Paraphilias and the Medicalization of Criminal Behavior

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ABSTRACT

'Paraphilia' is the term used by professionals to indicate that a sexual fetish is severe enough to warrant being called a mental health disorder. Even after the release of the fifth edition of the DSM (DSM-5) paraphilias remain controversial. Although philosophers and scientists alike have argued that some paraphilias are just a way to medicalize sexual behavior that is simply abnormal by society's standards, these arguments typically target paraphilias that do not involve immoral or illegal behaviors. To my knowledge, philosophers have largely ignored the 'criminal paraphilias' (like pedophilia) in their arguments. In this paper, I attempt to fill this gap. I argue that the diagnostic criteria for some paraphilic disorders allows for criminal behavior to serve as a sufficient condition for diagnosis, blurring the line between criminal behavior and psychopathology. I argue that such an equivocation is undesirable in at least three ways: it is contrary to the goals of psychiatry; it allows for the rights of individuals being diagnosed to be routinely violated; and it perpetuates mental illness stigma. These objectionable aspects of including criminal behavior as a diagnostic criterion for criminal paraphilias, coupled with the lack of empirical evidence that shows criminal behavior is a legitimate symptom of paraphilic disorders, provide a strong argument in support of removing the criterion. Once removed, there will effectively be no difference between diagnostic criteria for the noncriminal and criminal paraphilias, and philosophers providing critiques of the former group will be pressed to also address the latter.

GENERAL AUDIENCE ABSTRACT

‘Paraphilia’ is the term used by mental health professionals to indicate that a sexual fetish is severe enough to warrant being called a mental health disorder. Even after the release of the fifth edition of the DSM (DSM-5) paraphilias remain controversial. Although some have argued that a subset of paraphilias are used inappropriately to medicalize sexual behavior that is simply abnormal by society’s standards, these arguments typically target paraphilias that do not involve immoral or illegal behaviors. To my knowledge, philosophers have largely ignored the ‘criminal paraphilias’ (like pedophilia) in their arguments. In this paper, I attempt to fill this gap. I argue that the diagnostic criteria for some paraphilic disorders allows for criminal behavior to serve as a sufficient condition for diagnosis (meaning that criminal behavior is all that is needed to warrant a diagnosis of a criminal paraphilic disorder), blurring the line between criminal behavior and psychopathology. I argue that such an equivocation is undesirable in at least three ways: it is contrary to the goals of psychiatry; it allows for the rights of individuals being diagnosed to be routinely violated; and it perpetuates mental illness stigma (negative beliefs about the mentally ill that cause fear, dislike, and avoidance). These objectionable aspects of including criminal behavior as a diagnostic criterion for criminal paraphilias, coupled with the lack of empirical evidence that shows criminal behavior is a legitimate symptom of paraphilic disorders, provide a strong argument in support of removing the criterion. Once removed, there will effectively be no difference between diagnostic criteria for the noncriminal and criminal paraphilias, and philosophers providing critiques of the former group will be pressed to also address the latter.

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1. Introduction

'Paraphilia' is the term used by professionals to indicate that a sexual fetish is severe enough to warrant being called a mental health disorder. Paraphilias have gone through dramatic changes with each new edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM); most notably, homosexuality was declassified as a paraphilia in the 1970's.[1] Even after the release of the fifth edition of the DSM (DSM-5) paraphilias remain controversial. Scientists criticize the lack of reliable scientific evidence to show that the diagnostic criteria is either valid or reliable[2]—in fact, there have not been even preliminary field trials to provide a basis for the diagnosis of any of the paraphilias.[3] Although philosophers and scientists alike have argued that some paraphilias are just a way to medicalize sexual behavior that is simply abnormal by society's standards, these arguments typically target paraphilias that do not involve immoral or illegal behaviors.[4] Charles Silverstein, for example, argues that all of the paraphilias *which involve sex between consenting adults* should be removed from the DSM: "Like the beam of a flashlight at dawn, the paraphilias will likely disappear from *DSM* for those who have consensual adult-adult sex."[5] To my knowledge, philosophers have largely ignored the 'criminal paraphilias' (like pedophilia) in their arguments. Without a critical evaluation of any substantial difference between the 'criminal' and 'non-criminal' paraphilias, however, we should be wary of assuming that the

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[1] Patrick Singy, "How to Be a Pervert: A Modest Philosophical Critique of the Diagnostic and Statistical Manual of Mental Disorders," *Revista de Estudios Sociales* 43 (2012): 140.

[2] Anthony R. Beech, Michael H. Miner, and David Thornton, "Paraphilias in the DSM-5," *Annual Review of Clinical Psychiatry* 12 (March 2016): 388; J. Paul Federoff, Lisha Di Gioacchino, and Lisa Murphy, "Problems with Paraphilias in the DSM-5," *Current Psychiatry Reports* 15, no. 8 (August 2013): 4; Richard Wollert and Elliot Cramer, "Sampling Extreme Groups Invalidates Research on the Paraphilias: Implications for the DSM-5 and Sex Offender Risk Assessments," *Behavioral Sciences and the Law* 29 (2011).

[3] Beech, Miner, and Thornton, "Paraphilias in the DSM-5," 395.

[4] For example, see: Lisa Downing, "Heteronormativity and Repronormativity in Sexological 'Perversion Theory' and the *DSM-5*'s 'Paraphilic Disorder' Diagnoses," *Archives of Sexual Behavior* 44 (2015); Fedoroff et al., 2013; Colin A. Ross, "Commentary: Problems with the Sexual Disorders Sections of the DSM-5," *Journal of Child Sexual Abuse* 24 (2015); Singy, "How to Be a Pervert."

[5] Charles Silverstein, "The Implications of Removing Homosexuality from the *DSM* as a Mental Disorder," *Archives of Sexual Behavior* 38, no. 2 (April 2009): 162.

aforementioned concerns only extend to a subsection of paraphilic disorders. In this paper, I attempt to fill this gap.

I argue that the diagnostic criteria for some paraphilic disorders allows for criminal behavior to serve as a sufficient condition for diagnosis, blurring the line between criminal behavior and psychopathology. I argue that such an equivocation is undesirable in at least three ways: it is contrary to the goals of psychiatry; it allows for the rights of individuals being diagnosed to be routinely violated; and it perpetuates mental illness stigma. These objectionable aspects of including criminal behavior as a diagnostic criterion for criminal paraphilias, coupled with the lack of empirical evidence that shows criminal behavior is a legitimate symptom of paraphilic disorders, provide a strong argument in support of removing the criterion. Once removed, there will effectively be no difference between diagnostic criteria for the noncriminal and criminal paraphilias, and scholars addressing the former group will be pressed to also address the latter.

2. Criminal Behavior as a Sufficient Condition for Diagnosis

Criminal behavior is sufficient to diagnose an individual with a criminal paraphilic disorder. In theory, more than criminal behavior is needed to warrant a diagnosis. In practice, criminal behavior is sufficient, and, as I will argue briefly, there are loopholes in the DSM-5 that prove this practice is not an accident. The language in the DSM-5 explicitly allows criminal behavior to serve as sufficient evidence of a paraphilic disorder. To show why this is so, I will provide a brief overview of paraphilias as they are laid out in the DSM-5. I then examine how diagnoses of criminal paraphilias are conducted in order to show that criminal behavior is all an individual needs to exhibit in order to be given a diagnosis.

According to the DSM-5, "the term *paraphilia* denotes any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners."[6] The DSM-5 includes paraphilias that do not involve criminal behaviors—sexual masochism, sexual sadism, fetishism, and transvestism—and those that are constituted by criminal behaviors—voyeurism, frotteurism,[7] exhibitionism, and pedophilia. For the purpose of these paper, I will refer to these two classes as non-criminal paraphilias and criminal paraphilias, respectively. To be diagnosed with a paraphilic disorder, an individual must meet two criteria: "Criterion A specifies the qualitative nature of the paraphilia (e.g., an erotic focus on children or on exposing the genitals to strangers), and Criterion B specifies the negative consequences of the paraphilia (i.e., distress, impairment, or harm to others)."[8] Clinically significant distress or impairment in social, occupational, or other areas of functioning is necessary and sufficient to satisfy Criterion B for non-criminal paraphilic disorders. For the criminal paraphilic disorders, however, there are two ways to satisfy Criterion B: an individual may exhibit clinically significant distress or impairment in the way mention above, or they may have engaged in the criminal act that makes up the paraphilia. In principle, criminal behavior is neither necessary (an individual may experience clinically significant distress as a way to satisfy Criterion B) nor sufficient (an individual must also satisfy Criterion A by experiencing paraphilic desires) to be diagnosed with a criminal paraphilic disorder.

As a matter of diagnostic practice, however, things are very different. There are two reasons to believe that the vast majority of criminal paraphilic disorder diagnoses are given on the basis of criminal behavior. First, those diagnosed with criminal paraphilic disorders rarely report

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[6] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders: DSM-5* (Arlington, VA: American Psychiatric Association, 2013): 685.

[7] Frotteurism involves "touching or rubbing against a nonconsenting individual" (*DSM-5,* 685).

[8] American Psychiatric Association, *DSM-5*, 686.

experiencing distress due to their paraphilia.[9] Second, diagnoses of criminal paraphilic disorders are mostly given in a forensic instead of clinical setting where criminal behavior is often used to infer the presence of paraphilic desires,[10] making it so that criminal behavior serves to satisfy both Criterion A and Criterion B for the criminal paraphilic disorders.[11] This is by design: in the Diagnostic Features section for Pedophilic Disorder, for example, it states "[t]he diagnostic criteria for pedophilic disorder are intended to apply both to individuals who freely disclose this paraphilia and to individuals who deny any sexual attraction to prepubertal children […] despite substantial objective evidence to the contrary."[12] Further down, it explicitly mentions that the presence of multiple "victims" is sufficient for diagnosis.[13] In other words, Criterion A is rarely evaluated as separate from Criterion B; if an individual satisfies Criterion B, it is taken for granted that they experience desires that satisfy Criterion A. So, criminal behavior is used as a sufficient condition to diagnose an individual with a criminal paraphilic disorder.

3. Argument Against Criminal Behavior as a Sufficient Condition

Given that criminal behavior is used as a sufficient condition for diagnosis, I argue that it should be removed from the diagnostic criteria for criminal paraphilias. Including criminal behavior in the diagnostic criteria is contrary to the goals of psychiatry, perpetuates mental illness stigma, and is harmful to individuals who receive a diagnosis based on criminal behavior. Once criminal behavior is removed from the diagnostic criterion, there is insufficient justification for retaining these criminal paraphilias in the DSM at all.

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[9] Agustin Malón, "Pedophilia: A Diagnosis in Search of a Disorder," *Archives of Sexual Behavior* 41 (2012): 1088.
[10] Malón, "Pedophilia," 1091; Michael B. First, "DSM-5 and Paraphilic Disorders," *The Journal of the American Academy of Psychiatry and the Law* 42, no. 2 (2014): 191; Singy, "How to Be a Pervert," 146.
[11] Fedoroff et al. 3
[12] American Psychiatric Association, *DSM-5*, 698.
[13] Ibid.

3.a. Criminal Behavior and the Goals of Psychiatry

Psychiatry and psychology have long fought to be recognized as a legitimate branch of medicine and science, respectively. As a branch of medicine, concern for the patient (i.e., the individual receiving a diagnosis) should be the primary concern of mental health professionals. This means that mental disorders should be limited to conditions that cause harm or distress to the person with the disorder; diagnosing someone with a mental disorder only because they are at a higher rate of causing harm or distress to others is not in line with these goals. Psychology purports to be built upon an empirical basis, and needs to rely on good research in order to maintain its status as a science. In order to satisfy the goals listed above, diagnostic criteria for mental health disorders should be based on empirical evidence that the disorder causes harm or distress to the person with the disorder.

Allowing Criterion B for criminal paraphilias to include criminal behavior conflicts with these goals. With the inclusion of the criminal behavior criterion, an individual may be diagnosed without any symptoms that negatively affect them personally. Robert Spitzer, the driving force behind the removal of homosexuality from the DSM, argued that criminal paraphilic disorders—pedophilia specifically—are rightfully classified as disorders because they are harmful to society.[14] If psychiatrists accepts Spitzer's "harmful dysfunction" definition of mental health disorder, then they distance themselves from the goal of medicine, and psychiatry once again becomes just a way to enforce moral norms. As Gert and Culver argue, "if psychiatry is to take its place as a branch of medicine, mental disorders, like physical disorders, should be limited to conditions that cause harm

[14] R. L. Spitzer, "Harmful dysfunction and the DSM definition of mental disorder," *Journal of Abnormal Psychology* 108, no. 3 (August 1999): 431.

to the person with the disorder."[15] A similar sentiment is expressed in the definition of mental disorder in the DSM-5[16]:

> A mental disorder is a syndrome characterized by clinically significant disturbance in an individual's cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning. Mental disorders are usually associated with significant distress or disability in social, occupational, or other important activities. […] Socially deviant behavior (e.g., political, religious, or sexual) and conflicts that are primarily between the individual and society are not mental disorders unless the deviance or conflict results from a dysfunction in the individual, as described above.

Based on the DSM-5's own definition of a mental disorder, sexually deviant behavior does not indicate mental illness unless it causes significant distress or is caused by a dysfunction in the individual. Such a dysfunction would have to be supported empirically (meaning that there would have to be an association between some other indicator of the disorder and the behavior); the behavior cannot itself be evidence of the dysfunction.

Given the lack of data, it does not make sense to claim that the relevant criminal behavior is caused by a separately identifiable disorder in the individual. There is evidence to suggest that the interpersonal symptoms of Anti-Social Personality Disorder (ASP), for example, are related to abnormal brain structures and functioning;[17] no such data exists to suggest that criminal paraphilias nor the criminal behavior associated with them are related to any brain abnormalities. Should such data exist, criminal behavior relating to certain paraphilias may be a legitimate symptom of a mental disorder. Until there is supporting research, however, the inclusion of criminal behavior as

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[15] Bernard Gert and Charles M. Culver, "Sex, Immorality, and Mental Disorders," *Journal of Medicine and Philosophy* 34 (August 2009): 489.
[16] American Psychiatric Association, *DSM-5*, 20.
[17] For example, see Yaling Yang, Andrea L. Glenn, and Adrian Raine, "Brain Abnormalities in Antisocial Individuals: Implications for the Law," *Behavioral Sciences and the Law* 26 (2008): 65-83.

a symptom in this instance seems more like a moral claim than a medical symptom. This leaves distress as the only justification for classifying criminal sexual behavior as a mental disorder. Most individuals diagnosed with criminal paraphilic disorders—especially paraphilic disorder—do not experience any distress because of their paraphilia, however.[18] When these individuals cite clinically significant distress, they most often attribute their distress to a failure to fit into society, which is explicitly stated in the DSM-5 as not evidence of a mental disorder. Take, for example, individuals who identify as LGBTQ: they are more likely than heterosexual controls to experience distress, but that distress is not caused by their sexual orientation but instead by a failure to fit in to a society with certain moral norms.[19] Allowing criminal behavior—which neither causes significant distress in virtue of the disorder nor is caused by an identifiable dysfunction in the individual as far as we know—to serve as a diagnostic criterion for paraphilic disorders is a blatant departure from the goals of psychiatry and psychology.

3.b. Mental Illness Stigma

Including criminal behavior as a sufficient criterion for any mental health disorder perpetuates mental illness stigma, "a set of negative attitudes and beliefs that motivate individuals to fear, reject, avoid, and discriminate against people with mental illness."[20] Despite evidence to suggest that individuals with mental illness are not typically more violent than those without and that those with severe mental illnesses are much more likely to be the victim than the perpetrator of violent crimes, multiple studies on perceptions of individuals with mental illness show that the

[18] Malón, "Pedophilia," 1088; Singy, "How to Be a Pervert," 148.
[19] I am not claiming that criminal sexual behavior is the same as same-sex relationships, but merely providing the rationale behind the requirement be caused by the 'disorder' itself and not a conflict with society.
[20] Angela M. Parcesepe and Leopoldo J. Cabassa, "Public Stigma of Mental Illness in the United States: A Systematic Literature Review," *Administration and Policy in Mental Health and Mental Health Services* Research 40, no. 5 (September 2013): 384.

general public views these individuals as more violent and dangerous than individuals without mental illness.[21] These beliefs are linked to feelings of fear, aggression, and a desire to isolate those judged to have a mental illness. Stigma is known to have adverse health and treatment effects in those who suffer from it—in one literature review, for example, Hatzenbuehler, Phelan, and Link (2013) found that "stigma thwarts, undermines, or exacerbates several processes (i.e., availability of resources, social relationships, psychological and behavioral responses, stress) that ultimately lead to adverse health outcomes."[22] Because stigma surrounding mental illness is fueled by a fear that those with mental illness are dangerous or violent, mental health professionals work hard to separate other abhorrent behavior, such as mass shootings and domestic violence, from mental illness. Having criminal behavior as a sufficient condition to diagnose an individual with a mental illness preserves the idea that mental illness is intimately related to violence, providing the public with justification for their fears and encouraging stigmatizing behavior borne from those fears. Although diagnoses are supposed to remain confidential between patient and provider, information about mental health is often leaked and speculated about in relation to criminal trials. With the DSM-5 widely available to the public, it is easy to use diagnostic criteria to spark emotional responses. This is especially the case when mental illness, diagnosed on the basis of criminal behavior alone, is used as a justification to civilly commit violent criminals, as I will discuss in the next section.

3.c. Criminal Paraphilias and Respect for Persons

[21] M. C. Angermeyer and S. Dietrich, "Public beliefs and attitudes towards people with mental illness: A Review of population studies," *Acta Psychiatrica Scandinavica* 113, no. 3 (March 2006): 170-171; Colleen L. Barry et al., "After Newtown – Public Opinion on Gun Policy and Mental Illness," *The New England Journal of Medicine* 368, no. 12 (March 2013): 1081; Parcesepe and Cabassa, "Public Stigma," 388-390.
[22] Mark L. Hatzenbuehler, Jo C. Phelan, and Bruce G. Link, "Stigma as a Fundamental Cause of Population Health Inequalities," *American Journal of Public Health* 103, no. 5 (2013): p. 814.

With the inclusion of criminal behavior as a sufficient criterion for diagnosis for a criminal paraphilia, it is easy for forensic psychiatrists and the legal system to violate the rights of individuals accused of sexually violent crimes. When initially accused, forensic psychiatrists do not abide by the ethical guidelines set forth by the American Psychiatric Association (APA); specifically, forensic psychiatrists routinely diagnose individuals in these settings without ever examining them in person. This diagnosis is then used to involuntarily commit individuals via Sexually Violent Predator (SVP) laws, violating their rights against double jeopardy.

As mentioned earlier, most diagnoses of criminal paraphilic disorders occur in forensic settings. Although not in a clinical setting, individuals in this setting deserve the same respect as those who seek treatment on their own. This means that forensic psychiatrists must follow the ethical principles laid out by the APA when interacting with and diagnosing individuals in a legal setting. There are two principles which seem especially relevant to cases involving individuals accused of sexually violent crimes. First: "[the psychiatrist] should avoid offering speculation as fact. Sensitive information such as an individual's sexual orientation or fantasy material is usually unnecessary."[23] Relying on criminal behavior to determine whether or not an individual has paraphilic tendencies is nothing more than speculation, directly contradicting this principle. Second: "The psychiatrist may permit his or her certification to be used for the involuntary treatment of any person *only following his or her personal examination of that person*."[24] In practice, often individuals are given diagnoses of criminal paraphilic disorders without ever speaking with the forensic psychiatrist. Using such a diagnosis to justify civil commitment shows a blatant disregard for the ethical consideration the individual.

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[23] American Psychiatric Association, *The Principles of Medical Ethics: With Annotations Especially Applicable to Psychiatry*, 1993 ed. (Washington, DC: American Psychiatric Association, 1993): 6.
[24] Ibid., 9, emphasis mine.

If found guilty, SVP laws allow states to involuntarily commit sexual predators after serving their prison sentence *provided that they have a diagnosable mental illness*.[25] According to *Kansas v. Hendricks*, these laws are not unconstitutional so long as they contain a mental illness clause; in other words, it does not violate an individual's right to due process or against double jeopardy to commit them involuntarily so long as they have a diagnosable mental illness that makes them a danger to the public.[26] If criminal behavior is sufficient to diagnose an individual with a mental disorder that warrants civil commitment, however, it does seem like a violation of that individual's rights. Although Justice Breyer, in his dissent following the *Hendricks* case, argues that the lack of treatment during the punitive sentence indicates that civil commitment after the fact does seem punitive,[27] he did not address the importance of the crime serving as evidence of the mental disorder. In other words, the original crime serves as the sole basis for conviction *and* the diagnosis, which in turn is used as the sole basis for involuntary civil commitment after the original sentence is served.[28] Using the same crime as reason to convict (and thus to serve a punitive sentence) and as reason to diagnose (and thus to be involuntarily committed) is much more likely a violation of the right against double jeopardy than has been given previous attention.

The purpose of SVP laws is to protect society from individuals who pose a threat to society. Given that there is nothing in the diagnostic criteria related to lack of control and research suggests that "diagnosis [of a criminal paraphilic disorder] was unrelated to long-term recidivism," SVP laws seem less like a civil commitment and more like an unconstitutional punitive act. Lastly, if we are to accept that a diagnosis of a criminal paraphilic disorder inhibits an individual's control

[25] First, "DSM-5 and Paraphilic Disorders, 191.
[26] Kansas v. Hendricks, 521 U.S. 346 (1997).
[27] Kansas, Petitioner 95-1649 v. Leroy Hendricks Leroy Hendricks, Petitioner 95-9075 (1997), dissent, paragraphs 9-11.
[28] Many thanks to Daniel Wodak for helping me flesh this out properly.

over their actions (as SVP laws suggest), it does not make sense to hold them legally or morally responsible for those actions. When we recognize that an individual's mental illness limits their capacity for rational free action, it does not make sense to regard them in the same way we would an individual who had full control over their actions.[29] If we are to assume that an individual with a criminal paraphilic disorder cannot control their behavior, as SVP laws suggest, then it does not make sense to hold them to the same punishment as other individuals—if this were the case, we should just commit them instead of sending them to prison.[30] Given that there is no evidence to suggest that a diagnosis of a criminal paraphilic disorder does limit control, however, we must treat individuals in these scenarios as people capable of and worthy of moral respect.

4. Objections

There are three objections I anticipate in response to my claim that criminal behavior should not be sufficient to diagnose an individual with a criminal paraphilic disorder. First, someone familiar with the DSM-5 may wonder if my argument is applicable to other psychiatric disorders which include criminal behavior as a diagnostic criterion. Second, an objection can be made that extreme criminal behavior simply is evidence of mental illness. Finally, one may argue that it is necessary for sexual criminal behavior to remain tied to mental illness in order to justify funding for psychological research.

Perhaps the most obvious objection is the fact that criminal behavior is listed as a diagnostic criterion for other mental health disorders in the DSM-5, as mentioned earlier. For example, ASPD lists "Failure to obey laws and norms by engaging in behavior which results in criminal arrest, or

[29] P. F. Strawson, Freedom and Resentment
[30] Kimberly Kessler Ferzan, "Beyond Crime and Commitment: Justifying Liberty Deprivations of the Dangerous and Responsible," *Minnesota Law Review* 96 (2011): 143-144.

would warrant criminal arrest" as one of seven ways to satisfy one of the four criteria.[31] To this I have three responses. First, as mentioned above, there is empirical evidence which relates criminal behavior in individuals with ASPD to specific brain abnormalities, while no such evidence exists for the criminal paraphilic disorders. Second, in contrast to the diagnostic criteria for the criminal paraphilic disorders, criminal behavior is not a sufficient condition for the diagnosis of ASPD. Many individuals who fit the above criterion would not meet the full diagnostic criterion for ASPD whereas most (if not all) individuals who commit a sex crime would meet the full diagnostic criteria for a paraphilic disorder. There is a more stringent discrimination between psychopathology and criminal behavior for other disorders than there is for the paraphilic disorders. Thirdly, others have speculated that the inclusion of criminal behavior in the diagnostic criteria for ASPD is unhelpful in terms of identifying treatable symptoms and suggest a move towards internal symptoms.[32] The use of criminal behavior as a diagnostic criterion is not uncontroversial, even for other disorders, and should not be accepted blindly.

Another objection is that it seems intuitive that such sexually violent behavior is obviously a sign of mental disturbance. It is unclear, however, why heinous behavior of a sexual nature is inherently evidence of mental disturbance but not other heinous behavior, such as committing mass shootings. Mental health professionals are staunchly opposed to having these behaviors by themselves be evidence of a mental disorder, and I have found no argument in support of how sexual crimes are different. It seems that those who wish to classify sexual predators as mentally ill simply because they are sexual predators are falling victim to the lazy habit of using the mentally ill as a scapegoat for abhorrent behavior. As uncomfortable as it may make us to admit,

[31] American Psychiatric Association, *DSM-5*, 659.
[32] For example, see Morten Hesse, "What should be done with antisocial personality disorder in the new edition of the diagnostic and statistical manual of mental disorders (DSM-V)?," *BMC Medicine* 8 (2010): 66.

neurotypical people often commit terrible acts, and simply labeling them as mentally ill neither helps to hold them accountable nor is it fair to those who are truly mentally ill.

Finally, some may argue that it is necessary to keep criminal behavior in the diagnostic criteria for criminal paraphilic disorders in order to ensure research and treatment. Possible motivations for such an objection may stem from the fact that a large majority of individuals diagnosed with criminal paraphilic disorders are diagnosed in a forensic setting and a belief that research should be aimed to best help this population, or the notion that psychologists may only research recidivism in sexually violent criminals if they are diagnosed with a mental illness. While a noble consideration, this objection ignores the fact that little research has been done on treatment for criminal paraphilias even with the current criteria. Responding to a similar concern specifically about demedicalizing pedophilia, Agustin Malón mentions, "it seems that the perspective of care and humanitarian compassion is far from being the priority in the current treatment of pedophilia. Actually, contrary to what has happened with other mental disorders […] where their medicalization has contributed to the development of a more humane understanding and treatment of the people affected, in the case of pedophilia, the existence of a diagnosis is not apparently changing our ideas in this direction."[33] Further, it simply is not the case that psychologists do not research and devise treatment plans for things that are not mental illnesses. Domestic abuse and effective ways of 'treating' domestic abusers is widely studied. A study was published in early 2018 on characteristics of animal abusers.[34] We can therefore justify research on sexual predators without including criminal behavior in the diagnostic criteria for paraphilic disorders.

[33] Malón, "Pedophilia," 1092.
[34] A. Wijik, M. Hardeman, and N. Endenburg, "Animal abuse: Offender and offence characteristics. A descriptive study." *Journal of Investigative Psychology and Offender Profiling* (2018).

5. Conclusion

To summarize, I have argued that the diagnostic criteria for criminal paraphilic disorders allows criminal behavior to serve as a sufficient condition for diagnosis. This wrongly blurs the line between criminality and psychopathology. Allowing criminal behavior to be a sufficient condition for diagnosis is contrary to the goals of psychiatry, propagates mental illness stigma, and allows for the rights of individuals accused of sexually violent crimes to be infringed. Even ignoring the problems with the diagnostic criteria in practice, current research simply does not support the idea that criminal behavior is tied to an empirically-identifiable disorder. Unless future scientists provide compelling reason for the inclusion, criminal behavior should be removed from the diagnostic criteria.

Let me close by situating my central argument in a broader dialectical context, in three ways. First, my argument for removing criminal behavior as a diagnostic criterion leaves a question about whether there is *any* remaining justification for keeping such paraphilic disorders in future editions of the DSM. Currently, psychologists cannot point to any empirical evidence to show that such paraphilias in themselves cause distress. Even if such evidence existed, it is unclear why distress related to sexual activities constitutes a pathology but distress related to other concerns does not.[35] Many individuals who are unemployed report significant distress, but there is not a specific disorder related to unemployment. Second, my argument adds to the growing pile of scholarly work dedicated to identifying problems with the DSM. Scholars from various fields have argued that psychiatry (and the medical field more broadly)[36] still suffers from biases such as racism

[35] Many thanks to Daniel Wodak for bringing this argument to my attention.
[36] For example, see: Anke Bueter, "Androcentrism, Feminism, and Pluralism in Medicine," *Topoi* 36, no. 3 (2017): 521-530.

and sexism.[37] Finally, this paper serves as further evidence that criminology/immorality and pathology historically have been and continue to be wrongly conflated. The wider public is happy to accept this equivocation—we see this whenever mental illness is blamed for school shootings, for example. Equating disorder and immorality harms those who truly suffer from mental illness and does not allow us to properly hold accountable those who do terrible things. As experts, we should not play into these wrongful beliefs unless we have good reason to do. Based on our current epistemic position, we should not allow criminal behavior to serve as a sufficient condition for diagnosis of a paraphilic disorder, and we should critically evaluate whether the paraphilias have any place at all in future editions of the DSM.

[37] For example, see: Wouter Braamhorst et al., "Sex Bias in Classifying Borderline and Narcissistic Personality Disorder," *Journal of Nervous & Mental Disease* 203, no. 10 (2015): 804-808.

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