

Hebephilia: Quintessence of Diagnostic Pretextuality

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***Hebephilia* is an archaic term used to describe adult sexual attraction to adolescents. Prior to the advent of contemporary sexually violent predator laws, the term was not found in any dictionary or formal diagnostic system. Overnight, it is on the fast track toward recognition as a psychiatric condition meriting inclusion in the upcoming fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders*. This article traces the sudden emergence and popularity of hebephilia to pressure from the legal arena and, specifically, to the legal mandate of a serious mental abnormality for civil commitment of sex offenders. Hebephilia is proposed as a quintessential example of pretextuality, in which special interests promote a pseudoscientific construct that furthers an implicit, instrumental goal. Inherent problems with the construct's reliability and validity are discussed. A warning is issued about unintended consequences if hebephilia or its relative, pedohebephilia, make their way into the DSM-5, due out in 2013. Copyright © 2010 John Wiley & Sons, Ltd.**

INTRODUCTION

When police raided Todd Carta's home, they found numerous images of teenage boys on his computer. In subsequent forensic evaluations, the 41-year-old Massachusetts man was forthright in acknowledging a primary sexual attraction to boys between the ages of 13 and 19. Investigation revealed that he had a four-year, live-in relationship with a boy who was aged 13–17, and that he used the Internet to pursue relationships with adolescent boys (*United States v. Carta*, 2009).

After Mr. Carta completed a federal prison term for child pornography, the government sought to civilly commit him as a "sexually dangerous person" under the Adam Walsh Child Protection and Safety Act of 2006. Under that law, he could be detained indefinitely if the government proved he had "serious difficulty in refraining from sexually violent conduct or child molestation" due to "a serious mental illness, abnormality, or disorder." Ultimately, a central issue in his case became whether *hebephilia*, or the sexual attraction to adolescents, qualified as a serious mental disorder that could justify Carta's civil commitment.¹

Carta's case exemplifies the sudden emergence of the novel label hebephilia in the forensic context, and the controversy that this label is provoking within the fields of

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¹ Carta did not qualify for a diagnosis of pedophilia, because his victims were not prepubescent children. The criteria for pedophilia in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR)* (American Psychiatric Association, 2000) include "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger)" over a period of at least six months. The person must have "acted on these urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty."

psychiatry, psychology, law, and criminology. A LexisNexis search located 36 cases in which the term was mentioned, all but one litigated during the present decade. In three-fourths of these cases, the label was invoked in support of civil commitment of a sex offender who, like Carta, was neither a rapist nor a pedophile.

Only a small minority of cases find their way into the LexisNexis database, making it difficult to determine how many of the several thousand (Davey & Goodnough, 2007; Deming, 2008) sex offenders currently hospitalized under civil commitment laws carry a diagnosis of hebephilia. Because hebephilia is not a formally recognized diagnosis, men who do not meet the criteria for pedophilia because they have offended against adolescents are often diagnosed with the vaguely defined DSM-IV-TR category of “paraphilia not otherwise specified (NOS)” that is shared by rapists (Levenson, 2004). Hinting at the possible magnitude of hebephilia as a basis for civil commitment are file reviews of hospitalized sex offenders in Washington and Wisconsin indicating that 23.7% and 16.3%, respectively, carry diagnoses of “paraphilia NOS” other than rape, or “nonconsent” (Jackson & Richards, 2007; Elwood, Doren, & Thornton, 2010).

Because hebephilia is not included in any formal diagnostic system or authoritative text, in the legal arena its definition is largely idiosyncratic to the testifying expert. Of the 27 civil commitment cases located through the LexisNexis search, a different definition was cited in virtually every case. One government expert testified that hebephilia was “a mental abnormality manifested by a persistent sexual arousal to adolescent children” (*Commonwealth v. Plucinski*, 2005). Another defined it as any “sexual attraction to children older than 13 years of age” (*In re Goldhammer*, 2008). A third described it as “in essence [being] interested, sexually attracted to young adolescent males who are just emerging into their sexuality” (*People v. Robledo*, 2007). A fourth testified that it was “a deviant pattern of sexual arousal to adolescent individuals under the age of consent” (*United States v. Shields*, 2008). In the Carta case, a government-retained psychologist defined it as a sexual preference for “young teens. . . ’till about age seventeen.”

Ultimately, the federal judge hearing the Carta case rejected hebephilia as a scientifically validated condition, cautioning against conflating exploitative criminal conduct with genuine mental illness. An appellate court overturned his decision, however, and sent the case back to the trial court for a determination of whether Carta’s mental disorder makes him sexually dangerous (*U.S. v. Carta*, 2010). Such legal skirmishes over the validity of hebephilia lend an air of urgency to attempts by an activist minority in the mental health field to legitimize it as a *bona fide* psychiatric disorder.

THE LEGAL CONTEXT

The Adam Walsh Act under which the Carta case was brought is part of a wave of sexual predator laws enacted over the past two decades by 20 U.S. states and the federal government. These laws broaden previous civil commitment schemes by enabling the hospitalization of individuals who do not suffer from traditional mental disorders such as psychosis but who nevertheless represent a perceived danger to the public.² In narrowly upholding the constitutionality of these laws, the U.S. Supreme Court ruled that

² Unlike similar laws popular during the sexual psychopath era of the mid-20th century, in which “sexual psychopaths” were hospitalized rather than incarcerated in penal facilities (Sutherland, 1950a, 1950b), contemporary commitment laws seek to incapacitate potentially dangerous sex offenders only *after* they serve a prison term.

dangerousness must be coupled with a “mental abnormality” or “personality disorder” in order to justify involuntary hospitalization (*Kansas v. Hendricks*, 1997). Furthermore, the court subsequently held, the requisite mental disorder must be sufficiently severe so as to “distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case” (*Kansas v. Crane*, 2002).

This legal requirement of a serious mental disorder has spawned a booming cottage industry. Across the United States, state-of-the-art detention facilities have sprung up to house and treat an ever-expanding population of civilly detained and committed sex offenders, now numbering several thousand (Davey & Goodnough, 2007; Deming, 2008).³ A formerly tiny organization, the Association for the Treatment of Sexual Abusers has mushroomed into an influential national lobby about 2,700 strong. Psychologists have flocked to fill a lucrative niche as government-retained evaluators, where earnings can be upwards of \$1 million per year (Piller & Romney, 2008).

However, the reality that most sex offenders do not suffer from the traditional mental illnesses has created a dilemma for mental health practitioners in this new niche. Over the past two decades, the legal requirement of a severe mental abnormality has inexorably pressured psychiatrists and psychologists to expand existing diagnostic categories in what Janus (2006) refers to as “definitional drift.” A specialized and highly contested diagnostic nosology has evolved that is invoked almost exclusively within the civil commitment context.

Underpinning this system is a diagnostic triad consisting of antisocial personality disorder, pedophilia, and paraphilia not otherwise specified. The linchpin is antisocial personality disorder, assigned in about 31–59% of all cases (Zander, 2005). Research in correctional settings suggests that a large proportion of offenders meet the minimum criteria for this nonspecific diagnosis with poor construct validity (Rogers & Dion, 1991). In routine correctional practice, the diagnosis is often invoked arbitrarily based on race (Stevens, 1993) and/or to convey a negative message to other clinicians (Rhodes, 2000; Toch, 1998; Weinstock & Nair, 1984). In court, use of this diagnostic label stigmatizes defendants, priming judges and jurors to perceive them negatively (Graham & Lowery, 2004; Greenberg, Shuman, & Meyer, 2004). This is all the more true in sexually violent predator cases, in which fact-finders are already primed to perceive a respondent negatively due to his prior sex crimes.

Occupying the other two corners of the SVP diagnostic triad (Franklin, 2009a) are the more case-specific labels of pedophilia and paraphilia not otherwise specified. Most civilly committed sex offenders are either child molesters or rapists. During civil commitment proceedings, the child molesters are generally diagnosed with pedophilia, whereas rapists are diagnosed with an *ad hoc* label, “paraphilia not otherwise specified—nonconsent” (Zander, 2005). It is only when confronted with the occasional sex offender who, like Todd Carta, is neither a pedophile nor a rapist that government-retained experts invoke the novel diagnosis of hebephilia, the focus of this article. Thus, the sudden popularity of this archaic term owes directly to the advent of sexual predator laws and the consequent emergence of a mental health industry predicated on evaluating, diagnosing, treating, and incapacitating sex offenders.

³ As of May 2006, Deming reported that 2,627 sex offenders were civilly committed and another 1,019 civilly detained (e.g., awaiting commitment) in the United States (Deming, 2008). As of March 2007, the *New York Times* reported that 2,700 people were civilly detained under SVP laws (Davey & Goodnough, 2007).

HISTORY OF THE CONSTRUCT

Hebephilia is an obscure term, rarely used in the fields of medicine, psychiatry, or psychology. It is not listed as a diagnosis in the *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Association, 2000), the International Classification of Diseases (World Health Organization, 2007),⁴ or any other formal diagnostic system. Searches of academic databases find it very rarely invoked. Indeed, the term is so obscure that it is not even included in the 22,000-page *Oxford English Dictionary* (OED), the ultimate reference on English lexicography.⁵

The term is a variant of the term *ephebophilia*, which was introduced in 1906 by Magnus Hirschfeld, a German scientist and the forensic medical officer for the Berlin courts (Dynes, 1990).⁶ Hirschfeld was a prolific scholar of sexuality; the term *transvestism* is also his. The word *ephebophilia* stems from his study of homosexuality, in which he classified homosexual men along a number of dimensions, one of which was preferred partner age. His two primary age divisions were *ephebophiles*, who preferred youthful males from puberty to early 20s, and *androphiles*, who preferred more mature men in their early 20s to about 50. According to Hirschfeld, *ephebophilia* was common and nonpathological, with *ephebophiles* and *androphiles* each making up about 45% of the homosexual population. In contrast, he wrote, only about 5% of homosexual men were *pedophiles*, with a sexual preference for prepubescent boys; at the other end were *gerontophiles*, who preferred older men (Anonymous, 1948).

The 20th century saw increasing public and professional interest in sexuality and, especially, criminal sex offending (Gagnon, 1975). What one prison warden described as “a wave of popular hysteria” during the Great Depression (McGee, 1938) ushered in the 1930–1955 sexual psychopath era in the United States during which researchers devoted increased attention to pedophilia. Unlike in the contemporary era, these earlier researchers were not interested in pathologizing men who had engaged in consensual sexual behavior with underage teenagers and had not molested younger children.

In 1938, in a popular book aimed at explaining sexual deviancy to the general public, the senior psychologist at Rikers Island Penitentiary in New York City discussed this distinction. At the time, Bertram Pollens was in charge of the “sex clinic” at which all sex offenders imprisoned at Rikers underwent psychiatric evaluation to determine whether they should be considered for civil commitment as insane or mentally defective (Marke, 1953; McGee, 1938; see also Robertson, 2005). In *The Sex Criminal*, Pollens explained that not all men who have committed sex crimes are deviant. In a chapter

⁴ The “disorders of sexual preference” in the current edition of the ICD include fetishism, fetishistic transvestism, exhibitionism, voyeurism, sadomasochism, and paedophilia. Paedophilia is defined as “a sexual preference for children, usually of prepubertal or early pubertal age.” A stipulation is included that sexual contact between adults and sexually mature adolescents is “socially disapproved” but “not necessarily associated with paedophilia.”

⁵ Unlike hebephilia, the term *ephebophilia* is listed in the 20-volume, 22,000-page reference work. *Ephebophilia* is defined as “sexual attraction in adults to adolescents, especially homosexual attraction to adolescent males.” *Ephebophilia*’s entrée into the Oxford dictionary owes to the term’s mention in two gay history texts in 1964 and 1977, respectively (Eglinton, 1964; West, 1977).

⁶ Hirschfeld coined the term *ephebophilia* (from the Greek *ephebos*, or one who has arrived at adolescence or manhood, and *philein*, to love) in his 1906 book *Wesen der Liebe*, there defining it as attraction to sexually mature youths from puberty up to the age of 20. In his 1914 magnum opus, *Die Homosexualität des Mannes und des Weibes*, he specified the range of attraction as from “the beginning to the completion of maturity, so approximately ages 14–21” (Dynes, 1990).

entitled “Accidental sex offenders,” he cites as an example of the “non-pathological sex criminal” a 47-year-old man “of hard-working peasant stock” who resided with a 15-year-old girl. The girl, Pollens explained, was “mature for her age,” and the couple loved each other and intended to marry:

Although our community doesn’t approve of it, nevertheless, in many parts of the world, and even in some sections of our own country, such marriages do take place. The relationship is not considered abnormal, particularly if the girl is matured beyond her age (Pollens, 1938, p. 163).

The Sex Criminal reflected the thinking of the day, in which men who committed “normal sex acts” such as statutory rape were distinguished from pedophiles, rapists, and other sexual deviants. An exhaustive review of 200-plus articles and books published through mid-century on sexual deviance confirmed this prevailing view of statutory rapists as common and ordinary men undeserving of any special study or psychiatric labeling (Karpman, 1954). While pedophilia was the third most frequently researched topic (behind exhibitionism and homosexuality) in the sexual deviance literature between 1912 and 1951, research focused on men who had sexually offended against prepubescent children, with offenders against adolescents viewed as “normal,” garden-variety miscreants. This “non-pathological offender” was defined as “an individual who commits normal sex acts which are considered sex offenses, e.g., statutory rape” (Karpman, 1954, p. 51). Indeed, the author commented, “at least 85% of the younger male population could be convicted as sex offenders if law enforcement officials were as strict as most people expect them to be” (Karpman, 1954, p. 51).

This stark distinction between pedophiles and statutory rapists was echoed in a landmark study published in 1965 by Alfred C. Kinsey’s Institute for Sex Research. Based on large-scale research with 1,500 U.S. offenders between 1940 and 1960, the Kinsey team distinguished between offenders against younger children and those against minors aged 12–15, described as “biologically ready for coitus.” They characterized this latter group of statutory rapists as normal young men who “scarcely merit the emotionally charged label of sex offender” (Gebhard, Gagnon, Pomeroy, & Christenson, 1965).

These findings, released to widespread media attention in a 923-page tome, *Sex Offenders: An Analysis of Types*, were hardly a surprise to the general public. After all, sexual attraction to adolescents is widespread and, indeed, evolutionarily adaptive (Kenrick & Keefe, 1992); scholars across a range of disciplines have established that both heterosexual and homosexual men across cultures and time periods tend to prefer youthful partners who are at the peak of both beauty and reproductive fertility (Bailey, Gaulin, & Agyei, 1994). Consequently, legal proscriptions against adult–adolescent sexual behavior vary widely from nation to nation and even within nations such as the United States.

In the wake of the Kinsey study, researchers in the fields of psychiatry, psychology, and criminology continued to study sex offenders. Much effort aimed at designing classification systems for rapists and child molesters that might facilitate further research, treatment, and—ultimately—prevention. These disparate efforts, like those of prior eras, were not geared toward psychiatric diagnoses, however. Nor, again, was special attention afforded offenders against pubescent or postpubescent minors.

HEBEPHILIA'S EMERGENCE

A solitary exception to the general disinterest in statutory rapists over the course of the 20th century was a rather small and inconsequential experiment conducted in the 1950s which has been resurrected by contemporary advocates of a hebephilia diagnosis. The researcher was Bernard Glueck, a Polish-born psychiatrist and director of the first psychiatric clinic in a men's prison, at New York's Sing Sing Prison. An early leader of psychiatric criminology, Glueck was influenced by the racial hereditarianism movement of his day. (His brother and sister-in-law, Sheldon and Eleanor Glueck, were prominent eugenicists, as was John D. Rockefeller Jr., who financially supported Glueck's research through the eugenicist-dominated National Committee for Mental Hygiene.) He believed that criminal behavior reflected an underlying psychopathology and that mentally abnormal offenders should be incarcerated for life (Rafter, 1997).

In one of many experiments on prisoners, Glueck categorized 200 sex offenders for psychiatric experimentation based on their commitment offenses: rape, pedophilia, incest and hebephilia (Glueck, Undated; see also Hammer and Glueck, 1955; Hammer & Glueck, 1955, 1957). Here, then, we see introduction of the ephebophilia variant *hebephilia*, which Glueck's team defined as "sexual activity with adolescents... as distinguished from pedophilia, which we limit to children below puberty" (Hammer & Glueck, 1955).⁷ Glueck's team was not especially rigorous in their categorization scheme, nor did the group advocate elevating hebephilia to the status of a formal diagnosis. Rather, they used offense-specific labels such as hebephilia, rape, and incest merely to separate offenders into discrete offense categories to facilitate study.

This isolated use of the novel term hebephilia did not cause it to catch on in scientific or public discourse. Indeed, in reporting on the Sing Sing study a few years later, a group of Toronto researchers explicitly rejected it, critiquing the study's lack of rigor and cautioning against conflating pedophilia and sexual behavior with adolescents:

It remains doubtful whether [hebephilia] can have any uniform clinical meaning. . . . Since the deviation is related to the sexual maturity of the object, the natural break-off point would be the onset of puberty, determined by the presence or absence of secondary sex characteristics. . . . It is important that adolescent or young adult sexual activity, as found in charges of statutory rape, become excluded from pedophilic studies. Many of these acts, though legally forbidden, cannot be considered sexually deviant (Mohr, Turner, & Jerry, 1964).⁸

While hebephilia remained an obscure footnote in sexology research, in the 1950s ephebophilia was resurrected from the graveyard of Magnus Hirschfeld's many lesser-

⁷ The term is credited to prison psychiatrist Paul King Benedict. The Sing Sing researchers defined pedophiles as men who had offended against "prepubertal objects." However, they included some offenders with female victims over 14 in their heterosexual pedophilia group, and some offenders with male victims over 18 in their homosexual pedophilic group (Mohr et al., 1964). The hebephile category was subdivided based on victim gender, into heterosexual hebephilia (32 cases) and homosexual hebephilia (37 cases). This suggests that the term hebephilia (rather than Hirschfeld's ephebophilia) was introduced in order to include offenders against adolescent females rather than just males.

⁸ The researchers further commented on the inherent problems of assigning offenders to groups based on victim age, given the variability both in individual maturation among children and in the maturation of girls versus boys. Further, they noted, the outer limits of pedophilia are especially difficult to determine in "homosexual pedophilia." In contrast to "heterosexual pedophilia, where the majority of victims fall between the ages of 6 to 12 years," in homosexual pedophilia "the number of victims increases right into puberty, resulting in a statistical overlap with adult homosexuality. . . . [W]hether homosexual hebephilia is a consistent category will depend on further empirical studies."

known terms as a minor entry in a rather unusual research project. The goal of this Czechoslovakian project was to ferret out draft dodgers, specifically men who falsely claimed to be homosexual in order to avoid compulsory military service. Commissioned by the Czech military for this purpose, sexologist Kurt Freund realized that psychoanalytic methods proved incapable of distinguishing heterosexual from homosexual men and a new method was needed. Toward this end, he developed the science of *phallometry*, which would become so central to the modern sex offender industry. His penile plethysmograph, developed in 1957, detected sexual arousal by placing a glass cylinder and air cuff over men's penises and measuring resultant air displacement (Freund, 1963).

Over time, Freund's interest in homosexuality evolved into a focus on erotic age preference. He invoked Hirschfeld's original typology to distinguish *pedophiliacs* from *ephebophiliacs* and *androphiliacs* (the latter being Hirschfeld's term for homosexuals with a preference for mature adult men). For purposes of physiological testing, Freund operationalized ephebophiliacs as men who were criminally "charged with at least two homosexual offences on 13 to 17-year-old boys and none on younger ones" (Freund, 1967). He invoked Glueck's term hebephilia as the heterosexual counterpart to ephebophilia, specifically operationalized as men who preferred adolescent girls in the age range of 13–15 (in contrast to *gynephilia*, Hirschfeld's term for men's sexual preference for mature adult females).⁹ In discussing the difficulties of experimentally establishing these erotic age preference categories, Freund noted "The question, whether hebephilia exists as a counterpart to ephebophilia, remains open" (Freund, 1967, p. 228).

In a subsequent study, Freund confirmed the normalcy of sexual arousal to adolescents. His subjects were 48 young Czech soldiers, all presumed to be "normal" and heterosexual in orientation. He showed the men pictures of children (ages 4–10 years old), adolescents (ages 12–16), and adults (ages 17–36). As expected, most of the heterosexual men were sexually aroused by photos of both adult and adolescent females. They were not aroused by pictures of males of any age, and were aroused at an intermediate level by pictures of children (Freund & Costell, 1970).

This unsurprising tendency of normal heterosexual men to be sexually aroused by adolescents was confirmed by other researchers. Like Freund, a group of researchers in Canada was attempting to perfect physiological tools for measuring sexual arousal. These researchers found that their instruments could distinguish between the arousal patterns of child molesters and a control group exposed to slides of female children (ages 5–11), but both groups showed similar arousal patterns to slides of pubescent girls (ages 12–15) (Quinsey, Steinman, Bergerson, & Holmes, 1975).

These physiological findings were replicated by another group of Canadian researchers in the 1980s. Comparing men incarcerated for pedophilia, rape, and heterosexual conduct with adolescents, the researchers found no evidence of "deviant sexual arousal" patterns among either rapists or "heterosexual hebephiles" (defined as men with victims ages 12–16). "We may conclude that rapists and hebephiles are not sexually deviant in terms of either the preferred age of the sexual partners, or in terms of

⁹ In 1981, Freund narrowed his contemplated age range for hebephilia, again for the purposes of his laboratory research: "Let us define... the term hebephilia as an erotic preference for pubescents and let us define the age bracket of pubescents to be approximately 11 or 12 to 13 or 14 for girls, and to 15 or 16 for boys" (Freund, 1981, as cited by Blanchard, 2009a).

a sexual desire enhanced by the use of force,” the researchers concluded. Echoing the Kinsey team’s conclusions in the 1960s, they suggested that hebephiles’ choice of younger partners might be due to situational factors, such as availability or reduced likelihood to resist, rather than sexual preference (Baxter, 1984).

Freund’s physiological research program might have ended up in the dustbin of history if not for the “Prague Spring” rebellion against the Soviet Union, which prompted Freund’s 1968 emigration to Canada. There, he found fertile ground for his research at the Clarke Institute of Psychiatry¹⁰ in Toronto, where researchers were intensively studying court-referred sex offenders. Freund met protégé Ray Blanchard at the Ontario Correctional Institute, a detention facility for sex offenders, and the two began collaborating to apply plethysmography to the study of sex offenders, a course of research that would culminate—long after Freund’s demise—in Blanchard’s current proposal to add hebephilia as a formal diagnosis to the upcoming fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (Blanchard et al., 2009).

Freund’s group was one of several in Canada, the United States, and the United Kingdom conducting research with incarcerated sex offenders. In addition to pedophilia, Freund and his protégés were interested in understanding other unusual erotic preferences and gender identities, including transsexualism and the so-called “courtship disorders” theorized to include voyeurism, exhibitionism, toucheurism, and frotteurism. For the most part, these physiologically oriented researchers during the decades from the 1960s to 1980s focused on perfecting their techniques for identifying men with abnormal preferences for *prepubescent* children not yet capable of reproduction. Thus, sexual attraction to adolescents as a distinct phenomenon continued to be largely ignored.

After Freund’s death in 1996, his research team at the Law and Mental Health Programme of Toronto’s Centre for Addiction and Mental Health (CAMH) took a decidedly biological course. Increasingly, the group focused on searching for a neurodevelopmental basis (involving genes, hormonal exposure *in utero*, brain damage, or some combination) for transsexualism as well as male homosexuality and pedophilia.

Although the CAMH team had expressed occasional interest in hebephilia, they more formally incorporated this construct into their research program in 2004. In a study that year on cognitive function and handedness among sexually anomalous men (Cantor et al., 2004), hebephiles are presented as a distinct group, separate from pedophiles and *teleiophiles* (those with a primary attraction to adults). The team reported that hebephiles, defined as “people with an erotic interest in pubescent children,” were intermediate to pedophiles and *teleiophiles* in intelligence, memory, and left-handedness. However, the meaning of these findings was unclear due to gaps in “taxonomic knowledge of the paraphilias”:

It is clear... that there exist men who are more attracted to pubescents than they are to younger or older persons, but what do such men—those with hebephilia—really represent? Is this pedophilia oriented toward the oldest possible children, *teleiophilia* oriented toward the youngest possible sexually mature persons, some third orientation that is etiologically distinct from both pedophilia and *teleiophilia*, or a mixture of all three? (Cantor et al., 2004, p. 12).

¹⁰ The Clarke Institute is now known as the Centre for Addiction and Mental Health. Its physiological laboratory is named after Freund, who committed suicide in 1996 after being diagnosed with advanced lung cancer. After Freund’s death, Raymond Blanchard took over Freund’s position at the institute.

The following year, hebephilia made its debut into the title of a scholarly article by this same team, “Handedness in pedophilia and hebephilia” (Cantor et al., 2005). Hebephiles were defined as men whose victims ranged in age from 12 to 16, with the construct operationalized through phallometric responses to images of female or male “pubescents.” As in the previous study, pedophiles were significantly more likely than teleiophiles to be left handed, with the findings for hebephiles being less definitive.

Only one other group of contemporary researchers has targeted men with sexual offenses against pubescent minors for special attention. In contrast to the Canadian group, this strand of research came in response to a specific historical event: The priest sexual abuse scandals of the late 1990s.

In 2002, responding to its public relations crisis, the United States Conference of Catholic Bishops commissioned a team of researchers from the John Jay College of Criminal Justice to study all allegations of sexual abuse of minors by Catholic priests between 1950 and 2002. The researchers found that about 4% of U.S. priests were alleged to have sexually abused children, with the abuse peaking around 1970. Unlike in the general population, far more boys than girls were abused (four out of five victims), and most of the boys were post-pubescent (Terry & Tallon, 2004).

Armed with these data, a team of psychologists with the Catholic University of America briefly, and unsuccessfully, attempted to create an objective scale to detect what they called *ephebophilic* interests among priests. Attributing their terminology to Hirschfeld and Freund, the researchers defined an *ephebophile* as someone “sexually attracted to the pubescent or post-pubescent male,” and a hebephile as its heterosexual counterpart, someone “primarily sexually attracted to the pubescent or post-pubescent female.” To create their Combined Objective Ephebophile Scale, they combined 27 items from two widely used personality tests, the Millon Clinical Multiaxial Inventory-II (MCMI-II) and the Minnesota Multiphasic Personality Inventory (MMPI-2). When tested on 165 priests in treatment for psychiatric disorders, the scale was only able to correctly discriminate 69% of the time between same-sex ephebophile priests and priests with nonsexual psychiatric problems. Discussing their only limited success, the researchers acknowledged that “attempting to distinguish priest ephebophiles from other groups is extremely difficult” (Cimboic, Wise, Rossetti, & Safer, 1999).

Despite their inability to create a reliable means of assessing so-called ephebophilic interest among priests, the researchers nonetheless went on to lobby for the creation of a new psychiatric diagnosis. Ignoring the distinction between criminal behavior and psychopathology, they proposed this diagnostic expansion based solely on the existence of priests who had sexually offended against post-pubescent minors, mostly boys in the age range of 11–17. Indeed, without explaining their rationale for considering the priests’ sexual misconduct as evidence of mental illness, they wrote that—based on the large number of victims, numbering in the thousands—it would be “clinically negligent” to “not accept the utility of the ephebophilia diagnosis” (Cimboic & Cantor, 2006).

THE DIAGNOSTIC LOBBY

Since hebephilia is not included in any formal diagnostic system, government-retained expert witnesses justify its application in forensic cases by shoehorning it into a category called *paraphilia not otherwise specified* (Levenson, 2004).

The paraphilias¹¹ made their entrée into the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) with the third edition, published in 1980. Although the diagnostic criteria have changed with successive editions, the overall category describes sexually unconventional urges or behaviors; the eight listed in the current DSM-IV-TR (American Psychiatric Association, 2000) are exhibitionism, fetishism, frotteurism, pedophilia, masochism, sadism, transvestic fetishism, and voyeurism.

In the DSM classification system, “not otherwise specified (NOS)” is a residual category accompanying 44 different disorders ranging from dementia to nicotine-related disorder. Typically, as in *depression NOS* or *psychosis NOS*, this specifier is invoked when a condition is the focus of treatment but the patient’s symptoms do not meet the full diagnostic criteria. In the case of the paraphilias, the DSM authors suggest assigning an NOS code (302.9) to unusual sexual interests that do not meet criteria for the eight listed paraphilias. The seven NOS examples provided in the DSM-IV-TR are telephone scatologia, necrophilia, partialism, zoophilia, coprophilia, klismaphilia, and urophilia.¹²

The notion that hebephilia can be considered a paraphilia NOS derives from an instruction manual written for the express purpose of assisting in the civil commitment enterprise. The manual, *Evaluating Sex Offenders: A Manual for Civil Commitments and Beyond* (Doren, 2002), has had a major influence in the sexually violent predator niche. Its author, Dennis Doren, former evaluation director at a government detention center in Wisconsin, has conducted dozens of trainings in most states with SVP commitment laws (Doren, 2002) as well as internationally (Zander, 2005), and his manual is on the suggested reading list for forensic psychologists studying for the American Board of Forensic Psychology’s diplomate credential (American Board of Forensic Psychology, 2003).

On pages 80–81 of his manual, Doren explicates his position that sexual attraction to adolescents, “or what is otherwise called hebephilia or ephebophilia by some authors,” qualifies for a diagnosis of paraphilia NOS. He begins by conceding that such an attraction is normal, as reflected by the advertising industry’s use of “provocatively attired adolescent girls to promote products” and as indicated by empirical research showing that about one-third of nonoffending men are sexually aroused by adolescents. What makes it pathological, he contends, is “not the attraction per se” but, rather, the “degree to which someone is repetitively or chronically impaired by that attraction” (Doren, 2002).

Doren’s advocacy of shoehorning of hebephilia into the residual NOS category for paraphilias is problematic for at least six reasons.

First, the DSM-IV specifically states what makes pedophilia a disorder is the existence of “recurrent, intense sexually arousing fantasies, sexual urges, or behaviors”

¹¹ The term *paraphilia* is credited to Wilhelm Stekel, an Austrian follower of Freud. It refers to predilections for sexual behaviors other than consensual intercourse with adult partners. Explicitly based on cultural notions of “normal” sexuality, the construct pathologizes “forms of sexual activity which run counter to accepted social behavior and which are antibiological, either per se or because they are socially prohibited” (Karpman, 1954). Consistent with their socially defined nature, the specific paraphilias have changed over time, for example no longer including masturbation and homosexuality. However, despite efforts by sexologist John Money in the 1960s to make the term more value neutral, it has remained essentially pejorative.

¹² Hundreds of paraphilias, some even rarer, have been documented, including erotic attraction to noses (nasophilia), to insects and small animals (formicophilia), to amputees (acrotomophilia), and to foreigners or extraterrestrials (xenophilia). Lists of such paraphilias can be found in various places online, including at http://en.wikipedia.org/wiki/List_of_paraphilias

involving *prepubescent* child (“generally age 13 years or younger”). The implicit converse is that attraction to *postpubescent* children is *not* regarded as pathological.

Second, sexual attraction to adolescents is not rare, as are all of the listed examples of paraphilia NOS. Indeed, it is significantly more common than pedophilia. Due to the commonplace nature of attraction to postpubescent children, it seems logical that the DSM authors would have specifically listed this condition if they had intended to pathologize it as a mental disorder. In his ruling against the use of hebephilia, the federal judge in *Carta*’s case made that very point:

[I]t is difficult to conceive why the DSM editors would limit examples of paraphilia NOS to rare sexual fixations such as coprophilia and klismaphilia if the category were intended to include a sexual interest as common as attraction to post-pubescent adolescents (*United States v. Carta*, 2009).

Third, the concept of the paraphilias—explicitly based on cultural notions of normalcy—is widely critiqued as arbitrary, unreliable, imprecise, outdated, and lacking in scientific validity. Critics point out that the field trials for the paraphilias’ initial inclusion in the DSM-III involved small numbers of cases that collapsed all sexual dysfunctions and paraphilias together, and no field trials were conducted for the DSM-IV. Moreover, changes made over the years had no rational or empirical basis, and did not reflect advances in scientific research or evidence-based clinical practice (Moser & Kleinplatz, 2005; O’Donohue, Regev, & Hagstrom, 2000; Polaschek, 2002; Zander, 2005).

Fourth, the *ad hoc* nature of any NOS category makes it impossible to study, in order to establish its scientific reliability and validity. The NOS specifiers in the DSM are widely regarded as “wastebasket” categories into which a heterogeneous “hodge-podge” of individuals is placed for lack of any more precise diagnosis (Lareau, in press). Poor interrater reliability and validity plague many established DSM categories (Kirk & Kutchins, 1992; Lane, 2007), including pedophilia (Levenson, 2004; Packard & Levenson, 2006; O’Donohue et al., 2000). These problems are especially acute for residual conditions that are vaguely or inconsistently defined; most NOS categories have no research underpinning whatsoever, and the rates of error in categorization are unknown.

Fifth, Doren’s position that what makes hebephilia a pathology is not the presence of sexual attraction toward adolescents *per se* but, rather, “the degree” of such attraction is a dangerously vague standard for legal purposes, inviting arbitrary, inconsistent, unreliable, and potentially biased application. In other words, since some degree of sexual attraction to adolescents is considered normal, objectively defining a point at which it becomes abnormal is an inherently subjective and nebulous endeavor.

Finally, and perhaps most essentially, a new diagnosis should not emerge in the absence of empirical study and validation, on the basis of a training manual written for the explicit purpose of assisting in an adversarial endeavor. In rejecting hebephilia as a credible diagnosis, a federal judge in a 2008 case was influenced by just this problem. Noting that Doren’s manual was not peer reviewed, the judge opined “This book is the lone source cited by the government for the proposition that some kinds of hebephilia fall within paraphilia NOS. It does not suffice” (*United States v. Shields*, 2008).

In rejecting hebephilia as a valid scientific construct justifying the civil commitment of Todd Carta, Judge Joseph Tauro articulated three of these issues. First, he pointed to the absence of any evidence that the DSM-IV-TR residual category of “paraphilia NOS” was meant to include hebephilia, a common condition among normal men.

Second, he noted that inherent problems in operationalizing hebephilia make it an “unworkable” diagnosis. For example, experts differ as to the degree of sexual interest required for a diagnosis. Equally inextricable are the precise age range for adolescence and/or the specific level of physiological development that equates to biological maturity. Finally, “and most importantly,” the judge discussed the “limited and scientifically problematic” research on the construct, most of it conducted by a single research group.

Ironically, by invoking an *ad hoc* label such as hebephilia, government experts are ignoring an explicit caveat in the very manual they claim supports their diagnosis. The authors of the DSM-IV-TR specifically reference civil commitment proceedings in cautioning against the use of informal labels in the forensic arena:

[W]hen the presence of a mental disorder is the predicate for a subsequent legal determination (e.g., involuntary civil commitment), the use of an established system of diagnosis enhances the value and reliability of the determination (American Psychiatric Association, 2000, p. xxxiii).

An expedient solution to many of the concerns voiced by the judge in *Carta* and other court cases would be to legitimize hebephilia by getting it incorporated into a generally recognized diagnostic system. It thus comes as no surprise that this is just what is being proposed. In a controversial article (Blanchard et al., 2009), the Canadian group that popularized hebephilia advocates adding it to the upcoming, fifth edition of the American Psychiatric Association’s influential *Diagnostic and Statistical Manual of Mental Disorders*, due out in 2013. Blanchard has since elaborated on his initial recommendation, both in press and in a series of conference presentations in the United States and internationally (see, e.g., Blanchard, 2009b; Blanchard, 2010).

Rather than hebephilia, Blanchard now proposes an entirely new diagnostic label of *pedohebephilia* for those who are “intensely aroused sexually by children under the age of 15” (Blanchard, 2009b). Subtypes would include pedophilia (sexual attraction to prepubescent children, “generally younger than 11”), hebephilia (attraction to “pubescent children, generally age 11 through 14”), and pedohebephilia (attraction to children in both age groups). Blanchard also proposes drastically expanding the paraphilias to include (with a few listed exceptions) “any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, consenting adult human partners.”

As justification for this diagnostic expansion, Blanchard cites a physiological study conducted by his research group in which the self-reported erotic preferences of men referred to a clinic for sexual problems were compared with the men’s physiological responses on penile plethysmograph (Blanchard et al., 2009). Identifying a set of men who responded maximally to slides of young adolescents, the researchers argued that the mere existence of this group merits creation of a new psychiatric disorder. Blanchard also defends the diagnostic expansion on the ground that hebephiles “are getting DSM diagnoses anyway—just not the most precise ones” (Blanchard, 2009b).

DISCUSSION

Ironically, in the infrequent instances in which hebephilia is introduced in court outside of the sexually violent predator arena, it is in the service of criminal defendants. For example, in a 1992 case in New Mexico, a criminal defendant introduced expert

evidence of hebephilia in an unsuccessful attempt to show that his sexual contact with an adolescent male was consensual (*State v. Lamure*, 1992). Such deployment has generated vehement criticism from law enforcement leaders, who complain that the defense bar is introducing hebephilia and ephebophilia pretextually in order to excuse criminal conduct, when in reality sexual attraction to adolescents is neither a “sexual perversion” nor a legitimate psychiatric condition (e.g., Hazelwood & Burgess, 2009; Lanning, 2001).

The mere existence of men such as Todd Carta, with a primary sexual attraction to young adolescents, is not controversial. Indeed, the existence of adults who are attracted to pubescent and postpubescent minors is biologically normative across cultures and eras. The existence of a condition in nature does not make it a psychiatric malady. Nor is behavior necessarily pathological just because it is morally abhorrent or criminal.

Had the Canadian research group limited itself to description of this population and suggested semantics for different sexual arousal patterns, controversy would have been limited. It was the leap from description to proposed diagnosis that provoked vigorous protest. This proposal prompted seven rebuttals (DeClue, 2009; Franklin, 2009b; Janssen, 2009; Moser, 2009; Plaud, 2009; Tromovitch, 2009; Zander, 2009) raising a host of concerns, including methodological problems, doubts about the construct’s validity, and fears about the legal and public policy implications of pathologizing such a common human condition.

Regarding the specific study, rebuttals raised methodological concerns with the data selection, procedures, and analyses. For example, the researchers omitted slides of older adolescents from their stimuli, making it impossible to know whether subjects that they identified as preferentially attracted to young pubescents (ages 12–14) might have been more attracted to older adolescents, an attraction that the group acknowledges is *not* pathological (Plaud, 2009). They also failed to include a control group of “normal” men preferentially attracted to adults (Zander, 2009). Moreover, they excluded a majority of eligible participants on the grounds that these men were “noncooperative” because they claimed a sexual preference for adults despite having offended against children, introducing an *a priori* selection bias that may have predetermined their findings (Franklin, 2009b). (The assumption that these men were being duplicitous runs counter to evidence from other studies, such as that by Seto (Seto, 2008), indicating that only about half of sex offenders against children are pedophiles.)

As one rebuttal noted, the heterogeneous arousal patterns found in this study make it hard to see how hebephilia could have diagnostic specificity, that is, how it could correctly identify true hebephiles without also identifying large proportions of non-hebephiles. Overall, due to shortcomings in the data and confusing statistical and analytical procedures, the findings did not fit the conclusions reached and “more questions are raised than answered” (Plaud, 2009).

More broadly, the rebuttals touched on inherent problems in reliably measuring a primary or intense attraction to young adolescents so as to engender any meaningful diagnostic specificity or validity. The proposed cutoff age of 15 is arbitrary, as age is an unreliable indicator of either social or biological maturation. Yet, a diagnosis requiring clinicians to determine the stage of sexual development of an evaluatee’s victim is also potentially problematic, as pubertal onset varies tremendously not only among individual adolescents but also among races, and occurs earlier for girls than boys (Zander, 2009).

Even more problematic is determining which naturally occurring human variations are psychiatric maladies. For example, one critic asked, why not create a formal diagnosis for gerontophilia (Hirschfeld's word for sexual attraction to older adults) or for attraction to heavyset people (DeClue, 2009)? Even more apropos, why not repathologize homosexuality, a sexual variant gradually removed from the DSM between 1973 and 1987 (Spitzer, 1981)? Or, if it is the criminality of a behavior that makes it pathological, why not pathologize recidivist burglary or domestic violence? The "cycle of violence" in which men are driven to repeatedly assault their spouses despite all negative consequences seems at least as intrinsically pathological as adult sexual attraction to young teens, and might equally warrant a new diagnosis, such as Spousal Assault Disorder.

Also inherently problematic is defining at what degree or level of intensity a pattern of attraction must be in order to morph from normal to pathological. To address this issue, Blanchard clarifies that, in order to rise to the level of a clinical disorder, the person's arousal to children under 15 must be "intense" or at least equal to that of his arousal to adults, and that this arousal must cause "distress or impairment." These qualifiers are inherently vague and arbitrary. More importantly, they prove to be no barrier to formal diagnosis, in that Blanchard proposes treating all "criminal sexual offenses against children... as *de facto* impairment" (Blanchard, 2009b).

These issues of where to apply cutoffs—the child's age and pubertal development, the adult's degree of arousal and level of distress—point to inescapable problems in attempting to shoehorn something as complex as human sexuality into simple binary categories. Indeed, the creation of artificial dichotomies to describe complex, dimensional phenomena is a flaw in the DSM more broadly, one that has been the focus of widespread scientific critique. As pointed out by critics of the DSM, not only does the categorical approach enable the creation of diagnoses out of whole cloth (Lane, 2007), but the prevalence of a disorder can be made to "rise and fall as erratically as the stock market" (Kutchins & Kirk, 1997) through the manipulation of symptom criteria and duration.

In two recent federal cases rejecting hebephilia as a basis for civil commitment, the judges wrestled with this issue of whether hebephilia represented a serious mental disorder as required in order for civil commitment to be constitutional. In the case of Jay Abregana of Hawaii, the judge opined that "paraphilia NOS: hebephilia" might qualify as a clinical diagnosis, but that it did not reach the level of a "serious mental disorder" qualifying Abregana for civil commitment (*United States v. Abregana*, 2008). In the case of Jeffrey Shields of Massachusetts, the court held that professional literature may establish hebephilia as a "group identifier or label," but not as a generally accepted clinical diagnosis (*United States v. Shields*, 2008).

The forensic deployment of hebephilia as seen in these recent cases is a quintessential example of "definitional drift" (Janus, 2006), in which the legal requirement of a mental disorder in civil commitment proceedings pushes forensic experts to apply nebulous diagnoses in a highly pretextual manner (Franklin, 2009a). Hebephilia is being advanced as a mental disorder by a small cadre of government experts intent on legitimizing the indefinite detention of men who have committed culturally repugnant acts with minors and who do not meet the diagnostic criteria for other, more established, disorders.

Intentionally or not, expanding the definition of pedophilia—a diagnosis with already poor interrater reliability (Marshall, 1997)—into a broader construct of

pedohebephilia has the potential to dramatically increase the scope and power of the sex offender civil commitment industry. The inherent vagueness of the construct, in turn, will invite arbitrary application based on prejudice, bias, or pretextuality.

Law professor Michael Perlin defines pretextuality as courts' acceptance and/or encouragement of testimonial dishonesty, especially when expert witnesses "purposely distort their testimony to achieve desired ends." Perlin asserts that the mental disorder requirement in SVP civil commitment proceedings insidiously encourages pretextual testimony and decision-making, corroding the entire system:

This pretextuality is poisonous; it infects all participants in the judicial system, breeds cynicism and disrespect for the law, demeans participants, and reinforces shoddy lawyering, blasé judging, and, at times, perjurious and/or corrupt testifying (Perlin, 2007, p. 341; see also Perlin, 1998).

The current efforts to expand pedophilia into the broader category of pedohebephilia are particularly troublesome given the secrecy surrounding the revision process for the DSM-5, due out in May 2013. In a strongly worded warning, the chair of the DSM-IV task force, Allen Frances, predicts an epidemic of false disorders and other "unintended consequences" if the proposed changes are implemented. He cites the language in the existing paraphilias section of the DSM-IV-TR as an example of how "a seemingly slight wording change" that is insufficiently thought out can introduce confusion and be used to justify "the sometimes inappropriate lifetime psychiatric commitment" of criminal offenders with "no real mental disorder" (Frances, 2009).

Most recently, a leading researcher of rape has issued a strong warning against efforts to introduce into the DSM-5 another new sexual disorder of benefit to the civil commitment industry. Raymond Knight said there is no empirical justification for the proposed Paraphilic Coercive Disorder, which would replace the ad hoc label of "Paraphilia NOS—nonconsent" currently being invoked against rapists in sexually violent predator trials. The new syndrome, he warned, would have "serious potential for misuse" as a means of legitimizing civil commitments that might otherwise be found unconstitutional preventive detention (Knight, 2010).

Such cautions notwithstanding, the unique composition of the DSM-5 sexual disorders workgroup heavily favors adoption of these empirically suspect diagnoses. The chair of the Paraphilias Subworkgroup turns out to be none other than Ray Blanchard, the first author of the research study upon which the proposal is based, and indeed Blanchard is using his DSM workgroup post to lobby for the diagnosis. The chair of the larger Sexual Disorders Work Group, meanwhile, is Kenneth Zucker, who is chief psychologist at the Centre for Addiction and Mental Health (CAMH) in Toronto, where the research was conducted. Furthermore, Zucker and study co-authors Blanchard and James Cantor serve together on the editorial board of the journal that published the study. Thus, the CAMH group is poised to exert tremendous influence over the revision process for the DSM-5 sexual disorders and, by extension, the shape of forensic diagnosis of sex offenders for some time to come.

Significant unintended consequences are likely if novel syndromes of primary benefit to the sex offender commitment industry are incorporated into the upcoming edition of the DSM. First, at a time of mounting controversy over partisan influence and lack of scientific rigor in the DSM diagnostic system (Aldhous, 2009; Lane, 2007; Vedantam, 2006), critics will seize on this as a glaring example of arbitrary and unscientific use of psychiatric diagnosis in the service of a pragmatic goal. This could have the paradoxical

effect of reducing the scientific credibility of the DSM and the fields of psychiatry and psychology more broadly. In the forensic arena, where the diagnosis will most often be invoked, it may paradoxically invigorate defense challenges on the grounds that psychiatry is being deployed in a pretextual manner. In the end, hebephilia will come to haunt not only those who are civilly committed on pretextual grounds, but the entire mental health field, for years to come.

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