THE DILEMMA OF THE SEXUAL OFFENDER

Publication Number 1115

AMERICAN SERIES
IN
BEHAVIORAL SCIENCE AND LAW

Edited by
RALPH SLOVENKO, B.E., LL.B., M.A., Ph.D.
Professor of Law and Psychiatry
Wayne State University
Law School
Detroit, Michigan

Second Edition

THE DILEMMA OF THE SEXUAL OFFENDER

By

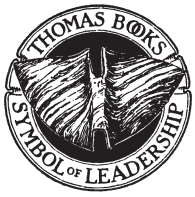
GEORGE B. PALERMO, M.D., M.Sc.Crim., PH.D.

Clinical Professor of Psychiatry
University of Nevada School of Medicine
and
Medical College of Wisconsin

and

MARY ANN FARKAS, PH.D.

Professor of Criminology and Law
Marquette University
Milwaukee, Wisconsin



CHARLES C THOMAS • PUBLISHER, LTD.
Springfield • Illinois • U.S.A.

Published and Distributed Throughout the World by

CHARLES C THOMAS • PUBLISHER, LTD.
2600 South First Street
Springfield, Illinois 62704

This book is protected by copyright. No part of
it may be reproduced in any manner without
written permission from the publisher.
All rights reserved.

©2013 by CHARLES C THOMAS • PUBLISHER, LTD.

ISBN 978-0-398-08860-6 (hard)
ISBN 978-0-398-08861-3 (paper)
ISBN 978-0-398-08862-0 (ebook)

Library of Congress Catalog Card Number: 2012036501
First Edition, 2001
Second Edition, 2013

With THOMAS BOOKS *careful attention is given to all details of manufacturing and design. It is the Publisher's desire to present books that are satisfactory as to their physical qualities and artistic possibilities and appropriate for their particular use.* THOMAS BOOKS *will be true to those laws of quality that assure a good name and good will.*

Printed in the United States of America
CR-R-3

Library of Congress Cataloging-in-Publication Data

Palermo, George B.
The dilemma of the sexual offender / by George B. Palermo, and Mary Ann Farkas. -- 2nd Ed.
p.cm.
Includes bibliographical references and index.
ISBN 978-0-398-08860-6 (hbk.) -- ISBN 978-0-398-08861-3 (pbk.) --
ISBN 978-0-398-08862-0 (ebook)
1. Sex offenders--Psychology. 2. Sex crimes--Psychological aspects. 3. Criminal psychology. 4. Sex offenders--Legal status, laws, etc.--United States. I. Farkas, Mary Ann. II. Title.

HV6556.P35 2013
616.85'83--dc23

2012036501

This book is dedicated to the pursuit of rational, coherent law and public policy that will safeguard the American ideals of justice, fairness, and equality for all citizens. It is our hope that this book will inspire more thorough reflection and consideration of the consequences of our laws and of new directions in the treatment of sex offenders, with the ultimate goal of preventing further victimization.

FOREWORD

Sex offenses, particularly those involving children, arouse the anger and anxiety of the community. During the past year in England, a country that prides itself on the rule of law, alleged sex offenders were attacked in their homes and on the streets.

To quell public outcry, legislators are moved time and again to enact legislation on sex offenders. Much of the legislation overlaps existing laws, but be that as it may, legislators, if they want to remain in office, are prompted to act.

The twentieth century in the United States was marked with enactment of laws on sex. The legislation enacted in the early part of the century reflected the therapeutic optimism that prevailed at the time. It was known as "sexual psychopath legislation." The term "sexual psychopath" was defined as "one lacking the power to control his sexual impulses or having criminal propensities toward the commission of sex offenses." By definition, it involved a prediction or prognosis as well as a diagnosis.

The American Bar Association Criminal Justice Mental Health Standards noted the assumptions underlying this legislation:

> (1) There is a specific mental disability called sexual psychopathy; (2) persons suffering from such a disability are more likely to commit serious crimes, especially dangerous sex offenses, than other criminals; (3) such persons are easily identified by mental health professionals; (4) the dangerousness of these offenders can be predicted by mental health professionals; (5) treatment is available for the condition; and (6) large numbers of persons afflicted with the designated disabilities can be cured.

The statutes enacted in the various states of the United States divided into pre-conviction and post-conviction types. The post-conviction type applied only to those convicted of sexual crimes; the pre-conviction type included persons charged with the commission of a specific sexual offense and applied

also to those accused of being sexual psychopaths. Here the law took the position of dealing with status rather than actual doing.

The term "sexual psychopath" was frequently called into question. There was disagreement as to whether it is a form of mental illness, a form of evil, or a form of fiction. The Group for the Advancement of Psychiatry stated that the term "sexual psychopath" is not a psychiatric diagnosis and has no precise clinical meaning. Consequently, the enforcement of the law resulted in a roundup of the vagrant and nuisance type of offender and failed to reach the dangerous, aggressive offender. The late Judge Ploscowe commented, "The sex-psychopath laws fail miserably in this vital task."

The sexual psychopath legislation was not implemented with staff and facilities for treatment, one of the major purposes of the legislation. The justification for deprivation of liberty under the legislation was treatment, but treatment was lacking. Special institutions such as Atascadero State Hospital in California were established to implement its sexual-psychopath statute. California, Michigan, and Wisconsin made the most use of their statutes, but they did not work out. Indeed, a consensus described the institutions as a hoax.

A special institution is theoretically justified only when there is a homogeneity within the group and when a particular institution can offer a special service for that group. Neither criterion was met. Supposedly, the special proceeding was adopted to detain the dangerous, aggressive offender, but the person usually confined was the mentally defective or impoverished farm boy bewildered by city life. The proceeding was designed to offer treatment, but whatever that was supposed to constitute, it assuredly was not available.

The sorry experience in those states that enacted sexual psychopath legislation and established special institutions furnishes ample evidence of the shortcomings of this approach. Michigan's Goodrich Act of 1935, the first sexual-psychopath legislation in the country, was enacted to ally public hysteria resulting from the brutal crimes committed by Goodrich. It was repealed in 1968. In 1960, 26 states and the District of Columbia had some form of sexual psychopath legislation; in 1992, it was half that number. They were called a "failed experiment," Brakel, Perry, and Weiner explained in an American Bar Association book, *The Mentally Disturbed and the Law.*

> Growing awareness that there is no specific group of individuals who can be labeled sexual psychopaths by acceptable medical standards and that there are no proven treatments for such offenders has led such professional groups as the Group for the Advancement of Psychiatry, the President's Commission on Mental Health, and the American Bar Association Committee on Criminal Justice Mental Health Standards to urge that these laws be repealed.

When repealing its sex offender statute in 1981, the California legislature declared, "In repealing the mentally disordered sex offender commitment statute, the Legislature recognizes and declares that the commission of sex offenses is not itself the product of mental disease."

With the demise of indeterminate sentencing generally, the 1990s witnessed a renewed interest in sex offender commitment. Starting in Washington in 1990, at least 14 other states have enacted laws for the commitment of "sexually violent predators" to wit: persons (1) convicted of a sexually violent offense, (2) about to be released from confinement, and (3) found to be suffering from a "mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence." The laws were sparked by cases like Earl Shriner's rape and sexual mutilation of a six-year-old boy in Washington and the killings of Megan Kanka in New Jersey and Polly Klaas in California. They provide for community notification when a high-risk sex offender moves into the neighborhood.

These new laws are different from the early sexual psychopath statutes and from ordinary civil commitment laws in several important respects. First, they do not require a medically recognized serious mental disorder. Second, they do not require any allegation or proof of recent criminal wrongdoing. Third, they require sex offenders to serve their full prison term prior to commitment. Fourth, no *bona fide* treatment program need be in place. The new legislation has no great hopes for treatment, as earlier legislation did, and more emphasizes incapacitation.

The new legislation, known as the "sexually violent predator" (SVP) law, establishes civil commitment procedures for individuals with "mental abnormality" or "personality disorder" who were likely to engage in "predatory acts of sexual violence." In using the concept of "mental abnormality," the legislation invokes terminology that can cover a variety of disorders. In challenging Washington's SVP statute, the state's psychiatric association said in an amicus brief, "Sexual predation in and of itself does not define a mental illness. It defines criminal conduct." Be that as it may, the Washington Supreme Court, in 1993, upheld its SVP statute against constitutional challenge saying:

> The fact that pathologically driven rape, for example, is not yet listed in the [DSM] does not invalidate such a diagnosis. The DSM is, after all, an evolving and imperfect document, nor is it sacrosanct. Furthermore, it is in some areas a political document whose diagnoses are based, in some cases, on what American Psychiatric Association leaders consider to be practical realities. What is critical for our purposes is that psychiatric and psychological clinicians who testify in good faith as to mental abnormality are able to identify sexual pathologies that are as real and meaningful as other pathologies already listed in the DSM.

The court turned the disclaimer in the DSM–that it is intended for clinical purposes, not for purposes of the law-on its head. The court said, "Over the years, the law has developed many specialized terms to describe mental health concepts. . . . The DSM explicitly recognizes . . . that the scientific categorization of a mental disorder may not be 'wholly relevant to legal judgments."

In 1994, the Minnesota Supreme Court upheld its statute but limited its scope to those who exhibit (1) a habitual course of misconduct in sexual matter, (2) "an utter lack of power to control sexual impulses," and (3) proof that the person will attack or otherwise injure others.

In 1996, the Kansas Supreme Court ruled its statute, almost identical to the Washington statute, as unconstitutional. The Kansas Supreme Court held that the statute violated substantive due process because the definition of "mental abnormality" did not satisfy what is perceived to be the definition of "mental illness" required in the context of involuntary civil commitment. The court did not address double jeopardy or *ex post facto* issues. The court noted that the laws targeted individuals who could not be committed under the general civil commitment law.

In 1997, in a 5–4 decision in *Kansas v. Hendricks*, the U.S. Supreme Court upheld the Kansas statute. The majority opinion, written by Justice Clarence Thomas, held that the Act does not violate the double jeopardy or *ex post facto* prohibitions. Justice Thomas acknowledged that, in addition to dangerousness, "some additional factor" that was causally linked to the dangerous behavior is constitutionally required. However, he wrote, substantive due process does not require that this condition be a mental disorder recognized by treatment professionals: "Not only do psychiatrists disagree widely and frequently on what constitutes mental illness . . . but the Court itself has used a variety of expressions to describe the mental condition of those properly subject to civil commitment." He also said, "[W]e have traditionally left to legislators the task of defining terms of a medical nature that have legal significance." Because the Kansas statute requires proof that individuals suffer from a volitional impairment rendering them dangerous beyond their control, he concluded, the statute does not allow commitment of individuals based solely on dangerousness.

The majority also concluded that the law was civil in nature rather than punitive in purpose or effect, and thus it did not violate either double jeopardy or *ex post facto* prohibitions. Except for Justice Ginsburg, the dissenters agreed with the majority that states have broad authority to define legal mental illness and that the statute's use of "mental abnormality" satisfies substantive due process. However, the minority concluded that the statute was essentially punitive in nature rather than civil, thus violating both double

jeopardy and *ex post facto* prohibitions. Under the laws, offenders are committed after they have served virtually their entire criminal sentence. Under the earlier sexual psychopath legislation, the prosecutor had to choose between conviction in the criminal system or commitment in the civil system.

The Court suggested in dicta that "treatability" is not a constitutionally required element for commitment, although treatment may be required if the state considers the individual amenable to treatment. The Court observed that the state may be obliged to provide treatment that is "available" for disorders that are "treatable." Moreover, the state can defer such treatment until after the offender had served his full prison term. Justice Thomas wrote, "[U]nder the appropriate circumstances and when accompanied by proper procedure, incapacitation may be a legitimate end of the civil law. . . . We have never held that the Constitution prevents a state from civilly detaining those for whom no treatment is available, but who nevertheless pose a danger to others." In a concurring opinion, Justice Anthony Kennedy, who was the swing vote, said, "If the object or purpose of the . . . law had been to provide treatment but the treatment provisions were adopted as a sham or mere pretext, [this would amount to] an indication of the forbidden purpose to punish."

Of the 14 sexual predator laws that have been enacted, the treatment setting in seven states is a hospital, while in the other seven states it is a segregated unit within a correctional facility or a correctional facility devoted exclusively to sexual predators. In all 14 states, the agencies responsible for providing treatment are the state health services, mental health, or social services departments. The ambiguous issue, however, is whether the states must invest sufficient resources in treatment to reach a minimum standard of intervention that could be expected to effect change, and whether the costs will come out of the diminishing mental health budget.

It is time for a fresh look, which Dr. George Palermo and Dr. Mary Ann Farkas provide in this book, *The Dilemma of the Sexual Offender.* They begin with a discussion of the importance of women and their bodies, the object of attraction in most sexual assaults. The female body, they point out, has been used and abused throughout history, often creating an atmosphere of mixed messages for men and ambivalent feelings toward women. In some males, the ambivalence destructures their ego. Also, they argue, the emancipation of women and the change of roles in the family structure shake the false sense of security in a patriarchal role felt by some men and intensifies their ambivalence even more, leading to their sexually offending against the object of their natural attraction. And in the case of pedophilic behavior, atavistic factors such as patriarchal property rights and displacement of sexual interest from women to prepubescent children with feminine forms may be the explanation for their behavior.

In subsequent chapters, the authors undertake an examination of classifi-

cations of sex offenders, and they then discuss existing laws and make recommendations. They point out that the characteristics of the offender, the characteristics of the victim, the location and type of offense, and the sociocultural context are important not only for taxonomic purposes but also for the assessment of the unconscious or conscious motivation for the offense. The authors subscribe to a unitary theory of sexual offending-they view the various paraphilias as a progressive worsening of human sexual behavior. Put another way, the various sex offenses are not discrete entities but rather are on a continuum.

Dr. George Palermo, the principal author, has a long and abiding interest in criminal behavior. For many years he was the senior psychiatrist in the forensic department of the Milwaukee County Mental Health Complex, and he was the court-appointed expert in the case of Jeffrey Dahmer who carried out cannibalistic killings. He is clinical professor of psychiatry and neurology at the University of Nevada School of Medicine and the Medical College of Wisconsin. He is the editor of the *International Journal of Offender Therapy and Comparative Criminology* as well as the author of numerous publications. This book is his fifth in the *American Series in Behavioral Science and Law.* Born in Italy, he is fluent in several languages and has lectured worldwide. In 1996, the Greater Milwaukee Legal Auxiliary named him "Citizen of the Year," and in 1997, the Justinian Society of Milwaukee named him "Person of the Year." He is my beloved and admired friend.

Dr. Mary Ann Farkas, his coauthor, is Professor of Criminology and Law and Director of the graduate program in the Administration of Justice Specialization at Marquette University. She has published numerous articles and presented papers on sex offender laws, practices, and policies. She has conducted research on the impact of sex offender community notification and the use of the polygraph with sex offenders under community supervision in Wisconsin. She serves as vice-president on the Executive Board of Wisconsin Correctional Services.

Their book is a thoughtful and lucid presentation of a controversial topic. Professionals and nonprofessionals alike will find their book interesting and important.

RALPH SLOVENKO
Editor, *American Series in Behavioral Science and Law*

PREFACE

It has been more than ten years since the release of this book's first edition. In that brief period of time, the dilemmas for the sexual offender–including their visceral and virtual manifestations–have captured the imagination of the public, have rewritten the subdiscipline of behavioral sciences and the law, and have led to new technologies in the assessment, diagnostic, and treatment decision sciences. Moreover, as an artifact of "ultramodern" culture, these dilemmas circulate in the marketplace of conspicuous digital consumerism. Indeed, we now live in an era that stylizes and commercializes the sex offender industry through society's ubiquitous infotainment-driven and carnival-like outlets. Such is the order of things in the ultramodern age. And, this is why the second edition of this book is an antidote to the voyeurism that addictively feeds on the dramatizations that caricature the victims, assailants, and predicaments that constitute the dilemmas for the sexual offender.

In this second edition, Dr. George Palermo and Dr. Mary Ann Farkas systematically probe and dissect the boundaries of their topic with erudition and insight. This acumen consists of psychiatric, legal, moral, and bio-social realms of inquiry and analysis. Old questions about the nature of evil, women in society, violence and mental illness, and treatment and recovery receive fresh attention based on the latest empirical evidence. New chapters address emergent forms of deviant sexuality (e.g., cyber-offending, erotic and sadistic psychopathy, and child-molesting clergy). New sections illuminate existing forms of aberrant sexuality (e.g., moral development and necrophilia, moral reasoning and sex offenders, the psychodynamics of serialized lust murder). In short, Palermo and Farkas offer the reader a state-of-the-art text, replete with cutting-edge case illustrations, that demonstrates how medicine, law, and culture are inextricably (and sometimes inexplicably) bound together. This is a masterful accomplishment for which the authors are to be con-

gratulated. There is much to learn in this book. As such, I invite you to discover in its pages more about the dilemmas for the sexual offender.

BRUCE A. ARRIGO, Ph.D.
Professor, Criminology, Law & Society
Department of Criminal Justice & Criminology
University of North Carolina at Charlotte

PREFACE TO THE FIRST EDITION

Historically, society's response to sexual deviance has benefitted from a disquieting and seemingly inexplicable rapproachment. For example, in today's culture of conspicuous consumerism, we openly deplore the practice of pornography and prostitution yet secretly marvel at the street smarts and business savvy of sex-trade industry corporate executives. In our strange and certainly imperfect way, we live out these contradictions, eliciting the aid of psychiatry to regulate our behavior and the law to legislate our morality. Perhaps it was Michel Foucault who understood best how (and why) we discipline difference; technically and productively establishing increasingly inventive modes of surveillance that enable us to normalize and, therefore, homogenize what we do not comprehend, what we fear. Such is the order of things.

It is at this juncture that we confront *The Dilemma of the Sexual Offender.* Condemned and ostracized by the public, mythologized and manufactured by the media, admonished and contained (both criminally and civilly) by the law, and pathologized and treated by psychiatry, society's reaction to rapists, child molesters, lust murderers, and other violent sexual offenders is nothing short of a sociological moral panic. Constructed from incomplete or inaccurate information about a particular phenomenon, moral panics are infused with well-publicized and emotionally laden sentiments, often giving rise to misguided (even nonsensical) social and public policy. George Palermo and Mary Ann Farkas succinctly capture this notion in the Introduction to their book when describing the efficacy of existing sexually violent predator (SVP) laws. As the authors explain, "The predatory statutes are based on determinations of the presence in a sexual offender of a mental abnormality or disorder, not a bona fide mental illness, which more likely than not will predispose him to engage in future sexually offensive behavior (recidivism). This is the psychiatrization of a person who is not mentally ill and, at the same time, the criminalization of a person for an antisocial act which has not yet been committed."

The Dilemma of the Sexual Offender charts a provocative, thoughtful, and necessary direction for interpreting and clarifying society's response to this form of sexual deviance. The essential thesis is as straightforward as it is compelling: The offender's behavior is rooted in the psychodynamics of sex and sexuality in which the male perpetrator violently, immaturely, and unconsciously expresses his ambivalence for women and the female body through repeated and frightening acts of sexual violation. The result is the atavistic subordination of the female victim and not the calculated domination of the male offender.

Cast in this light, rapists, child molesters, and lust murderers are not psychopaths; rather, they are disturbed pleasure seekers attempting to respond, although destructively, to their own inadequacies. Accordingly, as the authors note, humanely assisting the sexual offender is certainly worthwhile, and legal and psychiatric interventions should reflect this sentiment. Indeed, to dismiss sexual offenders as criminal miscreants is to ignore the unconscious pain and emotional scarring that renders them prisoners of their own psychic trauma. In the final analysis, therapy can be salubrious; however, beyond the antisocial conduct engendered by these transgressors, the cultural and historical conditions that locate treatment and inform prevention must be carefully and systematically explored.

At a time when society continues to struggle with its response to sexual deviance, this book offers a clear and cogent argument, explaining how law and medicine can move beyond the present climate of moral panic guided by a discerning and deliberate approach to interpreting sexual offenders. For readers interested in such matters as the role of women in society, the history of victimization, the relationship between mental illness and sexual offending, and the relevant laws and policies on the topic, *The Dilemma of the Sexual Offender* provides a useful and accessible primer for much of this material. In a culture that openly expresses, indeed routinely flaunts and esteems, sexuality, we should not be surprised when prepubescent girls (and boys) are transformed into centerfold models and objects of carnal lust. Regrettable as this may be, it is all too frequently the social norm. As sociologists are quick to remind us, human social behavior on the fringes of society tells us a great deal about the condition of its core. The presence of the sexual offender is, in part, an artifact of what we have created. Palermo and Farkas superbly explain the psychodynamics of this deviant, while reminding us of those external forces that co-shape the offender's reality. Whether you are a psychiatrist, lawyer, criminologist, policy analyst, or forensic mental health pro-

fessional, I invite you to discover the world of the sexual offender. I invite you to discover this world that the authors expertly reveal to us all.

BRUCE A. ARRIGO, Ph.D.
Professor of Criminology andForensic Psychology
Director of the Institute of Psychology, Law, and Public Policy
California School of Professional Psychology-Fresno

INTRODUCTION

In present-day society, reports of sexual assaults continue to be reported in the media on a frequent basis. The assaults take place against both sexes and against adults and children. The sexual offenders have kept up with the times as they entered the computer world in various ways, such as communicating with innocent and naïve children in chatrooms, engaging in the exchange and selling of pornography, and organizing sexual tourism, thus taking part in the world of cybercriminality. People in positions of power take advantage of those whom they should be protecting, attacking their personhood and their dignity. This moral degradation is present at all levels of society. Pedophiles have infiltrated the religious community, and members of the clergy have been accused and found guilty of the sexual molestation of children, at times repetitive and apparently without remorse. Teachers, both male and female, are promiscuous with their students. Police officers are reported to threaten and assault persons they stop for questioning.

Reflecting on these behaviors, they seem to be the logical consequences of years of laissez-faireism, of the weakening of the family structure, and the demolition of many of the bulwarks of society: decency, respect for one another, self-control. They are the manifestation of a steady corrosion of morals and a de facto more-pronounced moral poverty, which has created new aspects of sexuality and a tendency to a continuous subversion of life and the way it used to be (perhaps erroneously) thought of.

It is within this socially chaotic period that we decided to take a second look at the dilemma of the sexual offenders. Ten years ago, at the time of the writing of the first edition of this book, attempts were being made to prevent and correct the many problems of sexual offenses and sexual offenders. However, even though some progress has been made, the problems continue to plague society, including in new ways, such as cyberoffending. This is in spite of the many efforts at the local, state, and federal levels to curb the threat they pose. More treatment and rehabilitation centers have been created for the purpose of helping the offenders. New legislation has been passed, in great part to allay the fears of the public. Both have had limited success.

The recipients of society's stringent attention, the sexual offenders themselves, have claimed that the climate in many treatment institutions is anti-therapeutic, that the introduction of many laws that require treatment are akin to preventive detention, and the laws are unconstitutional. Their feelings are shared by many scholars. It seems that the providers of help and the recipients of that help are at an impasse. A climate of a lack of cooperation and feelings of resentment are present on both sides. Many of the offenders refuse treatment or limit their involvement in it. And the offenders remain, at taxpayers' expense, in the institutions year after year, with little hope and with no will to work for a discharge or even for supervised parole. Some will leave the institutions, but the obstacles they face in reintegrating themselves into society, particularly those caused by new sex-offender registrations laws, are difficult, at times insurmountable, and they recidivate.

Many scholars, even though appreciative of public anxiety, even panic at times, and the concern of citizens for their children, are of the opinion that many of the programs instituted, especially those based on the deterrence and retribution demanded by the public at large, are, as the offenders themselves say, basically anti-therapeutic. They believe that a more balanced approach to this grave problem is needed, one that is not only more humane but more practical.

Some sexual offenders, for example, serial killers such as Jeffrey Dahmer and Ted Bundy, deserve severe punishment. But there are others, a much larger cohort of sexual offenders, who, although necessitating punishment for their actions, are still treatable and often capable of rehabilitation. So a choice must be made–one of new programs, new attitudes, and modification of some laws. It must be recognized by all, including the public, that the laws now in existence have not been as successful as was hoped when they were passed. Their financial cost is high, and whether they prevent sexual violence is questionable. Many of them primarily allay societal fears but do little to aid in the rehabilitation of those offenders who deserve treatment. We also must ask ourselves whether this approach is moral. This and other questions should be faced with urgency, otherwise we will have to contemplate the creation of new towns: those for sexual offenders who are unable to find a place to reside within society.

This second edition of *The Dilemma of the Sexual Offender* will discuss the present laws and treatment of sexual offenders. It includes a new section on cyberoffenders, reflecting the adaptability of the sexual offender to contemporary society. It also includes a new section on female offenders and clergy offenders. In addition, we have corrected, rephrased, and updated parts of the original narrative.

We hope that the readers will find the second edition more complete and more helpful. We believe that the many additions will help them to gain a

better understanding of the dynamics, psychological and moral, that contribute to sexual offending as well as to further recognition of the problems with which the miasma of offending sexual deviants face society. Knowledge is a basic prerequisite to enacting more just laws.

G.B.P.
M.A.F.

INTRODUCTION TO THE FIRST EDITION

This book was born out of the pressure imposed on forensic experts by the new sexual predator laws and the dilemmas they have created. One is in how we conceptualize sex offenders and their victimization, another is how we manage and/or control their behavior (e.g., Should we use psychiatric or legal means or both?). Still another dilemma is how to resolve the conflict between their roles of forensic experts as treatment providers and as agents of social control under that mandates of sex-offender specific laws. In fact, even though they are aware of the increasing incidence of sexual offenses in our communities, offenses that obviously should be legally pursued and punished, many forensic experts encounter difficulties in adhering to the specifications of those laws. The predatory law statutes are based on the determination of the presence in a sexual offender of a mental abnormality or disorder, not a bona fide mental illness, which more likely than not will predispose him to engage in future sexually offense behavior (recidivism). This is the psychiatrization of a person who is not mentally ill and, at the same time, the criminalization of a person for an antisocial act that has not yet been committed. Once civilly committed, this "sexual predator" is subjected to mandatory and involuntary treatment. If the individual refuses to participate in such treatment, his chances for release from a correctional/therapeutic institution are almost nil. Scholars who object to this type of commitment sustain that it is unconstitutional because it is applied at the end of the offender's mandatory sentence.

Treatment for sexual offenders varies in type and has been found to be only marginally successful. In addition, its application varies from institution to institution. It is reasonable to assume that if any benefit from such treatment is marginal and not yet based on sound scientific research, prolonging imprisonment in a correctional/therapeutic setting beyond a mandatory release date will be nothing else than preventive detention. The above considerations show a violation of the long-held assumption that the accurate prediction of long-term sexually violent recidivism cannot be made except in rare cases. Besides, it violates basic, individual constitutional rights. It

appears that the sexual predator laws only fill the vacuum of a nonexistent therapeutic jurisprudence and only apply a Band-Aid approach to the fears of the communities at large. These fears, with some exceptions, have been greatly magnified by media reportage that stresses some unconscionable sexual offenses. This is certainly done with a good purpose–that of making people aware of the presence of such crimes; however, in so doing, it also creates intense anxieties, at times almost to the point of panic in those who are justifiably concerned about the possibility that they or their children will become victims of such crimes. This almost subconscious apprehension and concern has led to the creation of these drastic laws. The laws have created a dilemma for many people, especially those involved in the disposition of the sexual offender cases in the legal arena, and do not help either the victim or the victimizer in possible rehabilitative efforts.

Regardless of the above considerations, sexual predator laws and community notification laws have been found to be constitutionally sound. We have some difficulty in accepting these decisions because we recognize that the above laws have compounded the problem at hand. It frequently happens that a sexual offender, compulsorily treated during forced detention following the expiration of his mandatory sentencing, and finally deemed fit to reintegrate into society by professionals and with the added consent of the law, faces difficulties in being accepted by the members of society who tend to extrude him like a foreign, unwanted object. This may be a reaction formation, but if that is not one of the possible explanations, it certainly demonstrates a gross lack of humanness and civic duties fueled by realistic fears. It could also be the consequence of a campaign to sensitize the public to a problem for which no clear-cut therapeutic solution or reintegrative modalities have yet been established. It is a fact that most treated offenders face extreme difficulties in relocating in any community because community notification laws impede any type of successful reintegration.

This circuitous dilemma touches all of us as citizens, as representatives of the courts, as professionals involved in forensic work, but most of all the offenders and their victims. It needs clarification in order to be resolved. We believe that this clarification can come from delving into the psychodynamics of these offensive, humiliating, and frightening behaviors in a more thorough and realistic way.

The above are the basic reasons for writing this book on the dilemma of sexual offenders. It is a synthesis of the clinical research on the subject by a large number of scholars presented within the larger perspective of the problem itself, closer to the natural roots of human sexual behaviors and their historicity. The chapters on man's ambivalence toward women and their bodies is pivotal to our later psychodynamic interpretation of sexual offending-especially pedophilia and rape-which we see in a continuum, as a progres-

sive degeneration of human sexual behavior, as an atavistic reemergence of man's ambivalent feelings toward the object of their sexual attraction. We are of the opinion that at a deeper level these unconscionable behaviors may represent in men a hidden, unwanted subordination to women. The seductive or forceful behaviors of sexual offenders are expressions of immature personalities, often a childish action statement such as, "I want, I need, I take," without any intervening reflections concerning the appropriateness of the action and its effects on the victim.

We hope that the psychodynamics of sexual offending that we propose will promote a more humane interpretation of the dilemma with which sexual offenders face us and may aid in the improvement of their treatment. We also hope that any future legal dispositions will be more constructive and rehabilitative and change the accepted myth that the behavior of the sexual offender is primarily an act of control of the other, an expression of male domination.

We have attempted to formulate a theory that is confirmed by our experience with sexual offenders that could explain their disturbing sexual behavior. We think of them, all of them, as immature, maladjusted, and unable to reach out for the other in a normal way. Their aggressive or seductive behaviors are the childish expression of a basic inadequacy, which under stressful conditions reawakens their atavistic ambivalence toward women and their bodies, or toward the bodies of prepubertal children who are viewed by them as noncompetitive and nonchallenging to their masculine impotence. The latter is a type of cop-out to avoid facing the important other, a silent sign of their basic fear of women. Besides, since children were seen in the past as property and were disposed of at their father's whim, this belief may still be present at an unconscious level in the sexual offender. We believe that at times the stress produced in some sexual offenders by their inner conflicts brings about the eruption of repressed sexual feelings leading to a dissociative state or, better, a destructuralization of their ego, which allows their unbridled search for pleasure. These people seem to act like drug addicts, except that in their case the drug consists of the anticipation of sexual pleasure. They, like the addicts, are repetitive in their unconscionable behavior, and, like the addict, they seem to need a fix–a fix that has no lasting effect. As we do not reject the many drug addicts who also frequently commit serious antisocial offenses, but often commiserate and help them, why should we not try to help the sexual offenders in a more constructive way?

In this attempt, we may be aided by the fact that their behaviors involve sex and that society at large finds that sex is a touchy subject. Freud was forced to retract his findings on childhood sexuality and the incestuous behavior of fathers because they were unacceptable to both the medical community of his time and to society at large. It was scandalous. It is felt by

the majority that sex should not be associated with psychological immaturity and certainly that it should take place within certain social boundaries imposed by the symbolic idealistic meaning given to it by society. Sex, obviously, should not involve either extreme force or psychopathic seduction. The dilemma of the sexual offender, we believe, is in fact basically an issue of sex, of reawakened atavistic ambivalence, of displacement, perhaps made more acute by the contemporary competitive roles of men and women. Obviously, the feelings of love, resentment, and anger are intertwined. The child molester and the rapist seem to be the prototypical expressions of immature behavior: attacking or seducing the object of their desire.

Therapies are based on actuarial and psychodynamic factors; however, historical and cultural factors should be taken into consideration in devising them. They should be directed to the real issues and not diverted by political views. We propose that the awareness of humankind's cultural and social past is essential in the assessment of sexual offenders, and the assessment should be a multifaceted exercise that should include not only mental health and legal professionals but cultural historians and sociologists. This would help us to devise better preventive and therapeutic approaches to such behaviors, which are certainly not acceptable and not to be condoned.

G.B.P.
M.A.F.

ACKNOWLEDGMENT

Our deepest gratitude again goes to Adriana Palermo for her indefatigable dedication in the preparation of this book for publication. We are sure that she contributed to its success, and we hope that she will feel part of it.

CONTENTS

Page

THE DILEMMA OF THE SEXUAL OFFENDER

Chapter 1

WOMEN IN SOCIETY

INTRODUCTION

A book that deals with sexual offenses, the majority of which are perpetrated against women, victims of either a sudden violent raptus or persistent seductive maneuvering on the part of their victimizer, must, of necessity, consider the importance of the women and their bodies, the object of attraction in most sexual assaults. It must also consider the personality of the aggressor, the person who claims to have lost control of his sexual impulses at the time of the offense. It is postulated that the aggressor's opprobrious and antisocial action is the result of strong feelings of sexual attraction toward the female body, sexual attraction that degenerates into a carnal assault aided by his physical strength and unconscious desire to control and dominate. The above scenario is the worst expression of one of the manifestations of human behavior, the degenerate expression of the instinct of the beast that is in man, that Jungian shadow that is usually repressed in a civil society but resurfaces when lust takes over a man's behavior.

HISTORICAL-CULTURAL NOTES

From a sociological point of view, the social status of women in the Western world seems to have been strictly connected with the changes in the living status of humankind and the appearance of a civilized world. During the nomadic period, a woman's duties in the tribal community were restricted to the household because what de Beauvoir (1989) termed her "extravagant fertility" (p. 62) prevented her from actively participating in gathering food resources and because she had the responsibility of raising those chil-

dren who escaped infanticide. De Beauvoir (1989) wrote, "She [the woman] felt herself the plaything of obscure forces and the painful ordeal of childbirth seemed a useless or even troublesome accident . . . [and] she submitted passively to her biological fate" (p. 63). Even though she joined man in celebration of his victories over other men, she did not have a life of her own. Man was the center of her life, the protector and the ruler, the one who subdued her and the surrounding nature.

During the agricultural period, the woman was looked on as a vehicle of reproduction, the trait-d'union between the past and the future, a fertility goddess, similar to nourishing fertile nature. Her maternity continued to see her bound to a sedentary life and confined in her living quarters, while men collected food through hunting and fishing and continued to be the protectors from enemies. This is the period when she was viewed as an idol, creative, sacred in her lofty nature, and surrounded with taboos like all sacred beings: "she [was] herself a taboo; because of the powers she held, she [was] looked upon as a magician, a sorceress" (de Beauvoir, 1989, p. 70). This is probably one of the few times in history in which the woman was given power and reverence, idolized and invoked in prayer, and allowed to participate in the small-community management.

The above is considered to have been a period of matriarchy. However, this view of matriarchy is not accepted by everyone. In fact, it is thought by some to be a prehistorical myth derived from archeology and anthropology. In *The Myth of Matriarchal Prehistory* (2000), Eller reiterates that it was Johann Jacob Bachofen who, writing in 1861, transformed cultural and literary traditional worldwide stories into history. Indeed, Bachofen's theories have been widely discussed and criticized (see e.g., Georgoudi, 1992).

It is difficult to know whether within the tribal structure the woman continued to be seen as the *other*, and man was basically her master, whether she was "subjected, owned, exploited, like nature whose magical fertility she embodied," as de Beauvoir stated (1989, p. 73), or whether she enjoyed what could be considered a central role in the budding family. It is possible that man viewed her capacity to give birth as miraculous and awesome, and he set her apart from his life out of feelings of respect and his own inadequacy and that "being venerated and feared because of her fecundity, being other than man and sharing the disturbing character of the other, woman in a way held man in dependence upon her, while being at the same time dependent upon him" (de Beauvoir, 1989, p. 78). This interdependence between man and woman may have been at the basis of a good relationship, but apparently it was not reflected by outward social signs because man attempted to overcome his inferiority by affirming his power–by maintaining that the "father engenders, the mother merely nourishes the germ received with her body" (de Beauvoir, 1989, p. 79). Slowly, upholding a dualistic view of good

and bad, and assigning to the female–the other-a negativity due to her being only receptive in her sexuality, while man was "movement . . . better and more divine" (de Beauvoir, 1989, p. 79), matriarchy was supplanted by patriarchy. And as time passed the woman-the other–began to be perceived as evil, as epitomized in the myth of Pandora.

Men's ambivalence toward women, if not playing down the role of women in society, nevertheless persisted in the subsequent years. This may have been a macho façade because the body of woman began to be immortalized in artistic creations at the same time that she was confined to the household as man's "possession" and, strangely enough, also as *domina* (mistress) of the house. This may have been a struggle for the domination of one over the other, or an assignment of roles based on biological factors and cultural and psychological development. Man made laws that curtailed woman's freedom. He began to feel that he was the absolute ruler, disposing of his wife and children to the point of infanticide of the latter at his whim. While he practiced polygamy and used prostitutes for mere sexual pleasure, he relegated his wife to the house and expected her to be loyal and chaste. This inconsistency of his behavior toward women is certainly a mark of his ambivalence toward them.

The above behavior was probably the expression of man's belief that his property should be inherited by his own progeny, by a son who could perpetuate his name, but possibly of his distrust of women. For example, early Arab and Jewish populations were polygamous, and they could put away their wives almost at will, and in cases of adultery the wife was even stoned. The woman had no legal rights, and she was not allowed to make her own decisions, even after her husband's death. The woman had some rights in Babylon under the Code of Hammurabi (she received a part of the paternal estate) and also under Persian laws, where she continued to be her children's educator, and she was given some rights with a formal marriage contract that regulated inheritance and custody of the children. In Egypt, "men and women were virtually equal" (Tannahill, 1992), and the woman had "the same rights as man, the same powers in court, she inherited, she owned property" (de Beauvoir, 1989, p. 86). But even though the woman retained her dignity as a person, polygamy continued.

Greek society was not polygamous, but men could use the services of *hetaerae* for entertainment (the pleasure of the spirit) and concubines for their sexual pleasures. The *hetaerae* were probably similar to the Japanese geisha, while the concubines were considered to be prostitutes. In Athens, the wife was confined to the house and under legal restraints and guardianship: in other words, treated like a minor. In Sparta, instead, the relationship between husband and wife was freer, and women were treated almost as equal to men. Nevertheless, in Sparta as well as in Athens, the wife was expected to

be "a watchful mistress of the house, prudent, economical, industrious as a bee, a model stewardess" (de Beauvoir, 1989, p. 9).

In Roman society, the woman was at first at the mercy of her husband or guardian, and she had somewhat fewer legal rights than the Greek woman. But she was allowed to exercise a matronly role in her house as the *domina* of the home, supervising and giving orders to slaves and guiding, educating, and influencing the children. She was thought to be the companion of man, and her status must have pleased her because few divorces are reported during a period of several centuries. Socially, she was accepted, respected, and relatively free to move in and out of the house. Actually, Cato recognized the freedoms and social influence of women and is reported to have stated, "Everywhere men rule over women and we who govern all men are ourselves governed by our women" (de Beauvoir, 1989, p. 93).

With the passage of time, women, freed from the guardianship of fathers and husbands, found themselves under the guardianship of the State, with laws restricting their economic independence. But they rebelled as a group, obtained more rights, and became more autonomous: "[The woman] could inherit, she had equal rights with the father in regard to the children, she could testify . . . she could divorce and remarry at will" (de Beauvoir, 1989, p. 95). As the family unit crumbled, however, women's behavior became more questionable, particularly in their choice of amusement and in their vices, to the point of being reproached for their lewdness and their attempt to be rivals of men.

With the fall of the Roman Empire and the advent of Christianity, a married woman was subordinate to her husband's authority, and civilly, as well as in the church, she was assigned only secondary roles. However, she was expected to aid in charitable organizations. According to both the Old and New Testaments, she was accepted as God's creation for man. The statement of St. Paul (Ephesians 5:23), "The husband is the head of the wife, even as Christ is the head of the Church," gave the woman a certain recognition (de Beauvoir, 1989). Her body, however, being flesh, was seen as sinful. The Emperor Justinian, although recognizing the woman's role as wife and mother, and considering her to be the mistress of the house, held the view that the woman was legally incompetent regarding civil matters.

This social and civil status continued throughout the Middle Ages, during which the woman remained in a state of absolute dependency on her father and husband. Her position in society became ever more uncertain-during feudalism, for example-when she was under the protection of her husband, protection that was often forced on her and that certainly meant a state of social and civil deprivation. Her body was viewed as an object, and she had no free choice. This state of affairs continued, with some ups and downs, through late feudalism.