 22% of the mothers. These generally hostile and rejecting attitudes on the part of the parents enhance the impact of the parental threat of punishment, and should result in a submissive, that is a pathologically obedient, child. In the men studied, 70% were passively submissive toward their fathers and 63% passively submissive toward their mothers. Any rebellion was extremely covert, with defiance or rebellion shown by less than a third of the group.

One would think that this should make these individuals quite submissive and passive in adult life. This is true to a certain degree, for over one half of the homosexual offenders were isolated from their peer groups as adults, and made only marginal social and economic adjustments. However, an important additional factor enters into the development of the conscience mechanism at this point, namely, the necessity for adequate parental reward to the child for his obedience. It is assumed that unless the child is rewarded for conformity, he fails to internalize this process into mechanisms of self-reward and increasing moral pride. Without this specific aspect of the mechanism of conscience formation, a faulty conscience structure will result, especially in adult life, with the individual being dependent upon continuous threat of punishment for the exercise of control. In the men studied, 79% of the fathers and 81% of the mothers used punishment as the main mechanism for controlling the offender, only 2% of mothers and fathers used rewards as the main mechanism, and about 10% of the mothers and fathers used a normal balance of reward and

30. *Ibid.*

punishment. Thus, for most of the homosexual offenders, the automatization of the obedience patterns of childhood into adult patterns of self-restraint never takes place, due to the failure of the parents to adequately reward the child for good performance, that is, obedience. The failure of the parents to reward the child, thus not building self-esteem and pride, is reflected in the devaluated self-appraisal of the men studied, both in childhood and in adult life. Only 8.2% of the men were rated as having normal self-esteem while 75% were thought to have extremely impaired self-esteem or to be entirely lacking in self-esteem.

An additional factor entering into the formation of personality that resulted from rejection by the parents was a general lack of security in all areas of behavior. In the men studied, 68% were estimated as suffering from severe anxiety in childhood as demonstrated by the following important psychiatric symptoms: 25% of the homosexual offenders rejected food, 15% overate or had special food cravings, 40% bed wet past the age of 8, 32% were chronic nail biters, 28% had speech impairments, 44% had marked fears, especially of the dark and of snakes, 53% showed marked shyness and 42% showed marked stubbornness. This anxiety carried through into adult life and was reflected in the large number of psychiatric symptoms found in these men at the time that they were examined in prison.

The results of these disturbances in the development of the mechanisms of conscience are that homosexual offenders appear to be operating, as adults, with a fear of detection, a conscience mechanism of childhood, as the main type of self-restraint. When this mechanism persists in the adult, a serious defect in the operation of conscience results, since the restraining mechanisms have not been internalized, and much of the control must still come from without. The implications of this fact for society would appear to be that these men are only restrained if they are in a situation where immediate detection appears to be inevitable. If present laws are to be adequately enforced, a tremendous increase in the policing agencies would be required, since some type of external restraint appears to be necessary to make this group conform to the law. An evidence of this factor in action is the commonly reported "good behavior" of many chronic offenders while in confinement, that is with more rigid external controls, as compared to their chronic lack of control or self-restraint when in the general community.

As a reflection of the marked passiveness in the childhood reactions to control, a sizable group of the homosexual offenders

examined appeared to have developed a compensatory overcontrol, or rigid, obsessive type of conscience structure. This seems to fit with the compulsive behavior found in many of the parents, with its emphasis on orderliness, cleanliness and regularity. These traits are transmitted to the child, resulting in overconcern, as an adult, with patterns that pertain primarily to the nursery, toilet training, neatness, etc., and the neglect of important adult moral values. In the rigidly overcontrolled adult homosexual offender, when this control is weakened by some change in the state of consciousness, the antisocial impulses appear to break through because of the lack of adequate internal controls. In the men studied, this usually occurred as a result of drinking, 45% of the group having committed their offenses while intoxicated. In the entire group of 220 men studied, there was not a single individual who was rated as having an adequately restrictive, (to obey the law) yet sufficiently flexible, (to avoid neurotic symptoms) conscience structure, so that he could operate at an adult level of self-control. Over one third of the men were operating with a very rigid, overly restrictive conscience, in half of the group there was evidence of some-to-marked conscience deficiency, and 15% were thought to be generally deficient, or to have no conscience structure.

Another important set of hypotheses concerns the effect of temptation on the behavior of the child, since temptation may cause a release of the repressed rage of frustration and make an otherwise submissive, obedient child temporarily defiant. When this occurs, the child may override the fear of conscience temporarily and engage in the prohibited activity. In the sex offender study, it was found that many of the men were partially or completely seduced by their so-called "victims." This was true of both offenders against children, and of many of the rape and sexual assault offenders. This finding has been confirmed by other investigators³¹ and conforms to general psychoanalytic theory, in which the seductive behavior of children toward adults and the sexual interest of adults in children are generally accepted. The important difference between these two general patterns of behavior, and the specific pattern of behavior of the sexual offender, is the carrying through of the impulse with the socially unacceptable object. This break in self-restraint, as has been indicated above, occurs in an altered, generally weakened state of consciousness, frequently as a result of alcoholic intoxication. Why the men become intoxicated is an important bit of evidence in support of the concept of the

31. Bowman, *California Sex Deviation Report* (1954).

break through of repressed rage, since many of the men gave a story that seemed to indicate a fit of defiance against authority figures, (usually the wife or the boss) from an otherwise very compliant or even subservient individual. Some awareness of their inability to exercise adequate self-restraint was demonstrated by many of the men in the homosexual offender group in their complaint that someone, often even the child victim, didn't insist strongly enough that they cease their antisocial activities. This type of reproachful attitude is seen most often after the man has been in prison some time, and appears to be one of the measures employed to ease the strong guilty fear that 69% of the men showed during the early phases of their incarceration. The gradual overcoming of this guilty fear by a new wave of defiant rage, leading to the reproachful behavior described above, usually resulted from the inmate being held by the parole board beyond the date he felt represented a sufficient amount of punishment.

The effectiveness of the control mechanisms in the men studied was relatively poor. Only one man was considered to have essentially continuous control of his impulses. Twenty percent lost control of their impulses only in an altered state of consciousness (while intoxicated), 30% lost control occasionally in an apparently normal state of consciousness, 42% showed frequent lapses, while 10% were rated as being chronically uncontrolled in their behavior. These findings again point up the general impossibility of exercising adequate restraint unless the policing agencies are tremendously increased so that fear of being caught is brought home, an impractical solution, or unless the self-restraint mechanisms in these men can be improved beyond their current level of operation. As indicated above, punishment, far from being a useful measure, seems to intensify the defiant rage and might be thought to predispose toward further acting out of impulses.

The second general area of psychological activity that is pertinent to our discussion has to do with the overall psychological patterns of adjustment of the men studied. Among the group of homosexual offenders the most striking finding was the fact that 79% were diagnosed as having some type of schizophrenic illness, with half of the group showing overt psychotic symptoms even though they were not at the time of their conviction thought to be "legally insane." These findings ran through the entire group of sex offenders with about 70% of the total group showing some variety of schizophrenic illness. It is important to emphasize the fact that these men present a generally orderly front, to the extent that none

were diagnosed as being legally insane in the pre-sentencing investigations. However, careful appraisal of their day-to-day performance revealed a high percentage of mental illness patterns, as shown by psychiatric symptoms.³² Many of these men also engaged in extensive daydreaming, with 61% of the homosexual offenders using daydreams as an important area of psychological satisfaction, substituting this for the development of normally satisfying and supportive interpersonal relationships. This is extremely important, since the general failure of development of suitable mechanisms to handle anxiety, guilt and guilty fear seems to play a significant role in the total pattern of adjustment of the homosexual offender. Thus he resorts either to daydreaming, that is internalized acting out, or acts out in reality, producing the antisocial behavior. This would appear to be an important area of differentiation from individuals with equally severe sexual conflicts, who never act out their problems in an antisocial pattern, but manifest them in various types of neurotic symptoms instead.

The findings of such extensive psychopathology in the men studied, that is the great degree of mental illness, leads to the final important theoretical consideration in terms of the problem of controlling this antisocial behavior. This is the disturbance in these men in the functioning of the conscious portion of the mind known as the ego, particularly in the areas of perception and conceptualization of the world around them. It would again appear self-evident that there is an important distortion of the usual perceptions in those men who pick on a child as the object of a sexual approach. Techniques for testing subtler degrees of perception distortion are poorly developed, but evidence of obvious perceptual distortion, for example hallucinations and delusions, existed in a large percentage of the group. Further disturbance in ego function, with constriction of awareness of the external environment, an inability to deal with abstract concepts, and a pathological preoccupation with self was demonstrated in many clinical aspects of personality functioning, for example, the disturbance in self-image, impaired verbalization ability, impaired perception of reality and impaired ability for emotional contact with others. Since the area of personality functioning described as the ego has to do with the adjustment of the individual to the demands of his immediate environment, any impairment in the functioning of the ego is apt to cause serious dis-

32. 15% of the men had obsessions, 25% compulsions, 57% had phobias, 50% mood disturbance, 90% affect disturbance, 43% referential ideas, 50% paranoid ideas, 15% overt delusions, and 33% had hallucinations.

turbances in the individual's ability to conform to the demands of his society. The interpretation of social restrictions, ("laws") and the proper evaluation of the consequences of the failure to obey, are not the same in individuals suffering from serious ego disturbances as in the normal individual. Again this has important implications for the general concept of "control through punishment," considered in the opening paragraphs.

MINNESOTA STATUTES

Several Minnesota statutes, both civil and criminal, covering the general area of sexual offenses, apparently pertain to homosexual acts. They are the statutes referring to indecent assault, sodomy, aggravated assault, and the sexual psychopath law.³³ These statutes have a number of good points in contrast to similar laws in other states. They specify with exactness the types of offenses that are considered to be felonies. They give a specific age of consent, 16 years, and recognize the existence of some degree of mental illness in the special sexual psychopath law.

When we consider these laws in the light of some of the factors about the personalities of homosexual offenders, as presented earlier, two important areas of criticism merit discussion. The first area of concern would be whether certain sexual acts, both heterosexual and homosexual, that are now proscribed, especially by the sodomy laws, should continue to be proscribed in the light of modern knowledge about the wide variety of sexual activity engaged in by large segments of the population. Many of these sexual acts, previously thought to be evidence of immorality and depravity, occur in normal individuals, as a part of a pattern of sexual activity enjoyed by both partners. This is especially important in the case of marital partners, where much sexual activity that is expressly prohibited in the sodomy laws, which make no distinction about marital or non-marital status, may take place as the activity preferred by both partners. Since these are felonious acts, this might lead to the threat of exposure, as a kind of legal blackmail, in a subsequent disagreement between the partners, such as a divorce action.

Social scientists have also given a great deal of consideration to the problem posed by the consenting adult homosexuals who live for long periods of time in a stable relationship with the same partner. While no accurate figures exist in this area, it is assumed that

33. Minn. Stat. §§ 526.10, 617.08, 617.14, 619.38, 619.39 (1953).

many homosexual couples, both male and female, may lead entirely satisfactory, otherwise socially acceptable lives, never becoming a problem for society unless, or until their homosexual activity is detected. I would agree with many authors who advocate excepting this type of homosexual activity from the sodomy laws.³⁴ New York State has made a move in this direction, changing homosexual activity between consenting adults from a felony to a misdemeanor.³⁵

The type of homosexual activity that constitutes the greatest threat to society involves the adult-adolescent pair, or the adult-child pair. While it is extremely doubtful that the physical sexual acts engaged in are harmful to the child, with the exception of the danger of venereal disease infection, and damage from forceful penetration of the anus or vagina, there is a great deal of evidence that indicates these experiences may have disturbing psychological consequences for the child in terms of his general adjustment, and especially in the area of his sexual development. A very frequent finding in the early histories of the adult homosexual offenders examined at Sing Sing Prison was the story of seduction by an older man, which was usually given as the starting point of the offender's homosexual activity.

In addition to the problems presented by the type of homosexual activity described above, there is the problem of the very effeminate male homosexual, and the very masculine female homosexual. In addition to the attempts to copy the speech, mannerisms and dress of the opposite sex, which have a distinct social nuisance value, such individuals probably constitute a continuing source of social threat because of the marked degrees of emotional disturbance, including overt mental illness, found in this group.

Since the two types of homosexual described above are an important source of anxiety for the members of a society, and have such a disruptive effect on our accepted social norms and mores, it is obvious that their behavior must be controlled. In practice, these are the individuals most legislators have in mind when "sex laws" are written. Whether these statutes are effective in controlling this type of behavior, especially in the light of the "control through punishment" philosophy that lies behind the laws, is the second point to be discussed.

In the light of the findings on homosexual offenders described in the New York State Report, where the evidence of impairment

34. Kinsey, Pomeroy, Martin and Gebhart, *Sexual Behavior in the Human Female* 261 (1953), Ploscowe, *Sex and the Law* 202 (1951), Note, 17 *U. Chi. L. Rev.* 162 (1949).

35. N.Y. Pen. Law § 690.

of personality functioning seems quite conclusive, the effectiveness of any system of control based upon normal, rational thinking must be seriously questioned. The impairment of conscience development described, with the persistence of an immature type of conscience structure in the adult, makes external controls imperative for these individuals, since they have never developed their own internal controls. The threat of punishment, at some future date, which is the main threat in our present laws, does not have the same restraining force on these individuals that it presumably has in the normal person. This is a result of other disturbances in their psychological makeup, mainly in the area of their appraisal of, and interpretation of the real world around them. Thus fear of detection, rather than fear of some distant punishment, seems to be the most effective control for this type of offender. No one has ever settled the argument about the behavior of the "normal" individual, presented with the temptation to commit an offense, and certain that he would not be detected. Presumably, an adult with a well-developed conscience, would exercise the necessary self-restraint, and resist the temptation. Most legislators and law enforcement officials are extremely sceptical about the existence of such an individual, and insist society must constantly reinforce the individual's conscience by suitable threats of punishment for loss of control of one's behavior.

Some awareness of the mental illness present in the homosexual offender is certainly contained in the special Minnesota statute covering the "sex psychopath."³⁶ The wording of the statute, however, leaves the decision concerning the determination of sexual psychopathy extremely vague. This places a considerable responsibility upon the medical experts, and since factual knowledge in this area is so inadequate, wide variations in the application of this law must result. In discussions with many lawyers and judges, it is quite obvious that they recognize the existence of emotional disturbances in many men arrested for sexual offenses. They also appear to recognize the general futility of punishing these men by sentencing them to prison, in any terms other than temporary removal of the man from society. They look hopefully toward the sex psychopath law as a means of solving their problem, in terms of protection of the community, and at the same time placing the sexual offender in the optimum position for improvement of this condition. In practice, however, the Minnesota law, as has been the experience in most states with this type of special

36. Minn. Stat. § 526.10 (1953).

sex psychopath law, fails in its purpose. The main cause of this failure would appear to be the lack of adequate boundary lines for the determination of personality disturbance. An individual who is obviously "legally insane," that is who has a sufficient degree of mental illness to be considered insane under present legal interpretations, (in Minnesota, the general applications of the right and wrong test in criminal cases) presents no problem. He is removed from society, is considered to be mentally ill and a definite risk to the community and, therefore, tends to remain incarcerated. True, this is in a state hospital, rather than state prison, but practically this appears to make little difference to the individual offender, both from the standpoint of treatment received, and his own reaction to the incarceration. The majority of sexual offenders do not meet the current requirements of legal insanity and are therefore a very difficult problem for the hospital administrator when they are committed to a state hospital. Within a very short period of time the general appearance and behavior of the homosexual offender is sufficiently good so that when he begins to agitate for release, either directly or through his family or lawyer, the medical decision involved, to hold or to release, is a very complex problem, with little knowledge available to guide the hospital administrator. There is considerable evidence that this immediate improvement in no way indicates a change in the basic psychological mechanisms, so that the disturbances that combine to produce the antisocial sexual act are still present, and may cause further activity of this sort.

An additional complicating factor is the problem mentioned above, of generally inadequate methods of treatment for this group of individuals. Very few states provide suitable facilities, equipped with adequate professional personnel, for the treatment of this type of offender. Maryland and California have recently opened new facilities for sexual psychopaths, the District of Columbia has a treatment ward at St. Elizabeth's Hospital, and the State of New Jersey maintains a diagnostic center where sexual offenders are screened, and in some instances treated. In general, however, confinement in a state hospital or state prison offers little chance for adequate treatment, due both to shortages of personnel and inadequacy of treatment methods. There is no uniformity in diagnosis of individuals committing sexual offenses. In practice, the laws have usually been focused upon the persistent exhibitionist, voyeur and male homosexual. Frequently, sexual psychopathy is equated with homosexual, and male homosexual offenders bear the brunt of the prosecutions. Placing these individuals in a confined situation,

with other males, is far from the optimum situation for any kind of treatment approach. Since the more aggressive homosexual frequently continues to seek homosexual activity in prison, he becomes an important source of administrative difficulty, with the result that he is frequently segregated with other homosexuals in special sections of the prison or hospital, so that his immediate environment tends to emphasize and reinforce his problems of sexual adjustment. Any treatment attempts in this kind of situation are doomed to failure from the start.

As indicated above, most therapeutic efforts with homosexual offenders have in the past been relatively unsuccessful. This has been the experience in prisons, as well as in private psychiatric practice with patients who seek help, of their own accord, with these problems. Most psychotherapeutic approaches, including psychoanalytic, fail to change the patterns of sexual expression, although they may help to relieve some of the anxiety about this type of sexual adjustment. In the case of the adult homosexual, who seeks as a partner another adult, relief of anxiety might be considered an important therapeutic objective, if the culture accepts homosexual activity. In our culture, under present legal standards, this of course might be considered a very undesirable social consequence of therapeutic activity. Of more importance to society, however, is the question of the homosexual offender whose object is the adolescent or pre-adolescent child. Attempts to change the object of the homosexual approach from a child to an adult have generally been unsuccessful, so that these individuals continue to be an important source of social threat.

One explanation for the failure of current treatment methods has been advanced in the light of the findings described above in the New York research. That is the finding that three quarters of these men were suffering from emotional disturbances of such severity that they should be considered psychotic rather than neurotic. If this is the case, one would not expect any great response to psychotherapeutic efforts, since these are generally designed for work with neurotic individuals rather than psychotic individuals. Some hope in this generally pessimistic appraisal of the problem of treatment is provided by some of the newer organic therapies, for example the new drugs that appear to have a profound influence on mood and symptoms, and some of the therapies, such as electroshock therapy, which seem to offer some chance of changing the patterns of psychological adjustment in these individuals. An obvious necessity is much more intensive research, both in the areas of causation

of these disturbed patterns of behavior, and in the methods of modifying them, that is, treatment methods.

An even more important, and perhaps more successful type of approach would be the attempt to prevent the development of the disturbances in sexual behavior and in the control mechanisms seen in the homosexual offender. This would involve extensive socio-economic activities, such as slum clearance, improvement of schools, adequate leadership in recreational and other group activities, etc., as well as specific psychiatric treatment of potential offenders and their families. Some attempts are being made in the general area of delinquency in the special courts in New York City, such as Home Term Court, and Youth Term Court,³⁷ where psychiatric clinics are an integral part of the court structure. These pioneer efforts need tremendous expansion if we are to make any headway in prevention of all types of delinquency and criminality

SUMMARY

The problem posed by the homosexual offender has been discussed from the standpoint of current psychiatric and sociologic ideas about sexual behavior in general, and the specific personality patterns of the homosexual offender in particular. Two important questions are raised about the present laws covering sexual offenses, especially the sodomy laws. Should the laws be modified to exclude certain types of homosexual activity especially between consenting adults, as well as excluding various sexual acts which appear to be part of normal sexual expression in heterosexual partners? Does the threat of punishment contained in current laws really deter the homosexual offender, since these laws assume that a reasoned, logical choice will be made, and the evidence presented would indicate that the homosexual offender has such serious personality disturbances that it is doubtful that he can make such a choice? The problems involved in treating these individuals have been discussed, and the need for further research, both into treatment methods, and methods of preventing the development of these personality disturbances, must be stressed.

³⁷ See Gellhorn, *The Administration of Laws Relating to the Family in the City of New York*, in *Children and Families in the Courts of New York City* 149-52 (1954)

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