

Scientific Status of the Concept of Continuing Emotional Propensity for Sexually Aberrant Acts

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Continuing emotional propensity for sexually aberrant acts and similar concepts have a central role in the prosecution of sex offenders. This article examines the theoretical and scientific viability of such concepts, focusing on child molestation. It is shown that neither theoretical nor scientific underpinnings exist, although there is broad clinical agreement on the existence in some offenders of "something more" than just a pattern of continuing behavior. Both the DSM-IV and addiction models of sex offending capture this viewpoint, and it is suggested that clinical/forensic assessment for the presence of a continuing emotional propensity rely on these sources until a scientific foundation can be laid.

It is a long-standing legal principle in Anglo-American jurisprudence that prosecutors in a criminal trial must prove that the defendant actually committed a particular crime, irrespective of other bad things he or she might have done. For this purpose, character "propensity evidence"—evidence of a bad character—is generally inadmissible.¹ Prior bad acts may be admitted for certain specific reasons; for example to show "identity" through similarities in *modus operandi*.² However, prior bad acts may not be admitted in order to show bad character.

There is an exception to this rule in the

area of sex crimes, where many states do permit the introduction of evidence regarding prior criminal sexual acts. This type of exception centers around concepts such as "lustful disposition," an exception adopted in Kansas in 1926.³ The same exception was adopted in Arizona in 1956.⁴ In the Arizona case *State v. Phillips*,⁵ such acts were held to be admissible if they showed "an emotional propensity for sexual aberration," and subsequent decisions have affirmed a liberal definition of this criterion.⁶ A recent review by Beale⁷ shows that at times at least 29 states have had such an exception, although it currently is the subject of controversy and uncertainty in many jurisdictions on several different grounds.

Various rationales have been offered

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for the existence of the exception in sex offenses; for example, to level the playing field by bolstering the testimony of a child victim.⁸ A second reason is to recognize the special depravity of sexual crimes, with the implication that sex criminals are especially vile and loathsome people who really do not deserve to be treated like defendants in other crimes. A related reason is that deviant sexuality has been widely held to involve a long-standing disposition, trait, personal characteristic, or disease, such that a single deviant act provides evidence of this disposition, much in the same way that a single spirochete shows the presence of syphilis.

States have wrestled for many years with the notion of a continuing disposition toward deviant sexuality, questioning how real it is and how it should be used in the legal arena. Bryden and Park² conclude that "all of the arguments. . . may be unimportant in comparison with one's substantive attitude toward sex offenses" (p 583). Thus, the acceptance and application of the continuing emotional propensity (CEP) concept in sex crimes often might be based on subjective opinion and personal feelings rather than on its scientific viability.

The purpose of this article is to review psychological theory and data that are relevant to the issue of whether CEP is a scientifically viable concept. To anticipate the conclusions, CEP will be found to be clinically meaningful within certain limits. A delineation of those limits forms the subject matter of the article.

It is recognized that CEP and related terms are legal, and not psychological,

concepts. Therefore, to address such terms scientifically, it is necessary to identify concepts in the psychological literature that might be related to what is intended legally, and then build whatever bridges can be constructed between the legal and psychological arenas in this regard. The question of procedures for assessing the presence of a CEP can then be addressed. It is noted parenthetically that because the (legal) issue is raised on a case by case basis as to whether a particular defendant has a CEP, there is the clear implication that some deviant sexual acts do *not* stem from or demonstrate a CEP.

Theories of Deviant Sexuality

Following is a brief review of scholarly thought on reasons for sexually deviant behavior. Because the majority of cases in which the CEP concept has been addressed involve child sexual abuse, that particular behavior is emphasized here. However, the analysis also applies to other deviant sexual behaviors. It draws in part on three previous reviews by the author.⁹⁻¹¹ Five recognized theories, or at least views, can be identified regarding the nature of child molestation.

Characterological View The earliest influential theoretical view was held by Freud,¹² Havelock Ellis,¹³ and Krafft-Ebing.¹⁴ This view has two basic premises: (1) that all sexually deviant behaviors are theoretically and etiologically similar; and (2) that they represent a single type of psychopathology, specifically, a form of character disorder. Several comments can be made about this early view. First, as the only coherent view

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offered until the last 20 years or so, it has become the most firmly established view in society. Second, it has led to the popular position that sexual deviance must be regarded as a life-long problem, which, like alcohol abuse in the view of Alcoholics Anonymous, can be arrested but never cured. Like alcoholics, deviates are always recovering, never recovered. Families must be alert for relapses, and mothers must be taught to protect their children on a continuing basis. Third, it supports the view of sexual deviance as a permanent disease, together with the view that the presence of a single deviant act is sufficient to demonstrate the (permanent) presence of the disease.

Biological View There is a related view of the origin of deviant sexual behavior that leads to a similar position—the view that the deviance stems from biological factors. The biological view offers a small degree of comfort in the belief that such men are not bad but ill, and it suggests the possibility of physical treatment to make them well again. The view that biological factors are a sole or significant cause of deviant sexuality has been proposed by several writers, including Berlin¹⁵ and Flor-Henry.¹⁶ Although this view is potentially capable of being addressed scientifically, so far it remains unsupported.¹¹

Modified Psychoanalytic View About 15 years ago, a modified psychoanalytic view was developed.¹⁷ It was proposed that in addition to child molesters with a permanent problem, there were other molesters who might have had a more normal psychosexual development but who have molested in response to

situational stresses. These molesters were termed “regressed,” with the implication that they had essentially reached a normal level of psychosexual development but had temporarily regressed to a lower level under stress. For permanent molesters, the term “fixated” was used, implying that they had never reached the higher level. There seems to be at least some degree of general acceptance that successful treatment may be possible for regressed molesters; less so for fixated molesters.

This modified psychoanalytic view came to be reflected in the third edition of the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders* (DSM III),¹⁸ in the DSM-III-R,¹⁹ and most recently in the DSM-IV.²⁰ Specifically, the term *pedophile*, which until the time of the DSM-III was used by different authorities to mean different things, was now identified with fixated or permanent molesters, who were formally recognized as having a mental disorder. By their exclusion from the diagnostic scheme, one can infer that regressed molesters were considered to have engaged in temporary situational or stress-induced behavior.

The most recent (DSM-IV) diagnostic criteria for pedophilia require “over a period of at least six months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving activity with a prepubescent child or children” (p 528).²⁰ “The fantasies, sexual urges, or behaviors cause clinically significant distress or impairment in social, occupational, or other important areas of functioning” (p 528).²⁰ Although the psy-

chological and psychiatric literature do not appear to have directly employed or addressed the CEP concept, it would seem to have a reasonably close correspondence with the view of child molestation as pedophilia—a continuing disorder with deep psychological (or possibly biological) roots.

Behavioral View Behavioral views of a disordered behavior make few or no assumptions about the theoretical/conceptual roots of the behavior, but concentrate on discovering and implementing ways of changing it.^{21, 22} Although the possible usefulness of theoretical formulations is not denied, they are not considered essential to the formulation of a satisfactory behavioral framework. Such a view allows the use of the stress-induced versus pedophilic framework described above, and it also allows for a third possibility, that child molestation may sometimes be committed by men who fit neither of those two categories. The third category would consist of persons who molest for reasons that are not linked to psychological problems or stresses, but are relatively superficial in nature. They might be compared in some ways to persons who physically abuse others with little thought; or who rape with relative lack of emotion or sense of normal interpersonal decency. Such molesters, who might be termed *opportunistic*, engage in this behavior for no other reason than it is pleasurable and provides its own reward.

Addiction View The relatively new concept of sexual addiction has appeared significantly in the literature only within the past 10 years or so.^{23, 24} These authors believe that some cases of deviant sexu-

ality, whether legal or illegal, have essential similarities to addictions and other compulsions and can be successfully treated within treatment models originally developed for alcoholism and other substance addictions. They point out that this view is not to be taken as a *sufficient* explanation of deviant sexuality, since many persons with deviant sexual behavior do not fit the criteria for an addiction. In Carnes' words: "Addicts are people who cannot stop their behavior which is crippling them and the world around them" (p 46).²³ Simply engaging in the behavior does not constitute an addiction. Thus, in this approach, some men with deviant sexual behavior are addicts and some are not. There would seem to be a loose correspondence between the concepts of sexual addiction and CEP. As the sexual addiction model becomes further articulated in the empirical literature, the extent of this correspondence will become more apparent.

Research on Theories of Deviant Sexuality

Five distinct theories or views of the origin and/or nature of deviant sexuality have been delineated. Although there is now a considerable empirical literature on deviant sexuality, studies that are directly relevant to etiological views are sparse. Two types of studies can be identified. In the first, retrospective attempts have been made to study the childhood histories of such men, in the hope of finding consistent patterns. Several reviews of these studies have appeared, and their conclusions are notable for their similarity to research reviews of the origins of adult

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violence, child physical abuse, and rape.²⁵⁻²⁷ There is little evidence of a direct relationship with (or similarity to) accepted types of psychopathology; rather, the most salient underlying factors in deviant sexuality appear to be *attitudes*—normalizing the particular behavior; showing a lack of sensitivity to the victims—plus a subculture or family of origin that taught, shared, or fostered those attitudes. More research is obviously needed to understand these causes. However, it does appear that deviant sexuality is more etiologically similar to non-pathological, although socially unacceptable, behavior than to formal psychopathology.

The second type of research study has looked for similarities among different sexual deviations and, in particular, has examined whether it is the rule or the exception for a man to have more than one kind of deviation. Two studies in this area have shown contradictory results. In one study, Abel *et al.*²⁸ showed that most of the 561 paraphiliacs in their sample had significant experience with several types of deviant sexual behaviors. This finding could be interpreted to support the position that there is usually a generalized, underlying disorder of sexual deviance in men who commit a sexually deviant act. In the other study, Marshall *et al.*²⁹ studied 129 familial and nonfamilial child molesters regarding aspects of their deviant sexuality. In contrast to the results of Abel *et al.*, it was found that relatively few of the subjects had additional paraphilias. Thus, results in this area must be considered inconclusive.

To summarize, the empirical literature

does not permit any one (or more) of the five views to be accepted (or rejected). If anything, the literature leans away from the likelihood of a psychopathological basis and toward the existence of a learned, attitudinal basis, at least for many men. Thus, a consensual position would be that *some* offenders may have an ongoing condition that energizes or drives their behavior. The legal term “continuing emotional propensity” would seem to correspond reasonably well to such a concept. This position would be at least somewhat consistent with nearly all of the theoretical views and the available research literature.

Assessment of CEP

We have concluded that the concept of a continuing emotional propensity for sexual aberrant acts has no supportable scientific referent. However, it can be viewed as representing a reasonable consensus of various conceptually based clinical views. In this consensus, something more must be present than just a simple desire to engage in deviant sexual behavior. In the view of the DSM-IV, that “something more” is reflected in a continuing (six months or more) preoccupation with the subject matter of the deviance at a level that causes personal life impairment (internal and/or external). The addiction view specifically includes the compulsive quality that is characteristic of addictions—an inability to stop despite destructiveness to self and others. The literature that has grown up around the concept of pedophilia includes the general development of lifestyle changes (job, friends, place of residence, leisure

activities) to accommodate the deviant behavior, with the eventual result that the deviant behavior itself may become the center of the man's life. Perhaps not coincidentally, this is also the progression of events typically described in the various stage of an addiction.³⁰

Lists have been made comparing the clinical characteristics of diagnosable pedophiles with those of stress-induced molesters.^{17, 20} It is not the purpose of the present article to attempt an integration of these lists into a defensible diagnostic tool. However, an examination of these lists reveals a reasonably consistent clinical and life picture for pedophiles, in which the man's life comes increasingly to focus around the means for satisfying the deviant desires. Relevant characteristics are increasing preoccupation, inappropriate rationalization, self-destructiveness, and the progressive development of a lifestyle that is centered around the deviance.

The absence of definitive psychological concepts related to continuing emotional propensity makes the assessment task a difficult one, and the rather vague legal criteria that have been offered are of little assistance. For example, it was held in *State v. McFarlin*³¹ that "there is sufficient basis to accept proof of *similar acts near in time* [italics added for emphasis] to the offense charged as evidence of the accused's propensity to commit such perverted acts" (p 90). In *State v. Treadaway*,³² "near in time" is defined as less than three years. This would appear to be an arbitrary criterion with no discernible basis in either theory or research. While such characteristics might be cor-

related with the presence of a continuing condition, it is illogical to postulate a cause-and-effect relationship. For example, consider the woman who shops at a particular supermarket. For years she has shopped on the same two days each week, at the same time. She parks in the same spot, enters by the same door, heads up the same aisle, buys mostly the same items, and so on. But then a new supermarket opens nearby, and her entire shopping pattern changes overnight. This frequent and apparently rigid behavior was in fact a matter of personal convenience, controlled by superficial factors only.

What is the diagnostic procedure of choice for assessing the existence of an inner state such as a continuing emotional propensity for sexually deviant behavior? If we knew it was biological in foundation, a biological test would be definitive. If we believed it to be psychological, then an in-depth dynamic assessment of relevant psychological processes, whether the patient was aware or unaware of them, would be the procedure of choice. For the present, however, because there is agreement only about observable behavioral similarities and consistencies stemming from this condition, a careful comparison of the patient at hand with those documented similarities and consistencies would appear to provide an interim approach to assessing the presence or extent of a CEP until further research leads to a more precise definition and evaluation procedure.

Discussion and Conclusion

This article has reviewed the history of a group of highly similar concepts in sex

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offending, involving the existence and nature of a continuing emotional propensity for sexually aberrant behavior, a characteristic with the presumption of permanence and inherentness. At issue is something significantly more than the enhanced probability of a future act just because the defendant has done it before. The existence of such a characteristic is often a criterion for the admissibility at trial of prior acts of sex offending. A variety of reasons have been offered as to why this exception is appropriate, and some authorities have argued that it is not. The core of this article has been an examination of psychological and psychopathological theory and research to determine whether a theoretical basis might exist for the concept of a continuing emotional propensity. This review finds that no theory or conceptual approach has included CEP as a concept, although it is consistent with several approaches: the modified psychoanalytic, behavioral, and addiction models and the DSM framework. The very sparse research presented here is inconclusive but suggests that the origins of conditions such as a CEP are more likely to be based in attitudes than in psychopathology.

In regard to the task of assessing the presence or absence (or relative strength) of a CEP in any given individual, it was suggested that the common elements of the four approaches mentioned above could be used as a basis for such an assessment. In particular, there tends to be a clinical consensus that the intended concept is allied to the DSM-IV usage of the term *pedophile* and also to the concept of sexual addiction. It is recommended,

therefore, that until further research provides a more definite basis, assessment of the presence or extent of a CEP be done by reviewing the presence of commonly documented pedophilic and addictive characteristics.

Although the above review has offered little that can be immediately used for improving assessments related to CEP in sex offenders, it does suggest directions for further research and scholarship. In particular, it would seem to be useful to pursue the question of the extent to which paraphilias should be viewed as addictions. This question can be divided into three aspects, involving comparisons of what is known about the two groups of disorders in regard to *descriptive characteristics, etiology, and treatment.*

On the descriptive level, there are obvious similarities between paraphilias and addictions, such as the emphasis on immediate gratification at the expense of long-term difficulties, the habitual denial of the existence or extent of the problem, the secrecy surrounding the behavior, the gradual erosion of the person's life stability, and the frequency of relapse. These and other similarities have been documented by George and Marlatt,³³ who have also pointed out some important differences. Thus, paraphilias differ from recognized addictions in the extent of victimization, in the use of fantasy, and in ethical/legal considerations.

On the etiological level, there is much less that is definitive. There is no single recognized explanation of the origin of paraphilias or even of various specific paraphilias.¹¹ Even if there were an explanation, there is no single recognized

theory of the origin and development of addictions with which to make comparisons.³⁴ But the beginnings of etiological formulations have been offered in both areas,^{25, 35} and such knowledge is in principle attainable. This is, therefore, a research agenda for the future.

The situation is most positive in regard to treatment. In both paraphilias and addictions, the treatment approaches that have developed over the past 20 years involve essentially similar elements—complex packages of cognitive and behavioral change procedures. In particular, a detailed model for relapse prevention developed in the context of alcoholism treatment has been found directly applicable to relapse prevention with sex offenders.³⁶ The degree of detailed similarity between the two sets of treatment procedures strongly supports the idea of a basic underlying correspondence in the two disorders. Here again, however, we must await definitive empirical findings.

There is both popular support and extensive legal precedent for the position that many sex offenders have an inherently bad character. However, when examined as a scientific hypothesis, the empirical evidence for the viability of this concept is virtually nonexistent. Legal scholars have ignored the scientific aspect: namely, whether there are or can be depraved sexual instincts or an emotional propensity of this nature. Nevertheless, clinicians continue to believe that the concept has clinical utility, and its use appears to be increasing in the law. Thus, Kaloyanides¹ concluded that “there appears to be a growing trend toward creating an absolute exception to character

propensity influences in the case of sex crimes” (p 1307). It should simply be remembered that the popularity of a concept does not enhance its scientific soundness.

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